



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 13 of 2008

**JAMES MUNENE NDUMBI.....PLAINTIFF**

**VERSUS**

**HILLARY MUNENE KAMAU.....DEFENDANT**

**R U L I N G**

The Plaintiff/Applicant filed his plaint in person on 12/2/2008. The same is nonetheless dated 30/1/2008. He claims Ksh.255,133 from the defendant together with interest of 40% per month from 29/3/2005 until payment in full.

In his statement of defence which he also filed in person, the Defendant/Respondent expressly admitted paragraph 4 of the plaint vide paragraph 3 of his defence. Paragraph 4 of the plaint states as follows:-

***“ That on 27<sup>th</sup> May, 2005, the defendant herein received from the plaintiff a further soft loan of Ksh.161,133 making a total sum of Ksh.255,133/= only”.***

Paragraph 3 clearly, unequivocally states:-

***“ The defendant admits paragraph 4 of the plaint.”***

The Plaintiff thereafter filed the application dated 28/10/2008 seeking Judgment on admission and the striking out of the defence. Again, he filed the said application in person and dubbed it a **“Chamber Summons.”** Counsel for the Defendant/Respondent has asked the court to strike it out as the court has not been moved properly. I agree that applications grounded on Section 3 A of the Civil Procedure Act should be brought to court as **“Notices of Motion”** and not as **“Chamber Summons”**. I do note and I have said this many times that where an application is premised on other specific provisions of law, Section 3 A should not be dragged in. This provision should only be cited in situations that are not covered by any other known provisions of law. As noted earlier however, this application was filed by the applicant in person without the benefit of counsel. I am therefore willing to indulge him in line with the spirit of the overriding objective of the Civil Procedure code which is to facilitate the just expeditious, proportionate and affordable resolution of civil disputes as

encapsulated by Section 1 A (1) and (2) of the Civil Procedure Act. I will not therefore dismiss or strike out the application for want of form.

From the rival affidavits and the submissions from both counsel herein, it is clear that the only bone of contention is whether the plaintiff was entitled in law to claim an interest of 40%. Yet he is not a commercial lender. I am in agreement with counsel for the defendant that that raises a triable issue which this court should be called upon to decide.

On that point only, this court would not strike out the defence because that one triable issue cannot be canvassed and determined in a vacuum.

I do note however that the defendant admits in clear and unambiguous terms owing the plaintiff the decretal amount of Ksh.255,133. There is nothing to go to trial over that debt. The law allows this court to grant Judgment on admission under Order XII Rule 6 of the Civil Procedure Rules if the admission is expressly admitted in the pleadings or in any correspondence annexed to the application such as this. As stated by **Madan J.A in LALCHAND CHOITRAM and others -V- HERTA NAZARI(CA No. 8/82).**

***“ Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in Judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends upon the language used.”***

Being guided by the above observation by **Madan J.A**, I am inclined to allow the application before me but only in part. As quoted earlier on in this Judgment, paragraph 3 of the defence is an admission of the debt in unequivocal terms. There is no point of going to trial in respect of that amount. The only issue that should proceed to trial is whether or not the plaintiff could lawfully ask for 40% interest on the principal amount. According to counsel for the Applicant, the defendant agreed to those terms. I would nonetheless like to point out that a consent of the parties cannot circumvent the law. So whether he admits the interest or not, my view is that the lawfulness of the 40% interest is a triable issue and it should go to trial. I nonetheless enter Judgment for the Plaintiff on admission for the principal amount of Ksh.255,133. The issue of the interest and costs will be determined at the hearing. It is so ordered.

**W. KARANJA  
JUDGE**

Delivered, dated and signed at Embu this 24<sup>th</sup> day of May 2010.

**In presence of:- Mr. Igati Mwai for defendant.**