

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 209 OF 2002

KHALIFA SULEIMAN SIKANDER PLAINTIFF

VERSUS

ALI SAZIM WASSIB DEFENDANT

R U L I N G

The plaintiff filed suit on 11th May, 2002 against the defendant for a liquidated claim in the sum of Kshs.570,000/= which arose out of a transaction for money lent and received by the Defendant. The defendant entered a Defence on 28th June, 2002 and in paragraph 3 therein admitted owing the said sums. It is against this admission that the plaintiff filed the application by Motion dated 3rd September, 2002 under Order 12 rule 6 of the Civil Procedure rules seeking an order for judgement on admission.

At the hearing of the said application however, the defendant neither appeared nor filed any affidavit in Reply or Grounds of opposition. The date had been fixed by consent of both parties.

I have looked at the defence and no doubt it is an admission. At paragraph 3, it states:

“3. Save for the fact that the defendant acknowledges owing the plaintiffs the sum of Kshs.570,000/= the defendant denies the entire contents of the allegations contained in paragraph 3 of the plaint and puts the plaintiff to strict proof thereof -----“

And Paragraph 3 of the plaint reads:

“3. The plaintiff’s claim against the defendant is in the sum of Kshs.570,000/= due and owing to the plaintiff by the defendant in respect of monies lent and or cash had and received by the defendant for and on behalf of the plaintiff full particulars are well within the knowledge of the defendants and which indebtedness the defendant has already acknowledged in writing.”

In the other paragraphs the defendant denies having written the acknowledgement voluntarily and that he was not served with a notice of intention to sue. However, what is before the court for consideration is whether the debt is admitted as alleged and if there is any defence if at all worth consideration. From the contents of paragraph 3 of the defence, there is no doubt this is an equivocal admission of the total debt. In the circumstances, it would follow that it matters not whether there was a written acknowledgement of the debt and if so whether it was voluntarily signed. There is no other defence raised save in paragraph 5, where the Defendant is pleading to be allowed to liquidate the debt by monthly instalments of Kshs.5,000/=. It is against the said background that I find that the defendant did indeed admit the debt and consequently enter judgement for the plaintiff in the sum of Kshs.570,000/= together with costs and interest.

Dated and Delivered at Mombasa this 1st day of July, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE

