

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 2769 OF 1995

RAMJI RATNA & COMPANY LIMITED PLAINTIFF

VERSUS

KENYA MEDICAL RESEARCH INSTITUTE DEFENDANT

RULING

This application has been brought by the plaintiff under O. XII Rule 6 of the Civil Procedure Rules for judgment to be entered against the defendant for Shs.2,557,726.45 together with interest thereon at commercial rates. The ground upon which the application has been made is that the defendant has in several letters admitted liability in that sum to the plaintiff.

The evidence in support of the plaintiff's claim is to be found in annexures "RSP1", "RSP2", "RSP3", "RSP4" and "RSP5". In all these letters/documents, the defendant is shown to have admitted owing to the plaintiff the sum of Shs.2,557,726.45. However in a replying affidavit sworn on its behalf by Dunstan Magu Ngumo, the defendant asserts that it made certain payments to the plaintiff's sub-contractor on the plaintiff's behalf. The sum of Shs.300,000/= paid to M/S Debeca is specifically mentioned in that regard. The plaintiff concedes the payment but explains that the claim does not include the sum paid to Debeca.

The rest of the defendant's defence to the claim appears to run as follows. That the amount claimed by the applicant is the balance arising out of a contract sum of Shs.20,500,000/= for the construction of the defendant's Vector Biology and Control Research Centre Phase II Project at Kisumu which was completed and handed over by the plaintiff to the defendant on 10.11.1989. There was however a provision for six months defects liability period which was to end on 10.5.1990. During that period it was agreed that the plaintiff would attend to some major outstanding defects. The defendant claims that the plaintiff did not remedy the defects despite several reminders in that regard thereby compelling the defendant to withhold payments.

The plaintiff denies the defendant's assertions regarding the alleged failure to remedy defects and says that they are all afterthoughts. He cites several payments made after the defects liability period and says that such payments could not have been made if there was any claim by the defendant against the plaintiff for any unattended works. Examples of such payments are to be found in annexures "RSP 2(5) and 6".

The rule under which the plaintiff has moved this court (O. 12 R. 6) provides:-

"Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."

It is, I think, trite law that the exercise of this court's powers under the rule must be done judicially and only in cases where the admissions are clear. In the case of L. D. B. Choitram V. H. E. C. Nazari (1982-88) 1 KAR, the Court of Appeal held:-

"The rule empowers the court to make such order or give such judgment, as it may think just. It is settled that a judgment on admissions is in the discretion of the court and not a matter of right."

The court's discretion in the matter is unfettered, but as it was said in Kiprotich V. Gathua that discretion must be exercised judicially. "

The letters/documents referred to above show that the admissions made by the defendant are clear. In the words of Madan J. A. they are "obvious on the face of them without requiring a magnifying glass to ascertain their meaning". They are also plain and obvious. It is therefore my opinion that the plaintiff is entitled to judgment against the defendant for that part of the claim which the defendant has plainly and clearly admitted namely in the sum of Shs.2,557,726.45 plus interest thereon at commercial rates from the date of filing suit. The defendant will bear the plaintiff's costs with interest thereon at Court Rates. There will be orders accordingly.

Dated at Nairobi this 16th day of January, 2001.

T. MBALUTO

JUDGE