



REPUBLIC OF KENYA

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

**Civil Suit 839 of 2006**

**ANN CHEPKORIR ATUYA .....PLAINTIFF**

**VERSUS**

**HARUN KOMEN TUITOEK .....DEFENDANT**

**R U L I N G**

The Notice of Motion dated 23<sup>rd</sup> April, 2007 seeks orders for Judgment on admission or in the alternative for striking out of the Statement of defence and Judgment be entered. The application is filed under the provisions of order XII Rule 6, Order VI Rule 13(1) (b) and (c) and Order XXXV Rule 1(2) of Civil Procedure Rules and also under section 3A of the Civil Procedure Act and all other enabling provisions of law.

The application is not responded by either filing replying affidavit or the grounds of opposition. The learned counsel for the Defendant simply relied on the Statement of Defence dated 5<sup>th</sup> April 2006.

The application is supported by the Plaintiff's supporting affidavit sworn on 23<sup>rd</sup> April, 2007 and on the grounds set forth on the face thereof.

The Plaintiff's claim is for the refund of the sums paid to the Defendant for the purchase of some properties. The sales did not materialize and the parties entered into the agreements thereafter for refund out which two are dated 28<sup>th</sup> October 2003, and third is dated 23<sup>rd</sup> May, 2002.

On 18<sup>th</sup> September 2007 when the application was to be heard, the counsel of the parties recorded the consent order that the parties have agreed that the three agreements were executed between them. The only issue they wanted to settle was the sum due. On 1<sup>st</sup> October 2007 when the matter was before me they agreed to hear the application on the issue of sum due and payable.

The learned counsel for the Plaintiff/Applicant relied on the agreed agreements and the total sum as per those agreements comes to Shs.5,764,270/= which is the claimed sum.

The statement of defence merely denies that the Defendant owes the Plaintiff the said sum. The Defendant does not show how after he conceded the execution of the agreements, he still maintains his denial.

In short, I am satisfied that the Defence filed by the Defendant is an abuse of court process and is so filed only to delay the just claim of the Plaintiff.

I thus allow the Notice of Motion dated 23<sup>rd</sup> April, 2007 by granting the order that the Judgment be entered in favour of the Plaintiff as prayed with costs and interest.

**Dated, Delivered and Signed at Nairobi this 12<sup>th</sup> day of October, 2007.**

**K.H. RAWAL**

**JUDGE**