



**Surgilinks Limited v Mediheal Sourcing Limited & 4 others (Civil Case E183 of 2024)
[2025] KEHC 6561 (KLR) (Commercial and Tax) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6561 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E183 OF 2024**

**F GIKONYO, J
MAY 15, 2025**

BETWEEN

SURGILINKS LIMITED PLAINTIFF

AND

MEDIHEAL SOURCING LIMITED 1ST DEFENDANT

MEDIHEAL HOSPITAL & FERTILITY CENTRE 2ND DEFENDANT

**MIDEHEAL SUPERSPECIALITY HOSPITAL NAIROBI LIMITED 3RD
DEFENDANT**

**MEDIHEAL DIAGNOSTIC & FERTILITY CENTRE, RWANDA 4TH
DEFENDANT**

MEDIHEAL GROUP LIMITED 5TH DEFENDANT

JUDGMENT

Judgment on Admission

1. Before me is the plaintiff's notice of motion dated 11th April 2024, expressed to be brought under Order 13 Rule 2 and Order 51 Rule 1 of Civil Procedure Rules, Sec 1A, 1B and 3A of the [Civil Procedure Act](#). It seeks entry of judgment against the 1st, 2nd, 3rd and 4th Defendants for the sum of Kshs. 21,393,040.44, Kshs. 3,173,775.89, Kshs. 110,972.45 and USD 9,360 (equivalent of Kshs. 1,058,990.40), together with interest. It also seeks entry of judgment against the 5th Defendant for Kshs. 25,736,779.18 together with interest.



2. The application is premised on the grounds set out in the application, the annexed affidavit sworn by the plaintiff's accountant Paul Metho on 11th April 2024 and written submissions dated 15th January 2025.
3. The grounds are that:-
 1. On several dates, the plaintiff sold and delivered to the 1st, 2nd, 3rd and 4th defendants, at their request, various pharmaceutical supplies (hereinafter "the goods") worth a total sum of Kshs. 25,736,779.18.
 2. On several and diverse dates, the plaintiff demanded payment of the outstanding sum of Kshs. 25,736,779.18 due and owing on account of the said goods sold and delivered to the defendant, which was and has not been paid and remains outstanding to date.
 3. Since 2020, the defendants acknowledged their indebtedness to the plaintiff and the 5th defendant issued various post-dated cheques to the plaintiff, totalling to Kshs. 4,545,556/-, in part-settlement of the outstanding debt. However, the 5th defendant requested the plaintiff not to bank the said cheques since it had insufficient funds in its account.
 4. on 25th February 2022, pursuant to an audit carried out by the firm of Ashvin Rampara & Company, the 1st defendant acknowledged and confirmed that the amounts due to the plaintiff from the 2nd defendant and itself as of 31st December 2021 were Kshs. 3,427,241.36 and Kshs. 21,729,546.74, respectively.
 5. Further, in october 2022, the 1st defendant issued to the plaintiff eighteen (18) post-dated cheques totalling to Kshs. 15,600,000/- in part settlement of the defendants' outstanding balance. However, all the cheques were returned unpaid due to insufficient funds in the 1st defendant's bank account.
 6. Subsequently, on 26th August 2023, the 5th defendant, on behalf of the 1st, 2nd, 3rd and 4th defendants, wrote to the plaintiff, admitting that the outstanding amount was well overdue and promised to settle the entire amount in 10 weeks from that date.
 7. on 6th November 2023, upon further demand of the outstanding amount, both the 5th defendant and its advocates, Messrs Ndisi Munje & Associates Advocates, admitted owing the plaintiff and promised to pay the outstanding amount before 6th December 2023.
 8. The defendants have made a clear admission of liability for the principal sum of Kshs. 25,736,779.18 together with interest, and it is proper and just that this honourable court enters judgment for the plaintiff on admission.
4. The plaintiff submitted that by the issuance of cheques in part payment of the debt and authoring the above various correspondence admitting the debt, the defendants made clear admissions of their indebtedness to the plaintiff, and it is proper and just that this honourable court enters judgment for the plaintiff on the defendants' admission. It also submitted that the defendants were not under any forceful persuasion or pressure that overpowered their free will when they admitted the debt. It added that consequently, the admission was clear and voluntary deliberately intended to bind the defendants.
5. The plaintiff relied on *Choitram v Nazari* [1984] KLR 327, *Jondu Enterprises v Royal Garments Industries EPZ*, [2014] eKLR and *Mugunga General Stores v Pepco Distributors Ltd* [1987] eKLR.



