



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITALE**

**Civil Suit 154 of 2007**

**CLEMENT NDERITU )  
T/A WANDI CONTRACTORS AND TRANSPORTERS ).....PLAINTIFF.**

**VERSUS**

**TRANS NZOIA TEACHERS ENTERPRISES CO. LTD. ) .....DEFENDANT.**

**RULING.**

By a Notice of Motion dated 20<sup>th</sup> December, 2007, pursuant to the provisions of order XXV Rules 1 (1) (a), and 2, 8 and 9 of the Civil Procedure rules, sections 3 and 3A of the Civil Procedure Act, the applicant seeks orders:

1. That judgment be entered summarily for the plaintiff against the defendant for the sum of Ksh. 5,173,291/40 with interest for the date of filing until full payment as prayed for in the plaint.
2. That the defendant do pay the costs of this application and the entire suit

The application is based on the grounds:-

- (a) **THAT**, the plaintiff's claim against the defendant is a liquidated demand with interest arising out of a contract entered into between the plaintiff and the defendant.
- (b) **THAT**, the defendant is truly indebted to the plaintiff.
- (c) **THAT**, the defendant does not have a reasonable defence to the plaintiff's claim.
- (d) **THAT**, the defendant's statement of defence is a mere denial calculated merely to delay the determination of the plaintiff's case.
- (e) **THAT**, the defendant even admits in his defence the existence of the contract with the plaintiff.
- (f) **THAT**, the contract giving rise to the plaintiff's claim was voluntarily and mutually entered into between the plaintiff and the defendant.
- (g) **THAT**, the defendant has even made part-payment in partial fulfillment of the terms and conditions of the contract.
- (h) **THAT**, the defendant is in breach of the terms and conditions of the contract between it and the plaintiff and is bound to suffer the consequences agreed upon in the contract.

The application is predicated upon the annexed affidavit of Clement Nderitu sworn on the 20<sup>th</sup> of December, 2007.

The application was opposed. The respondent relied on the replying affidavit of Hendrick Wanyonyi sworn on 9<sup>th</sup> September, 2008.

When the application came up for hearing the parties entered into a consent to employ the services of a qualified accountant to unravel the issues relating to rates of accounts.

I shared the view that the issues in controversy were purely mathematical in nature and the best person to unravel the same would be an accountant.

The parties then employed the services of KM Rop Associates certified Public Accountants whose report dated 29<sup>th</sup> January, 2009

was received in court on 3<sup>rd</sup> February, 2009.

While the applicant agreed with the report, the respondent declined to have the report as a basis of a settlement.

In view of the stalemate, I now order that the applicant do swear affidavit enclosing the report. In that way the report will be part of the application. The respondent be at liberty to apply under order XVIII Rule 2 of the Civil Procedure Rules to cross examine the said Accountant on the contents of his report. Thereafter respective counsel will proceed and argue the application in the normal manner.

The submissions; which shall include the result of cross-examination of the accountant shall form the basis of a ruling to be delivered by the court.

There shall be mention on 26<sup>th</sup> March, 2009 to confirm whether the court's directive herein has been given effect to. In which day a hearing date for the application by way of Notice of Motion dated 20<sup>th</sup> December, 2007 shall be fixed.

Dated and delivered at Kitale this 24<sup>th</sup> day of March, 2009.

**N.R.O. OMBIJA.**

**JUDGE.**

**Mr. Njoroge for Plaintiff/Applicant.**

**Mr. Onditi for Defendant/Respondent.**