



Rubis Energy Kenya PLC v Skytanking Kenya Limited (Commercial Suit E275 of 2024) [2025] KEHC 5735 (KLR) (Commercial and Tax) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5735 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E275 OF 2024**

BM MUSYOKI, J

MAY 9, 2025

BETWEEN

RUBIS ENERGY KENYA PLC PLAINTIFF

AND

SKYTANKING KENYA LIMITED DEFENDANT

RULING

1. On 21-05-2024, the plaintiff brought this suit against the defendant claiming a sum of USD 2,726,127.09 being the principal sum and a further USD 341,436.90 being contractual interest which it claimed were due from the defendant borne out of a contract between the parties where the plaintiff supplied the defendant with jet fuel on various days between 1-04-2022 and 30-09-2022. The plaintiff also asked for interest at a rate of 2% London Interbank Offer Rate with effect from 1st May 2024 until payment in full.
2. On 22-05-2024, before the defendant entered appearance or filed its defence, the plaintiff filed a notice of motion dated 21-05-2024 praying for the following orders;
 1. Judgment be and is hereby entered for the plaintiff against the defendant as prayed in the plaint on the defendant's own admission of indebtedness to the plaintiff.
 2. The costs of the suit and the application be awarded to the plaintiff.
3. This is the application to which this ruling relates. The application was supported by affidavit of the plaintiff's fuel sales manager one Martin Kiarie dated 21st May 2024. In the affidavit, the deponent after giving the history of the contract between the parties states that, the defendant admitted the debt in insolvency cause number E012 of 2022 and made part payment. He also states that there was admission



of the debt in a letter dated 12th September 2022 and in averments OF the defendant's director in chief magistrate's court case number E1665 of 2024.

4. The defendant filed its defence and counterclaim on 26th July 2024 to which the plaintiff replied through reply to defence and defence to counter-claim dated 23rd August 2024. By its replying affidavit sworn by Dennis Munene Muthike on 9th October 2024, the defendant opposes the application on three discernable grounds. The first one is that the application was prematurely filed as the same was filed before it entered appearance or filed the defence. The second is that the defence raises triable issues that warrant the matter going for full hearing one of them being that it paid the claim by remitting USD 6,115,846.66. The third ground is that it did not make any admission of the claim as alleged by the plaintiff.
5. It is important that this court differentiates between an application on admission and an application for summary judgement. The defendant in arguing that the application was prematurely filed and that its defence raises triable issue, it seems to approach the application as if it is for summary judgement under Order 36 of the Civil Procedure Rules. I say so because the defendant has argued that the plaintiff should not have filed the application before it filed its defence. A look at Order 13 of the Civil Procedure Rules which provides for judgment on admissions, there is no provision that the same must be filed after the defendant enters appearance or files defence. The Order which has only two Rules provides that;
 1. Any party to a suit may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or part of the case of any other party.
 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.
6. The Order does not specify the stage at which an application for admission should be filed. It can be filed at any stage including simultaneously with the suit. It is my holding therefore that the application was not prematurely filed and the question whether or not the defence raises triable issues is not for consideration in this ruling.
7. Having said the above, I hold the view that all that the court needs to decide in disposal of this application is whether the three instances claimed to constitute admissions are actually admissions of the debt which warrants entry of judgement under Order 13 of the Civil Procedure Rules.
8. My understanding of the plaintiff's position is that the defendant admitted the debt in two other court causes and by a letter dated 12th September 2022. I will start with the admission claimed to be contained in the insolvency cause number E012 of 2022. The plaintiff has not been specific on the portion of the affidavit which it claims constituted an admission except to state that the defendant averred that it was able to pay its debts. I don't see how this statement amounts to an admission. The said affidavit is produced as annexure MK23 of the replying affidavit appearing on pages 1653 of 1660 the plaintiff's application. I have gone through the replying affidavit and in my view, contents of paragraphs 10 and 11 thereof negates any form of admission. At paragraph 10 the deponent stated that the defendant would pay its debts as and when the same fell due while paragraph 11 stated that by April 2022, the defendant had cleared its then pending debts.
9. I have also gone through the letter dated 12th September 2022 which has been produced as plaintiff's annexure MK15. In my opinion, whereas the said letter acknowledges some outstanding debts whose



value is not specified, it seems to be calling for negotiations on how future or further business engagements between the parties should be conducted. There is no express or unambiguous statement of acknowledgment of a specific debt which could amount to admission in law. In *Choitram & another v Nazari* [1984] KECA 47 (KLR) the Court held 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. 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.”

10. On the cmcc E1665 of 2024, the defendant avers that the same was litigation between the plaintiff and one of the defendant’s directors and has no bearing in this suit neither did it concern the defendant. I have looked at the pleadings produced by the plaintiff as annexure MK24. It is clear that the suit was filed by Mark Kithuka Mutua against the plaintiff in this suit with Metropol Credit Reference Bureau Limited being an interested party. The plaintiff in the magistrate’s court’s suit pleaded that he was a director of the defendant in this suit. The cause of action in that suit was a defamation claim where the said director was seeking damages for being listed by the interested party as a defaulter of debts allegedly owed by the defendant in this suit. The said director averred that the listing was a reckless and deliberate action meant to defame him. It is my considered view that those averments and pleadings cannot be construed as admission of the debt claimed in this suit because, in addition to the said director being a separate entity from the defendant herein, the basis of the suit was denial of existence of the alleged debt. Even the figures stated in the said suit are worlds apart from the amount claimed in this matter.

11. The plaintiff herein has not exhibited the defence it may have filed in the said chief magistrate’s court’s suit to enable this court ascertain whether existence of the debt in this matter was made an issue in the said suit. This court cannot deduce or assume an admission based on pleadings in a separate suit especially where the other suit is a contested one. In *Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others* [2021] KEHC 13344 (KLR) the court held that;

“There cannot be an inferential admission – it has to be unambiguous. In other words, the court should not deduce an admission, as the result of an interpretive exercise. The court’s approach while considering whether any averment or omission to traverse any material allegation amounts to an admission cannot be subjective or one sided. It has to necessarily, take into consideration the implications which may arise from a party urging one contention or another, on the basis of what is on record.”

12. It is my view that the averments, pleadings and correspondence the plaintiff has relied on in this application do not amount to an admission and the application dated 21-05-2024 is not merited. The same is dismissed with costs to the defendant.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MAY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Miss Nyangweso holding brief for Mr. Muthui for the plaintiff and Mr. Kibuthu holding brief for Miss Muraguri for the defendant.