Response

6. In response, the defendants filed grounds of opposition dated 15th November 2024 and written submissions dated 20th March 2025.
7. The core grounds are that:-
 1. the application is bad it law, misconceived, frivolous, and an abuse of the court process.
 2. the application contravenes the overriding objectives espoused in Sections 1A and 1B of the Civil Procedure Act and the principles enshrined in Article 159(2)(d) of the Constitution of Kenya, 2010.
 3. the Application curtails the defendants/respondents' constitutional right to a fair hearing on the merits of the case.
 4. the said application is therefore incompetent, fatally defective and does not lie and the same ought to be struck out or dismissed with costs.
8. The defendants asserted that they filed a defence against the suit raising substantive issues that need to be determined on merits. They relied on Article 50(1) of the Constitution of Kenya on the right to a fair hearing. They also relied on Olympic Escort International Co. Ltd. & 2 Others v Parminder Singh Sandhu & Another (Civil Appeal 306 of 2002) [2009] eKLR.
9. The defendants highlighted that the application for summary judgment was filed together with the plaint dated 11th April 2024, thus obstructing the defendant's right to file its defence within 15 days upon service. It submitted that the application raises several triable issues including whether any cheques/ payments were made to the plaintiff? and/ or whether there is any money owed to the plaintiff by the defendants. It relied on Osodo v Barclays Bank International Limited [1981] KLR 30 to argue that where there are triable issues raised in an application for summary judgment, there is no room for discretion and the court must grant leave to defend unconditionally.
10. The defendants also relied on Gupta v Continental Builders Ltd [1976-80] 1 KLR 809, Kariuki Network Limited & Another vs. Daly & Figgis Advocates (Civil Application No. Nai 293 of 2009), Lalji t/a Vakkep Building Contractors v Casousel Ltd. [1989] KLR 386

Analysis and Determination

11. The issue for determination is whether the plaintiff has made a case for entry of judgment on admission as prayed.
12. Order 13 Rule 2 of the Civil Procedure Rules provides 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 judgement 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 judgement, as the court may think just.”



13. The Court of Appeal underscored the principles for entry of judgment on admission 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...”

14. The plaintiff submitted that this case is fit for judgment on admission based on the issuance of cheques in part payment of the debt and the correspondence admitting the debt.
15. The plaintiff exhibited a letter dated 30th September 2020 (marked PM-5) from the 5th defendant indicating that it had issued cheques for Kshs. 4,545,556/- in its favour and requesting it not to bank the cheques till further communication. It exhibited a letter dated 25th February 2022 (marked PM 6) containing a confirmation from the 1st defendant, Mediheal Sourcing Limited, that Kshs. 25,156,788.81 (Mediheal Hospital & Fert Centre Kshs. 3,427,241.36 and Mediheal Sourcing Kshs. 21,729,546.74) was payable as at 31st December 2021. It also exhibited return cheque advices for Kshs. 15,600,000/- (marked PM 7). Also exhibited a letter dated 7th November 2023, marked PM 10, containing a confirmation by the 1st defendant that according to its books of accounts, Kshs. 21,019,480.44 was payable to the plaintiff as at 31st December 2022.
16. On their part, the defendants argued that the defence raises triable issues between the parties, which require full hearing for the court to determine the issue of liability.
17. I have examined the defence dated 7th March 2025. The defendants admit that the plaintiff delivered pharmaceuticals as requested. They indicated that according to schedule 1 filed by the plaintiff, the payments were being cleared. They contended that the schedule does not provide a complete or exhaustive account of all transactions. The further averred that payments have been made to the plaintiff, including some executed through cheques handed over directly.
18. The defendants admitted that they issued cheques to partly settle the debt owing. Yet, they denied that the cheques were returned due to insufficient funds.
19. However, the evidence on record confirms that the 5th defendant admitted that it had issued cheques for Kshs. 4,545,556/- but asked the plaintiff not to bank them. The return cheque advices confirm that cheques for Kshs. 15,600,000/- were returned due to insufficient funds. The letters exhibited also show that the defendants admitted that they owed the plaintiff Kshs. 25,156,788.81 as at 31st December 2021 and Kshs. 21,019,480.44 as at 31st December 2022.



20. The admissions have been made in the defence and correspondences from the plaintiff. The admissions are made in sheer simple, plain and clear language. They are 'obvious on the face of them without requiring a magnifying glass to ascertain their meaning'. Choitram case supra.
21. In the face of such admissions, the court should enter judgment without waiting for determination of any other issue between the parties.
22. Consequently, I am satisfied that the plaintiff has met the threshold for entry of judgment on admission.
23. In conclusion, the application dated 11th April 2024 is allowed in the following terms: -
 1. Judgment on admission is entered for the plaintiff against the 1st to 4th defendants for Kshs. 21,019,480.44 together with interest.
 2. Judgment on admission is entered for the plaintiff against the 5th defendant for Kshs. 25,736,779.18 together with interest.
 3. THAT the costs of this application be borne by the 1st to 5th defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 15TH DAY OF MAY, 2025.

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F. GIKONYO M

JUDGE

In the presence of: -

Ms. Catherine for Kolonya for Plaintiff

Ms. Tazila for Kangogo for 1st -5th Respondent

CA Kinyua

