

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

Civil Suit 322 of 2007

TARPO INDUSTRIES LIMITED.....PLAINTIFF/APPLICANT

VERSUS

PICASSO PRODUCTIONS LIMITED.....DEFENDANT/RESPONDENT

R U L I N G

By a notice of motion dated 1st September 2007, filed on 5th September 2007, Tarpo Industries Limited the plaintiff/applicant, has moved this court pursuant to the provisions of Order XXXV Rules 1 (a), 2, 8 and 9; Order XII Rule 6; and Order L Rule 1 of the Civil Procedure Rules; and Section 3A of the Civil Procedure Act, seeking summary judgment against the defendant Picasso Productions Limited in the sum of Kshs.3,500,000/= plus bank charges of Kshs.1,000/= together with costs and interest as prayed in the plaint. In the alternative, the applicant seeks judgment on admission against the defendant. The application is supported by an affidavit sworn by Shafana Rajani, on the 1st of October 2007.

The respondent was duly served with the application but did not file any replying affidavit or grounds of opposition. The respondent was also served with a hearing notice for the hearing of the application but did not attend court. The hearing therefore, proceeded *ex parte*.

The defendant filed a defence on the 2nd of August 2007, in which it denied the plaintiff's claim, and contended in the alternative that any order it may have placed with the plaintiff was fully paid for. In support of its application, the applicant has filed an affidavit, sworn by its General Manager Shafana Rajani to which is annexed local purchase orders and delivery notes showing that the respondent ordered for goods from the applicant and that the goods were delivered. Also annexed is a letter of demand addressed to the respondent by the applicant's advocate Macharia Mwangi & Njeru Advocates, demanding payments on account of two invoices which had not been settled. In a letter dated 23rd May 2007, which has also been annexed to the supporting affidavit, the respondent has clearly admitted that in respect of invoice No.7314 for the sum of Kshs.3,500,000/=, they expected to clear the amount by bankers cheques before 30th June 2007, and also pay the bank charges. The respondent has not filed any response to this replying affidavit denying this letter nor has the respondent demonstrated any evidence supporting its contention in the defence that any amount owed by it to the applicant has been paid. I find that the letter dated 23rd May 2007, is a clear admission of the respondent's indebtedness to the applicant. I therefore, grant the motion and enter judgment on admission in favour of the plaintiff/applicant as against the respondent as prayed. The applicant shall further have costs of this application.

Dated, signed and delivered this 12th day of November 2007.

H. M. OKWENGU

JUDGE