



Enzyne Creations Limited v China Roads and Bridge Construction Corporation & another (Miscellaneous Application E341 of 2024) [2025] KEHC 6617 (KLR) (Commercial and Tax) (20 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E341 OF 2024
JWW MONG'ARE, J
MAY 20, 2025**

BETWEEN

ENZYNE CREATIONS LIMITED PLAINTIFF

AND

**CHINA ROADS AND BRIDGE CONSTRUCTION CORPORATION 1ST
DEFENDANT**

MACHIRI LIMITED 2ND DEFENDANT

RULING

1. What is before this Honourable Court is a Notice of Motion Application dated 12th August 2024 filed under a certificate of urgency and brought under Order 13 Rule 2 and Order 51 of the [Civil Procedure Rules](#) seeking the following orders: -
 1. Spent
 2. Judgment on admission be entered against the 2nd Defendant for the sum of Kshs.29,914,650/=(Kenya Shillings Twenty-Nine Million, Nine Hundred and Fourteen Thousand Six Hundred and Fifty) together with costs and interest thereon, without waiting for the determination of any other question between the parties.
 3. That costs of this application be provided for.
2. The application is supported by the grounds set out on its face and the supporting affidavit of Evans Obae Omarisworn on 12th August 2024. The Application is opposed and the Respondents have filed a replying affidavit sworn by JAMES MUCHIRI on 28th August 2024. Both parties on the directions of the court have filed written submissions which I have carefully considered.



3. The Plaintiff by this application is asking the court to find that the 2nd Defendant has admitted to a part of the claim and urges this court to enter judgment on admission in line with Order 13 Rule 2 of the Civil Procedure Rules.

4. Order 13 Rule 2 provides as follows: -

“2. . Judgment on admissions [Order 13, rule 2] -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”.

5. The power to enter a judgment on admission as per Order 13 Rule 2 cited above is one that is discretionary. Both parties agree that as held in the case of Choitram v Nazari [1984] KLR 327, the said discretion can only be exercised in cases where the admission is clear and unambiguous. Justice Madan JA, stated 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 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.”

6. A perusal of the plaint reveals that the Plaintiff's claims the payment of the sum of Kshs.66,477,000.00/= together with interest at 3% per month from 8th February 2023 arising from a breach of a contractual agreement between the Plaintiff and the two Defendants.

7. From the material presented before this court, the Plaintiff has urged the court to find that the 2nd Defendant has admitted to a portion of the sum claimed in the plaint and this court is urged to enter judgment on admission for the sum of Kshs.29,914,650.00/=. I have looked at the two letters presented as evidence of admission and I note that the referenced letters do not amount to a clear and unambiguous admission as alleged. Indeed, as the 2nd Defendant argues, the letter of 1st February 2023 addressed to the 1st Defendant by the 2nd Defendant reads as

follow:-

“Forwarded herewith is the letter reference ENZ/CRBC/MACHIRIJV/002 dated 12th Jan 2023 regarding the above-mentioned subject. In light of addendum to Machiri-CRBC JV and Enzyne Creations Ltd agreement dated 9 mar 2022, we opine that, we need to settle this matter amicably.”

8. The second letter is the one dated 8th February 2023 addressed to the Plaintiff by the 2nd Defendant which similarly reads as follows:-

“we are in receipt of your letter reference ENZ/CRBC/MACHIRIJV/002 dated 12 January 2023 regarding the above-mentioned subject. We have no problem settling our portion of the balance but we request to be allowed more time as we are currently following payment with our clients.”



9. From a reading of the said letter, one cannot clearly discern that the 2nd Defendant has admitted to being indebted to the Plaintiff to the tune of Kshs.29,914,650.00/=. In any event, the suit before this court is for a claim of Kshs.67,477,000.00/= plus interest at 3% from 8th February 2023, which is contested and denied by the Defendants, in their respective pleadings before this court. It is therefore the finding of this court there is no admission on the part of the 2nd Defendant as envisioned by the provisions of order 13 Rule 2 of the civil Procedure Rules. What is clear from the pleadings is that for the court to find in favour of the Plaintiff, evidence must be tendered to establish whether indeed the Defendants are indebted to the Plaintiff for the sum of Kshs.66,477,000.00/= and whether the rate of interest of 3% per month should be levied on the said sum as claimed.
10. In upshot, I find and hold therefore that the application for judgment on admission is without merit and I dismiss the same with costs to the Defendant. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF MAY 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of

Mr. Mudanya for the Plaintiff/ Applicant.

Ms. Kimiti holding brief for Mr. Makambo for the Respondent.

Amos - Court Assistant

