



REPUBLIC OF KENYA



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**Njau v Ngungu (Commercial Civil Case E012 of 2024)
[2025] KEHC 3348 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
COMMERCIAL CIVIL CASE E012 OF 2024
HI ONG'UDI, J
MARCH 20, 2025**

BETWEEN

GEORGE NJAU PLAINTIFF

AND

MISHRAM NGECHU NGUNGU DEFENDANT

RULING

1. The Notice of motion application dated 5th December 2024 by the applicant herein prays for the following orders;
 - i. Judgment on admission be entered in favour of the plaintiff/applicant in the amount of kshs. 21,000,000/= with an interest at the prevailing Central Bank of Kenya rates, provided the same does not go below 12% per annum.
 - ii. That costs incurred in the processing the dishonoured cheques, that is kshs. 13,200/= be borne by the defendant/respondent.
 - iii. That the defendant/respondent bears the entire cost of travel and accommodation in pursuit of the claimed sum as placed on record.
 - iv. Costs of this application be provided for.
2. The application is premised on the grounds on its face as well as the affidavit sworn on even date by the applicant. He deponed that on 6th July 2024 him and the defendant/respondent duly executed a written memorandum of agreement where the defendant/respondent made an unequivocal admission of liability to pay the entire sum of Kshs. 21,000,000/=. Further that, he committed to pay the said amount within a period of 120 days from the said date. Additionally, he was to bear the entire cost of legal fees, travel and accommodation expenses in enforcement of the agreement and to pay interest



at the prevailing Central Bank of Kenya rates (the same was not to be below 12%) upon lapse of the aforementioned period.

3. He further deponed that the defendant/respondent tendered undated cheques from Kingdom Bank for the entire amount of Kshs 21,000,000/= which were all to clear before the lapse of 120 days but the same were dishonoured on banking. That the defendant/respondent acted in bad faith, despite a clear and unequivocal admission as to the liability and he would suffer irrecoverable losses, should the same remain unsettled. He sought for Judgement to be entered against the defendant/respondent for the amount claimed.
4. The defendant/respondent did not file any response to the application.
5. The application was to be canvassed by way of written submissions.
6. Only the plaintiff/applicant filed submissions dated 14th February, 2025 by Maina & Partners LLP which are dated 14th February 2025. Counsel gave a brief background of the case and identified two issues for determination.
7. On the first issue as to whether the plaintiff/applicant is entitled to the orders prayed for, counsel submitted that the evidence adduced by the plaintiff/applicant was proof of clear and unequivocal admission by the defendant/respondent of a debt owing to him in the sum of kshs. 21,000,000/=, accrued interests and costs of pursuing the same. He placed reliance on order 13 rule 2 of the Civil Procedure Rules and the decision in Guardian Bank Limited v Jambo Biscuits Kenya Limited [2014] eKLR where the court held as follows;

“..

- (7) Back to the main course of things. The principle applicable in judgment on admission is that the admission must be very clear and unequivocal on a plain perusal of the admission. The admission in the sense of Order 13 Rule 2 of the Civil Procedure Rules is not one which requires copious interpretations or material to discern. It must be plainly and readily discernible. In such clear admission, like J.B. Havelock J stated in the case of 747 Freighter Conversion LLC v One Jet One Airways Kenya Ltd & 3 Others HCCC No. 445 of 2012, there is no point in letting a matter go for a trial for there is nothing to be gained in a trial. See the case of Botanics Kenya Ltd Ensign Food (K) Ltd Hccc No. 99 of 2012, where Ogola J gave a catalogue of other cases which amplified this principle. These cases are: Choitram v Nazari (1984) KLE 327 that;

“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,”

Chesoni Ag. JA went on to add that:

“an admission is clear if the answer by a bystander to the question whether there was an admission of facts would be ‘of course there was’”;



“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”.

8. On the last issue on who should bear the costs of the suit, counsel submitted that costs follow the event. He urged the court to award costs to the plaintiff/applicant and to exercise its discretion in allowing his application.

Analysis and determination

9. I have considered the application, the supporting affidavit and the submissions by the plaintiff/applicant. I opine that the main issue for determination is whether the application dated 5th December 2024 is merited.

10. Order 13 Rule 2 of the [Civil Procedure Rules](#), 2010 provides for judgment on admission and it states as follows; -

“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.”

11. In the case of *Choitram v Nazari* (supra) also relied on by the plaintiff/applicant the Court of Appeal expounded on the issue of judgment on admission where Madan, JA stated that:

“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.” (emphasis added)

12. In the same judgment, Chesoni Ag. JA made the following observation –

“Admissions of fact under Order XII rule 6 need not be on the pleadings. They may be in correspondence or documents which are admitted or they may even be oral. The rules used words “otherwise” which are words of general application and are wide enough to include admission made through letters, affidavits and other admitted documents and proved oral admissions...It is settled that a judgment on admission is in the discretion of the court and not a matter of right and that discretion must be exercised judicially.”

13. In the instant case the plaintiff/applicant argued that the defendant/respondent made his admission vide a written agreement dated 6th July 2024 and undertook to pay the entire sum of kshs. 21,000,000/ = within 120 days from the date of the said agreement. Apart from that the defendant /respondent was to bear costs of legal fees, travel and accommodation expenses and to pay interest at the prevailing Central Bank Interest so long as the same was not lower than 12% per annum. Upon perusal of the said signed agreement I note that the same contains the payment schedule and undated cheques for



the entire amount were issued by the defendant/applicant as a commitment towards the settlement of the principal sum owed.

14. For this Court to enter judgment on admission in favour of the plaintiff/applicant against the defendant/respondent, it has to ensure that the admission relied on by the plaintiff is clear and unequivocal. In the agreement dated 6th July 2024 the defendant/respondent signed and committed to pay the sum due and owing to the plaintiff/respondent within 120 days. He even went ahead to issue undated cheques for the entire amount as commitment to pay.
15. This Court is bound by the Court of Appeal finding in the case of Cassam & Another v Sachania & Another (supra) where in dismissing an appeal, it held that:

“The Judge’s discretion to grant judgment on admissions 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.”
16. In view of the foregoing, it is my finding that the defendant/respondent in entering into a memorandum agreement with the plaintiff/applicant and issuing undated cheques amounted to clear or obvious, unequivocal and unconditional admission of the debt on his part.
17. The said cheques when presented to the bank for payment were dishonoured. The plaintiff/applicant has availed documents to prove all this. The defendant/respondent though served with both the plaint and application and even mention notices has never filed any defence, response, submissions nor attend court to contest the plaint and application.
18. The upshot is that the application dated 5th December, 2024 is merited and is hereby allowed. Judgment is entered as prayed together with costs of the application.
19. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 20TH MARCH, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

