



From Here Ventures Fund 1, GP v Lipa Later Limited & another (Civil Case E523 of 2024) [2025] KEHC 7263 (KLR) (Commercial and Tax) (26 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7263 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E523 OF 2024**

F GIKONYO, J

MAY 26, 2025

BETWEEN

FROM HERE VENTURES FUND 1, GP PLAINTIFF

AND

LIPA LATER LIMITED 1ST DEFENDANT

LIPA LATER GROUP INC 2ND DEFENDANT

RULING

1. Before me are two applications. The first one, is the notice of motion dated 30th August 2024 by the plaintiff, seeking entry of judgment on admission against the defendants. The second, is the chamber summons dated 16th September 2024, by the defendants seeking a stay of proceedings and referral of the dispute to arbitration.

2. On 4th October 2024, the court directed that both applications be heard together.

Application dated 30th August 2024

3. The application seeks entry of judgment against the defendants for the admitted sum of USD 507,375, interest thereon at 30% per annum from 18th April 2024 when the sum became due until payment in full as per the terms of the Investment Agreement dated 18th October 2023 and costs of the suit.

4. The application is grounded on the annexed affidavit sworn by the plaintiff's director, Mark Karake, on 31st August 2024 and written submissions dated 23rd September 2024.

5. The defendants opposed the application through a replying affidavit sworn by the 1st defendant's director, Michael Maina, on 29th January 2025.



Application dated 16th September 2024

6. The application is based on the grounds set out in the annexed affidavit of Michael Maina on 16th September 2024 and written submissions dated 29th January 2025.
7. The plaintiff opposed the application through grounds of opposition dated 23rd September 2024, a replying affidavit sworn by Mark Karake on 25th September 2024 and written submissions dated 23rd September 2024.

The defendants' case

8. The defendants' case is that the plaintiff initiated this suit through a plaint dated 30th August 2024 over a dispute emanating from an investment agreement dated 18th October 2023; that under clause 9.3 of the agreement, any dispute between the parties would be referred to arbitration, and that in the circumstances, the matter ought to be referred to arbitration for hearing and determination.
9. The defendants contended that the plaintiff has not attempted to confer with the 1st defendant to resolve any issues as per clause 9.2 of the investment agreement. They also contended that the plaintiff neither issued a demand letter nor sought to initiate a dispute as per clause 9.3 nor wrote to the Chairperson of the Chartered Institute of Arbitrators seeking the appointment of a suitable arbitrator to determine any dispute.
10. The defendants relied on Section 6 of the *Arbitration Act*. They submitted that they have met the requirements for referral of the dispute to arbitration. They asserted that clause 9.3 of the investment agreement had an arbitration agreement. They also asserted that there is no dispute that the agreement is valid and operative. They relied on *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] KECA 362 (KLR) to assert that parties are bound by their agreements.
11. The defendants highlighted that they have moved the court appropriately through their application after entering an appearance and before filing any defence or other pleadings. They submitted that there is a valid dispute as outlined in their replying affidavit, as regards the alleged outstanding amounts, as the plaintiff has failed to produce a statement showing payments made by the 1st defendant. They also disputed the interest rate charged of 30% p.a. on a loan denominated in US Dollar as it is unconscionable and unenforceable as it far exceeds the LIBOR rate. They contended that the 2nd defendant is not a party to the investment agreement hence there is no privity of contract, and that it cannot be held liable for the amount claimed.
12. The defendants relied on *Patel v EA Cargo Handling Services* [1974] EA 75 to argue that a triable issue is not a defence that must necessarily succeed, but one which should go for adjudication. They also relied on *DT Dobie & Company (Kenya) Ltd v Muchina* [1982] 1 KLR on the guiding principles for determining whether to strike out a suit or pleading.
13. The defendants submitted that the 1st defendant never admitted to owing the sum of USD 507,375 and that the claim for judgment on admission is unmeritorious. They pointed out that the plaintiff purports to rely on alleged emails issued by the 1st defendant, which have been produced contrary to Section 106B of the *Evidence Act*. The defendants denied the authenticity of the emails and WhatsApp conversations relied on by the plaintiff and submitted that they were in contravention of Section 78A of the *Evidence Act*. They contended that they have not been authenticated and one cannot tell how the documents were generated, stored or communicated.



