



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**Civil Case 123 of 2007**

**PANATECH LIMITED.....PLAINTIFF**

**VERSUS**

**CREDIT AFRICA LIMITED. .... DEFENDANT**

**R U L I N G**

The Defendant has filed this Chamber Summons application dated 15<sup>th</sup> August, 2008. It seeks:

*“That the honourable court be pleased to order that the Defendant/Applicant do liquidate the admitted sum of Kshs.3,346,450.50 by monthly installments of Kshs.150,000/- with effect from the 31<sup>st</sup> day of August, 2008, and on the last day of each subsequent month until payment in full.”*

The application is based on the grounds:

- (a) That the Defendant sells various items on hire purchase to customers who make periodic payments.**
- (b) That the Defendant’s shops are in the Rift Valley, Western Kenya and Nyanza Provinces most of which were looted during the post election violence in January.**
- (c) That a number of the Defendant’s customers were displaced and have not been traced to make payments on the items purchased.**
- (d) That the Defendant presently has no large or sufficient income from which it can make payment of the admitted sum in whole.**
- (e) That the prevailing economic situation has made it difficult for the Defendant to pay the admitted sum at once.**

The application is supported by the affidavit of ANDREW OGOTT the Managing Director of the Defendant Company of even date.

The application is expressed to be brought under the provisions of Section 3A and Section 63(e) of Civil Procedure Act and Order XX rule 11 of the Civil Procedure Rules and all enabling provisions of the law.

Even though the Plaintiffs did not file any grounds of opposition or replying affidavit it has opposed the application on a technicality.

Mrs. Were for the applicant urged the court to allow the application on the grounds that the Defendant had admitted part of the claim amounting to Kshs.3,346,450/50, and that on the basis of that admission it seeks to be allowed to liquidate the said sum by monthly installments of Kshs.150,000 with effect from 31<sup>st</sup> August, 2008, and subsequently by the end of every month. Mrs. Were relied on grounds on the face of the application and urged the court to find that no prejudice will be suffered by the Respondent if the application is allowed.

Mr. Etemesi for the Plaintiff/Respondent opposed the application on points of law. Counsel submitted that there was no basis upon which the application could be made since the provisions invoked by the Applicant presupposed that there was a judgment on admission and a formal decree both which were missing in the instant case.

In response, Mrs. Were submitted that the Applicant was seeking a discretionary remedy which the court could grant.

The application has been brought under Order XX rule 11 of Civil Procedure rules which stipulates:

***“11 (1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by installments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.***

***(2) After passing of any such decree, the court may on the application of the judgment-debtor and with the consent of the decree-holder or without the consent of the decree-holder for sufficient cause shown order that the payment of the amount decreed be postponed or be made by installments on such terms as to the payment of interest, the attachment of the property of the judgment debtor or the taking of security from him, or otherwise, as it thinks fit”***

Order XX of the Civil Procedure Rules deals with judgments and decrees of the court. The decree discussed under Order XX is the one which results from a judgment. That decree must, *inter alia*, as provided under rule 6, agree with the judgment. As the Respondent’s advocates have contended in their oral submissions, there is no judgment and or decree on record in this case. The only judgment on record was set aside on the application of the Applicant in the instant application on a technical ground that the procedures adopted to obtain the judgment was fatally defective.

Can the court exercise its discretion to allow payment by installments of a debt admitted in the pleadings where there is no judgment or decree? Mrs. Were for the Applicants did not rely on any case and therefore the court has no precedence to go by. Mrs. Were merely relied on section 3A and section 63(e) of the Civil Procedure Act, which the Applicant has invoked in its application. The two sections provide:

***“S.3A Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”***

***“63. In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed –***

***(e) Make such other interlocutory orders as may appear to court to be just and convenient.”***

I have considered the application, the submission by counsel and also the provisions of the law invoked by the Applicant in support of this application. The Applicant has invoked the inherent jurisdiction of this court under section 3A of Civil Procedure Act together with section 63(e) which gives the court power to make interlocutory orders as may appear to the court to be just and convenient. I appreciate that this court has unlimited jurisdiction to make orders that are just and convenient and those that may be necessary for the ends of justice or to prevent abuse of the process of the court. Order XX rule 11 which gives the court the power to direct payments of decrees by installments can only be applied where there is a decree in existence. There is no such a decree.

Order XII rule 6 was also invoked in support of the application. It provides for entry of judgment on admissions. The application for entry of such judgments can be made by any party entitled to judgment on such admissions. A party cannot apply for a judgment on admission against itself. What the Applicant is doing in this case is an attempt to have a judgment on admission entered against itself on the premises that the court has inherent jurisdiction to do so and also on the premises that the court can make any order which is convenient. It is trite that where the rules provides for a specific procedure to be followed in order to obtain certain orders, it will be irregular to adopt a procedure which is unknown in the rules even if done by invoking inherent powers of the court. Since there is a well laid down procedure for the entry of judgment on admission and for issuance of decrees; and since this procedure has not been adopted in this matter, I find that the application is not merited and should not be allowed. Order XII rule 6 is very clear and for the purposes of this case it is the Plaintiff who should move the court to enter judgment on admission in its favour as against the Defendant. It cannot be any other way. It is only upon entry of such judgment and of the consequential that the Applicant herein can move the court under Order XX rule 11 to be allowed to make payment of the decree or judgment by installment. I decline to give a wider interpretation of the rules invoked in support of this application especially because the Applicant put a record straight by having a judgment entered through improper application of the rules set aside.

In conclusion, I find that the application has no basis in law in the circumstances of the case and the same cannot lie. It is accordingly dismissed with costs to the Respondent.

**Dated at Nairobi this 24<sup>th</sup> day of October, 2008.**

**LESIT, J.**

**JUDGE**

***Read, delivered and signed in presence of:***

Miss Mango holding brief Mrs. Were for the Applicant

N/A for Mr. Etemesi for the Plaintiff/Respondent

**LESIT, J.**

**JUDGE**