Vector Aerospace Africa (PTY) Limited Doing Business as Standard Aero v BFO Aerospace International Limited (Commercial Case E450 of 2024) [2025] KEHC 8386 (KLR) (Commercial and Tax) (16 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8386 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL CASE E450 OF 2024

BM MUSYOKI, J

JUNE 16, 2025

BETWEEN

VECTOR AEROSPACE AFRICA (PTY) LIMITED DOING BUSINESS AS STANDARD AERO ..... PLAINTIFF

AND

BFO AEROSPACE INTERNATIONAL LIMITED ..... DEFENDANT

RULING

1 . The plaintiff instituted this suit against the defendant vide plaint dated 2nd August 2024 claiming the following;

a. The sum of USD 392,121.18.

b. The sum of USD 44,996.83 as accrued interest from 28th December 2023 (the date of invoicing) to 31st July 2024.

c. Storage costs at the rate of USD per month from 28th December 2023 until payment of (a) in full.

d. Interest on the sum awarded in 'a' at the agreed contractual rate of 1.5 per cent per month (19.56 per cent per annum) from the date of filing to the date of settlement in full.

e. Interest on the sum awarded in (b) and (c) at the court rates.

f. Costs of this suit.

g. Such other relief that this Honourable Court may deem just and fit to grant.

2. The cause of action in this matter is an unwritten agreement between the parties in which the defendant contracted the plaintiff to carry out hot section inspection of his aircraft engine bearing serial number PW120A/PCE-120805. The plaintiff averred that on or around 25th September 2023, the defendant requested it to share an estimate of costs of doing the aforestated job upon which the plaintiff gave its quote dated the same day.

3. The plaintiff's quotation was for a sum of USD 557,896.80. The defendant instructed the plaintiff to proceed to carry out the inspection against a down payment of USD 40,000 and billed the defendant for a sum of USD 532,121.18 through invoice dated 28-12-2023, amount which was lesser than the quoted sum. The plaintiff averred further that the amount due and owing from that contract was USD 392,121.18.

4. The defendant filed its defence dated 9th September 2024 in which it admitted the claim but gave reasons for non-settlement of the debt as; failure by the plaintiff to respond to its credit application dated 19-09-2023, the plaintiff's application of unjustified high interest rate and tough economic times. In addition to these reasons, the defendant denied the jurisdiction of this court based on the plaintiff's standard agreement which stipulates that dispute should be settled through the New York State laws.

5. The plaintiff had contemporaneously with the plaint filed an application for judgement on admission dated 2nd August 2024 which prays that;

    1. Judgment on admission for the sum of USD 392,121.18 (the principal amount) plus interest of USD 25,749.95 (a total of USD 417,817.13) together with interest at the rate of 1.5 per month (19.56 per cent per annum) on the principal amount from the date of filing until the date of payment in full be entered against the defendant.

    2. Costs and incidental to this application.

6. The application was supported by affidavit of Muzamil Khokher who described himself as the plaintiff's service center manager for Nairobi sworn on 2nd August 2024. In the supporting affidavit, the deponent in addition to giving the background of the case as pleaded in the plaint produced a copy of the quotation dated 25-09-2023, its invoice dated 28-09-2023, a statement of account dated 28-12-2023, the defendant's email dated 6-05-2024 which acknowledged a debt and CR12 for the defendant.

7. In opposing the application, the defendant filed a replying affidavit sworn by Honour Gathoni on 12th September 2024. In the said affidavit, the deponent admitted the terms of engagement as described in the plaintiff's supporting affidavit. She stated further that the defendant applied for credit on 19th September 2023 which was not respondent to causing uncertainty regarding payments timelines. She also added that the defendant has been unable to settle the debt due to failure by the end user to remit payments.

8. The replying affidavit also stated that since there was no written agreement between the parties, resort had to be to the plaintiff's standard agreement which does not specify any particular interest rate and provides that the law governing the agreement was to be the laws of State of New York. According to Gathoni, the application is not suitable for granting because the defence has triable issues and the email which is sought to be relied on lacks certainty and was ambiguous on the exact amounts the defendant owes. She added that the proceedings are not in the right forum as this court lacks jurisdiction over the matter.

9. The application was argued by way of written submissions. The plaintiff's submissions are dated 14th October 2024 while the respondent's are dated 21st November 2024. I have read the submissions by

the parties, the affidavits, annexures to the affidavit and the pleadings. There are only two issues arising from the application which are; whether this court has or can assume jurisdiction over this matter and whether there was a clear and unequivocal admission of the debt which would entitle the plaintiff to a judgment on admission.

10. I will start with the issue of jurisdiction. The defendant has argued that since there was no formal agreement between the parties, the court must resort to the plaintiff's standard agreement. It has exhibited what it refers to as the sample standard agreement annexure 'HG2' and cites paragraphs 19 thereof which provides that the agreement is to be governed by the laws of the State of New York and that the parties agree to exclusive jurisdiction of the courts of State of New York.

11. The parties did not execute the alleged standard agreement and the same has not been referred to in the invoice, quotations or correspondences exchanged between the parties. There is no document or conduct or action of any of the parties that would suggest that the parties intended or desired to be bound by the standard agreement. An agreement is a free will instrument and even standard agreements must be voluntarily entered into and cannot be introduced in proceedings between parties if none or one of the parties did not commit to be bound by it regardless of which of the parties was the author of the standard agreement.

