



Civil Practice and Procedure

- **Application for judgment on admission**
- **The overriding objective.**

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 353 OF 2009

KENYA PORTS AUTHORITY.....PLAINTIFF/RESPONDENT

VERSUS

SPEARS SHIPPING AGENCY (K) LIMITED.....DEFENDANT/APPLICANT

RULING

The plaintiff sued the defendant for US dollars 82,485.95. The defendant filed a defence by way of admission of the debt of US dollars 71,485.95. The defendant in its defence offered to pay that debt by way of monthly installments of US dollars 2000.

The defendant pleaded in that defence that it had already paid to the plaintiff US dollars 11,000 towards the settlement of that debt. That is why it admitted part of the debt claimed by the plaintiff. After that defence was filed, the court file went missing and the plaintiff successfully applied for its reconstruction. The application that was argued before me was the one filed by the plaintiff dated **3rd March, 2011**. The parties filed written submissions to that application. That application is brought under Order 13 rule 2 of the Civil Procedure Rules 2010.

It seeks a prayer that judgment be entered against the defendant on admission for US dollars 71,485.95. The defendant by an affidavit of its managing director dated **1st April 2011** did not oppose the application for entry of judgment but sought in that affidavit that it be allowed to clear the decretal amount by monthly instalments of US dollars 2000. The payment by those installments was opposed by the plaintiff. The plaintiff sought an order of four installments of US dollars 10,000, 10,000, 20,000 and 31,485.95.

When parties filed their written submissions they seemed to be at cross purpose of the order of this court of **19th September 2011**. On that day the court ordered parties to file written submissions in respect of the plaintiff's application dated **3rd March 2011**. The parties however in their written submissions addressed themselves to the defendant pending application for leave to pay the decretal amount by

monthly installments.

Since there is no dispute in the defendant's indebtedness to the plaintiff debt of US dollars 71, 485.95, I shall apply the overriding objective in section 1 A (1) of the Civil Procedure Act to ensure that this matter is expeditiously and affordably resolved in finality by entertaining both the plaintiff's and defendant's applications. Just to consider what the court of appeal has at one time stated in respect of the overriding principle, I will refer to the case; **CIVIL APP. NO. 263 OF 2009 (UR 183/09) STEPHEN BORO GITIHA =AND= FAMILY FINANCCE BUILDING SOCIETY & OTHERS.** The court of appeal in considering the overriding principle held that the principle over-shadows all technicalities, precedents, rules and actions which are in conflict with it. Applying the overriding principle therefore, I will proceed to consider the plaintiff's application dated **3rd March, 2011** seeking judgment on admission and also will proceed to consider the defendant's application dated **7th December, 2009**. By that application of **7th December, 2009** the defendant seeks to be allowed to pay the admitted amount by monthly installments of US dollars 2000. Order 13 Rule 2 of the Civil Procedure Rules provides as follows:

“Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.”

As stated before, the defendant admitted the plaintiff's debt of US dollars 71,485.95. That being so the plaintiff's application dated **3rd March, 2011** will be granted as prayed. There is also an additional amount of Ksh. 825 being bank handling charges which were charged to the plaintiff when the defendant's cheque for the claimed amount was dishonoured. This amount was not admitted by the defendant in his defence but was claimed in the plaintiff's application for judgment on admission and the defendant did not oppose the same. The plaintiff by documents obtained from its banker proved that amount was charged to it. It is for that reason that I will also enter judgment for that additional amount.

Defendant's application which I will also consider in this ruling dated **7th December, 2009** is for leave to pay the decretal amount by installment. Although the defendant will be allowed to pay the plaintiff's claim by installment, the amount offered by the plaintiff is far too low and will take too long to clear the plaintiff's debt. It is also at variance with the amount offered by the defendant by its letter addressed to the plaintiff dated **2nd October 2008**. In that letter the defendant offered to pay the plaintiff's debt as follows:

1. ***10th November, 2008 us dollars 10,000.***
2. ***31st November, 2008 us dollars 10,000.***
3. ***31st December 2008 us dollars 20,000.***
4. ***30th January, 2009 us dollars 31,485.95.***

It will be seen that had the defendant paid the plaintiff's debt as proposed in that letter, the debt would have been fully paid by **30th January 2009**. I am of the view that justice demands the debt be paid by reasonable installments. I therefore grant the following orders:

1. Judgment is hereby entered against the defendant for US dollars 71,485.95 plus Kshs. 825 and costs and interest.

2. The defendant is granted leave to pay the decretal amount by instalments as follows:

- 30th November, 2011 US dollars 10,000.
- 31st December, 2011 US dollars 10,000.
- 31st January, 2012 US dollars 20,000.
- 29th February, 2012 the whole balance of the decretal amount.

If the defendant defaults in any of those payments execution to issue.

3. The cost of the chamber summons dated 7th December 2009 and the notice of motion dated 3rd March 2011 are awarded to the plaintiff.

DATED and DELIVERED at MOMBASA on this 10th day of November, 2011.

**MARY KASANGO
JUDGE**