14. The defendants urged the court to find that there is no clear and unequivocal admission to warrant judgment on admission and to dismiss the plaintiff's application with costs.
15. The defendants submitted that the plaintiff is not entitled to Mareva injunction orders sought as it has not set out a good arguable case that is more than a prima facie case. In support, they relied on *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 213 and *Beta Healthcare International Limited v Grace Mumbi Githaiga & 2 others* [2016] eKLR.

Plaintiff's case

16. The plaintiff's core contention is that there is no genuine dispute to be referred to arbitration, as the defendants have admitted the debt and even made proposals for settlement of the debt which they failed to honour. It asserted that the defendants' application does not identify the genuine dispute between the parties. It also asserted that the plaintiff's director conferred with the defendants over the debt and that the 1st defendant's director proposed to settle the debt.
17. The plaintiff argued that this is a clear case for entry of judgment on admission. It advanced the 1st defendant USD 450,000 under the investment agreement which clearly set out the investment amounts, investment rate, total interest and the investment maturity. It was agreed that upon maturity of the investments, the 1st defendant would make a bullet payment consisting of principal and interest.
18. The plaintiff contended that the 1st defendant has in correspondence, unequivocally admitted that it owes USD 507,375 and proposed a settlement, but has failed to make any payments to date.
19. The plaintiff also argued that the defendants' application is frivolous, vexatious and an abuse of the process of the court, meant to delay the determination of its application dated 30th August 2024, seeking entry of judgment on admissions against the defendants.
20. The plaintiff relied on *UAP Provincial Insurance Company Ltd v Michael John Beckett* [2013] KECA 205 (KLR), *Clearspan Construction (A) Limited v East African Gas Co. Ltd* [2008] eKLR, *Halki Shipping Corpn v Sopex Oils Ltd* [1998] 1 WLR 726

Analysis and Determination

Issues

21. The two applications present inextricable issues. The linchpin issue is; whether there is a dispute to be referred to arbitration; a decision that will come upon determination of whether judgment on admission should be entered and freezing order issued.

Judgment on admission

22. The guiding principles for determining whether to enter judgment on admission were discussed by the Court of Appeal in *Choitram v Nazari* [1984] eKLR, as follows: -

“For the purpose of order XII rule 6, admissions can be express 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. Much depends upon the language used. The admissions must leave no room for doubt that the parties passed out of the stage of negotiations onto a definite contract. It matters not if the situation is arguable, even if there is a substantial argument,



it is an ingredient of jurisprudence, provided that a plain and obvious case is established upon admissions by analysis. Indeed, there is no other way, and analysis is unavoidable to determine whether admission of fact has been made either on the pleadings or otherwise to give such judgment as upon such admissions any party may be entitled to without waiting for the determination of any other question between the parties. In considering the matter, the judge must neither become disinclined nor lose himself in the jungle of words even when faced with a plaint such as the one in this case. To analyse pleadings, to read correspondence and to apply the relevant law is a normal function performed by judges which has become established routine in the courts...”

23. As regards the outstanding amounts and the interest, the plaintiff produced copies of emails dated 20th April 2024, 8th May 2024, 21st May 2024, 3rd July 2024 and 30th July 2024.
24. The 1st defendant has submitted that it disputes the authenticity of the emails. The 1st defendant relied on Section 106B of the Evidence Act and Section 78A of the Evidence Act to argue that the emails and WhatsApp messages relied on by the plaintiff were produced without a certificate of electronic evidence. The plaintiff did not respond to this contention in its submissions.
25. The record confirms that the plaintiff did not file a certificate of electronic evidence as required under Section 106 B of the Evidence Act. The court may allow the plaintiff to subsequently file the certificate as it did in *George Gabriel Kiguru & another v Republic* [2022] eKLR. However, the request was not put to the court.
26. The requirement for certificate is to establish the integrity and authenticity, of, source and recipient of the digital evidence. It is therefore, fundamental requirement making its omission substantive lapse. Therefore, in the circumstances of this case, it is difficult to reach a determination that the admission was obvious, clear and straight forward envisaged in order 13 rule 2 of the Civil Procedure Rules.
27. Be that as it may, it is important to state that, under section 6 of the Arbitration Act, the court shall not refer the parties to arbitration, where it finds ‘...(b) that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.
28. Be it known, therefore, to all that these presents may come greeting that, admission of a debt in the terms under Order 13 rule 2 of the Civil Procedure Rules results into ‘...there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration’. And, a referral will not be ordered lest it should inadvertently encourage abuse of the arbitral process by parties whose sole purpose is to delay justice due to the other party. Arbitration being consensual process loathes such manoeuvres; instead, should excite obedience; thus, should be shielded from abuse.
29. As a consequence, the application for entry of judgment on admission is declined.

