

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI

Civil Suit 186 of 2005

EQUATORIAL COMMERCIAL BANK LTD.....PLAINTIFF

VERSUS

MICROHOUSE NET LIMITED.....DEFENDANT

R U L I N G

The defendant who was served with a hearing notice of the application dated 21st June 2005 failed to attend court and accordingly the matter proceeded without opposition.

The plaintiff's application is by Notice of Motion brought under Order XII Rule 6 and Order XXXV Rule 1 (a) of the Civil Procedure Rules. The orders it seeks are; that judgment be entered for the plaintiff against the defendant on admission, or in the alternative, that summary judgment be entered as prayed in the plaint.

The application is founded on the grounds that the plaintiff seeks judgment for a liquidated claim; that the defendant has admitted its indebtedness to the plaintiff; and that the defence filed herein doesn't disclose any or any reasonable defence and is a sham.

The facts that come out of the affidavit in support of the application are that the defendant applied and was granted by the plaintiff a temporary overdraft facility of kshs 2, 500, 000/- which was repayable within 30 days. The letter requesting for the over draft by the defendant, from the plaintiff is dated 17th March 2004; the same was annexed to the supporting affidavit. The defendant continued to enjoy that facility but later defaulted and payment was demanded from the defendant by the plaintiff's advocate. The defendant by its letters annexed to the supporting affidavit and marked as "KM2" "KM 3a" and "KM 3b" admitted its indebtedness to the plaintiff of the amount demanded, that is, kshs 2, 883, 209. 20. The plaintiff to prove the debt annexed the statement of defendant's account, which reflected the amount claimed in the plaint.

The case of CHOITRAM - V - NAZARI [1984] KLR, 327 the court found as follows: -

"For the purpose of Order XII Rule 6, admission can be expressed or implied either on the pleadings or otherwise, e.g. in correspondence. Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning."

The case CASSAM - V - SACHANIA [1982] KLR 191, the court found that,

"The judge's discretion to grant judgment on admission of fact under the order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment."

I have examined the application together with the supporting affidavit hereof. I find that the letters written by the defendant in response to the demand made on behalf for the plaintiff, that, they are clear and there is no ambiguity in their content. The defendant did not deny being indebted to the plaintiff at all. That being the finding of the court, a defence filed herein denying having requested for the over draft,

denying being indebted cannot stand in view of the letters exhibited by the plaintiff.

The plaintiff has proved that it is entitled to judgment on admission.

The orders of the court are: -

- (1) That judgment is entered for the plaintiff as prayed in the plaint**

- (2) That the plaintiff is awarded costs of the Notice of Motion dated 21st June 2005.**

Dated and delivered this 7th December 2005.

MARY KASANGO

JUDGE