



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 738 of 2000

GEORGE MURIAINI MUHORO.....PLAINTIFF

VERSUS

GEORGE M. KARIITHI1ST DEFENDANT

NANCY N. CHEGE2ND DEFENDANT

PHARMADEX (E.A.) LTD.....3RD DEFENDANT

SUNCITY EXHIBITIONS.....4TH DEFENDANT

RULING

The Plaintiff by his Notice of Motion dated the 19th day of January 2007 and filed in court on 28th day of March 2007 moved this court for two primary orders as here below:-

- (1) That judgment on admissions be granted against the defendants**
- (2) Costs of the application be in the cause.**

It is based on the grounds:

- (a) *That the defendant expressly admitted the claim vide a letter dated 7th February 2005.***
- (b) *That the matter need not proceed through the rigours of prosecution to a claim that has been admitted by the defendant.***
- (c) *That the further prosecution of the matter shall embarrass due process.***

The application was supported by an affidavit of **CINDANO GAKURU** advocate and it was brought under S.3A of the Civil Procedure Act, Order L rule 1 and order XII rule 6 of the Civil Procedure Rules and all other enabling provisions of the Law.

No papers whatsoever were filed in opposition to the application and so the same proceeded before me unopposed. Counsel for the Plaintiff/Applicant submitted that the Plaintiff's claim was as set out in the Amended Plaintiff filed in court on 7th August 2000. A defence was also filed but on 18/08/2000. Thereafter and more particularly on the 7th February 2005 the 1st Defendant on his behalf and on behalf

of the 2nd, 3rd and 4th Defendants entered into an out of court settlement arrangement with the Plaintiff and reduced such arrangement into writing. There is annexed to the affidavit filed in support a document marked "EG/1" and dated 7th February 2005 and headed Ref: HCCC NO. 738 of 2000: **JUDGMENT BY CONSENT**. The counsel for the Plaintiff/Applicant continued in her submissions that the terms of the said agreement are very clear. It was further submitted that the Defendants did not make good the agreement thereby necessitating this application. Counsel therefore submitted that on the admission in the annexure marked: "CG/1" judgment ought to be entered. She further stated that the parties had agreed that interest be calculated on the amount of Kshs.1,350,000/= but that the rate of such interest was not agreed. She prayed that the court applies interest on the said amount at court rates from 10.08.2000 being the date that was agreed on by the parties. She also prayed for the costs of the application.

I have perused the pleadings herein. I have also perused the application as filed and the affidavit and its annexure. I have also considered the submissions before me. Having done so I take the following view of the matter. In the Amended Plaint the Plaintiff at paragraph 5a claims a sum of Kshs.1,960,970.00 and interest thereon at 25% per annum. No specific amount of money is sought in the application itself. However in the exhibit marked "CG/1" and signed by the 1st Defendant and by the Plaintiff the total amount outstanding as at 7th January 2005 is stated as Kshs.521,850/=. This the defendants admit to be due and owing to the plaintiff and they pledge in the letter dated 7th February 2005 to pay to the Plaintiff. The agreement by the parties herein also extended to the payment of Advocate's costs. And finally there is agreement on payment of interest on the sum of Ksh.1,350,000/= from 10th August 2000 on reducing or what the parties call declining balance. The rate of interest to be used was not agreed and I have been asked in the oral submissions to use court rates although counsel must have been aware that the plaintiff sought a rate of 25% per annum.

In light of the above my task has been made easy. I shall exercise my discretion and accord the consent by the parties herein consideration and clothe it with an order in the following terms:-

- (a) Judgment be and is hereby entered for the Plaintiff against the defendants jointly and severally in the admitted sum of Kshs.521,850/=**
- (b) There be interest on the agreed sum of Kshs.1,350,000/= at court rates from 10th August 2000 until payment in full.**
- (c) Costs of the suit and of the application to the Plaintiff/Applicant.**

Orders accordingly.

DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24th DAY OF **April 2008**.

In the presence of Miss Muriu for the Applicant.

P. M. MWILU

JUDGE

24.04.2008