Freezing order

30. It sought an order that pending the hearing and determination of the main suit, the 1st defendant be restrained from transferring any of its assets, property or money held in its local and foreign bank accounts to the 2nd defendant or any other matter.
31. The prayer for a freezing order saddled upon the request for judgment on admission. It was not sought as an interim measure of protection under section 7 of the Arbitration Act. Accordingly, it is not appropriately situated in light of the decision to refer the matter to arbitration.
32. This does not prevent the plaintiff from moving the court appropriately for an interim measure of protection under section 7 of the Arbitration Act.



Referral to arbitration

33. Section 6 of the [Arbitration Act](#) states that: -

“ 6. Stay of legal proceedings

- (1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay the proceedings and refer the parties to arbitration unless it finds—
 - (a) that the arbitration agreement is null and void, inoperative or incapable of being performed; or
 - (b) that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.
- (2) Proceedings before the court shall not be continued after an application under subsection (1) has been made and the matter remains undetermined.
- (3) If the court declines to stay legal proceedings, any provision of the arbitration agreement to the effect that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.”

34. The plaintiff and the 1st defendant entered into the investment agreement dated 18th October 2023. Clause 9.3 of the agreement provides that, any dispute between the parties would be referred to arbitration.

35. It is hotly contested, whether there is any dispute to be referred to arbitration.

36. In the UAP Provincial Insurance Company Ltd v Michael John Beckett [supra], the Court of Appeal underscored that “the inquiry by the court with regard to the question whether there is a dispute for reference to arbitration, extends, by reason of Section 6(1)(b), to the question whether there is in fact, a dispute.”

37. The plaintiff argued that there is no dispute for referral to arbitration as the 1st defendant has, in correspondence, unequivocally admitted that it owes USD 507,375 and proposed a settlement, but has failed to make any payments to date. It also asserted that the investment agreement set out the invested amount, USD 450,000, the interest rate, 30% per annum, the total net interest, USD 57,375 and the investment term of the loan agreement, 6 months.

38. The request for judgment on admission by the plaintiff has been declined for the reasons given by the court. The plaintiff’s claim is for judgment against the defendants for: -

1. The sum of USD 507,375



2. Interest on (1) above at 30% per annum from 18th April 2024 when the judgment sum became due until payment in full as per the terms of the Investment Agreement dated 18th October 2023.
39. On the other hand, the 1st defendant submitted that there is a valid dispute regarding: -
- i. the alleged outstanding amounts, as the plaintiff has failed to produce a statement showing payments made by the 1st defendant.
 - ii. the interest rate charged of 30% p.a. on a loan denominated in US Dollar as it is unconscionable and unenforceable as it far exceeds the LIBOR rate.
 - iii. the 2nd defendant cannot be held liable as it is not a party to the investment agreement.
 - iv. the authenticity of the emails and WhatsApp conversations relied on by the plaintiff.
40. From the plaint, the dispute arises from the investment agreement. And following the decision on the request for judgment on admission, the dispute herein should be referred to arbitration. The emails and messages together with the relevant certificates to establish their integrity, source and recipient may be tendered in evidence before the Arbitral Tribunal.

Disposal

41. In the upshot: -
1. The plaintiff's application dated 30th August 2024 is dismissed with no order as to costs given the findings by the court.
 2. The 1st defendant's application is allowed upon the terms below.
 3. The dispute is referred to arbitration, in accordance with, clause 9.3 of the Investment Agreement.
 4. The Chairperson of the Chartered Institute of Arbitrators, Kenya Branch, to appoint an arbitrator in accordance with the arbitration clause who shall determine the dispute. If no time lines are provided in the arbitration agreement, the appointment of the arbitrator shall be done within 21 days of this ruling.
 5. The proceedings are stayed pending hearing and determination of the arbitration. This matter remains undetermined.
 6. I caution, however, that the decision of the arbitral tribunal shall be filed in these proceedings to avoid a situation where these proceedings remain pending indefinitely or parties apply under separate miscellaneous applications for setting aside the award and or recognition and enforcement of the arbitral award.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 26TH DAY OF MAY, 2025

F. GIKONYO M

JUDGE

In the presence of: -



Kiarie for Plaintiff

Kisinga for Defendant

CA Kinyua

