

Civil Practice and Procedure

- · Application on admission O. XII R. 6

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
COMMERCIAL DIVISION MILIMANI
Civil Case 222 of 2005

LAWRENCE KIPCHUMBA YEGO

LOISE NZISA T/A SKYLARK PATROLS.....PLAINTIFFS

VERSUS

**MUGOYA CONSTRUCTION & ENGINEERING
LIMITED.....DEFENDANT**

The plaintiffs seeks for judgment to be entered in their favour on admission. The application is brought under Notice of Motion and is brought under Order XII rule 6 of the Civil Procedure Rules.

The application is grounded on the grounds that, the defendant has admitted the substantial claim, of the plaintiff, through a letter dated 12th April 2005; that it is just and fair that judgment be entered for the sum admitted; that the plaintiffs are prejudiced by the defendant's refusal to pay, the admitted amount; that the defendant's admission is plain, and obvious, and that the defendants do not have a defence to the plaintiff's claim, the plaintiff relied on the cases **ELLIS VERSUS ALLEN [1914] 1 CHAN 904** and **CHOITRAM – V – NASARI [1984] KLR 327** which cases found that order 12 rule 6 should be invoked to obtain speedy judgment, where a party has made a plain admission, which admission can also be in correspondence.

The plaintiffs in their application annexed the letter written by the defendant, which admits indebtedness to the plaintiff "**SKYLARK PATROLS**" of kshs 4, 914, 891. 65.

The defendant opposed the application on two fronts. The first is that the letter of admission was obtained by the plaintiff by means of fraud. In that regard the defendant relied on the case HCCC NO. 802 OF CREDIT AGRICOLE INDOSUEZ LTD AND OTHERS (unreported). In that case where allegation of fraud was made similar to the present allegations, Hon Justice Waweru held: -

“...those letters are seriously disputed by the 1st defendant. it has denounced them as instruments of fraud borne of collusion between the plaintiff and the 2nd and 3rd defendants. Those letters must be investigated in full trial in order for the trial court to determine if they are genuine.”

The defendant second front of opposition was on a point of law. That O 7 rule 1 (2) which states: -

“The plaint shall be accompanied by an affidavit sworn by the plaintiff verifying the correctness of the averments contained in the plaint” was contravened by the plaintiff.

The present plaint, is verified by the first plaintiff only, and not the second. I find and I hold that objection is valid. Order 7 Rule 1 (2) requires verification, of the plaint by the plaintiff. There being two plaintiffs, it is essential that the two plaintiffs verify the correctness of the plaint. In the absence of such verification, the party who has failed to so verify, cannot be afforded the benefit of the claim in the plaint.

The letter alleged to be of the defendant's admission, addresses itself to the debt owed to "**Skylark**

Patrol", not plaintiff, who has not verified the plaint. Accordingly I am unable to hold that there is admission of the claim because that claim has not been verified by the named plaintiff.

Accordingly on that basis alone I order as follows: **-(1) That the plaintiff's application dated 30th May 2005 is dismissed with costs to the defendant.**

Dated and delivered this 15th day of August 2005.

MARY KASANGO JUDGE

JUDGE