12. Based on the above paragraph, I do not buy the argument that where there is no formal agreement a court can fall back to one of the party's standard agreement. I am persuaded by the holding of Lady Justice D.O Chepkwony in Mwangema t/a Mwangemi General Contractors v Attorney General & another (2023) KEHC 17852 (KLR) where she held that;

> 'A party cannot rely on provisions they had not taken in possession and in this Court's view, a contract signed by only one party remains a draft agreement. The same can have contractual force but for it to be binding, it must be signed essentially to express the terms which the parties have agreed bind their subsequent conduct.'

13. Having held that the parties are not bound by what the defendant has referred to as the plaintiff's standard agreement, I do not wish to take time considering whether this court can assume jurisdiction. The circumstances of this case show that the contract was entered into in Kenya and the defendant is a company registered and resident in Kenya. The affairs of the parties in relation to the contract must therefore be under the jurisdiction of the laws of Kenya and by virtue of Sections 5, 12 and 15 of the *Civil Procedure Act*, this court has jurisdiction to entertain and determine this matter.

    As indicated above, the defendant has admitted the debt. I specifically refer to paragraph 4 of the defence which states that; 'Contents of paragraphs 5, 6, 7, 8 and 9 of the plaint are not disputed. The terms of the engagement between the parties were clear.' For clarity, the paragraphs of the plaint referred to here states as follows;

    1. On or around 25th September 2023, the defendant requested the plaintiff for an estimate as regards a hot section inspection of the aircraft engine bearing the serial number PW120A/PCE-120805 (the engine).

    2. The plaintiff, in response to the defendant's request, shared an estimate dated 25th September 2023 for the sum of USD 557,896.80.

14. Close to the above, paragraph 7 of the defence states that; 'In response to paragraph 12 of the plaint, the defendant affirms its commitment to settling the amount due for the services rendered and is actively exploring all available options to resolve the outstanding payments.' The paragraph being referred to here states that; 'Despite repeated promises to settle the entire sum of USD 532,121.18, the

defendant has to date only paid USD 140,000.' My interpretation of the above is that the defendant acknowledged that it was not contesting paragraph 12 and it was giving its commitment to pay. The difference between USD 532,121.18 and USD 140,000 is USD 392,121.18 which is exactly the amount in prayer 'a' of the plaint. In my view, there cannot be a clearer admission than this.

15. The defendant need not use the word 'admit' for the court to find merits in the application. The words taken in their ordinary meaning would undeniably amount to admitting the existence of the debt. All the court needs to do is satisfy itself that the defendant's words are unambiguous and clearly makes reference to the debt in question and that the defendant was not contesting it. In Vehicle and Equipment Leasing Limited v Cola Cola Juices Kenya Limited (2017) KEHC 7165 (KLR), it was held that;

> 'For judgment to be entered on admission. The admission needs to be clear and unambiguous.'

16. The email dated 6-05-2024 had asked for extension of credit period to 24th May 2024. That date came and passed as this suit was filed on 7th August 2024. The defendant claimed that the email was not clear and unequivocal and cannot found a judgment on admission. Whereas it is true that the email does not acknowledge the exact amount, it is in not disputable what the debt the email made reference to. Again, even if the email or any other correspondence were not available or did not exist, the admissions in the defence are enough to justify granting of the application. Under Order 13 of the Civil Procedure Rules admission may be in pleadings or otherwise. The Rule 1 of the Order provides that;

> '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.'

17. In my assessment, there is nothing the plaintiff would be required to prove if this matter goes for full trial. A party is not bound to prove what has been admitted by the opposite party. There will therefore be no need to keep the plaintiff herein waiting for the hearing when there are no issues to be tried. Section 61 of The *Evidence Act* provides that;

> 'No fact need be proved in any civil proceeding which the parties thereto or their agents agree to admit at the hearing, or which before the hearing they agree, by writing under their hands, to admit, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the court may in its discretion require the facts admitted to be proved otherwise than by such admissions.'

18. I am guided by the holding of Honourable Justice J.M. Mativo as he then was in Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others (2021) KEHC 13344 (KLR) where he held that;

> 'A clear and unequivocable admission of fact is conclusive, rendering it unnecessary for the one party (in whose favour the admission was made) to adduce evidence to prove the admitted fact, and incompetent for the other party, making the admission to adduce evidence to contradict it. The rational for this principle is confirmed by Order 13 Rule (2) of the Civil Procedure Rules. A reading of this rule leaves no doubt that admissions made either in the pleadings or otherwise are binding on the party who makes the admission and

no further evidence need to be adduced by the other party in respect of those facts admitted and the court can (and should) make an order purely based on those admissions. The effect of this principle is that it is not necessary to adduce evidence to prove admitted facts.'

19. There could not a better admissions than that contained in a parties' pleadings as it is trite law that parties are bound by their pleadings. The defendant cannot be allowed to adduce evidence or import meanings into words that contradict what is pleaded. An admission in the defence must take precedence over what could have been the meaning in the defendant's email dated 6-05-2024.

20. The defendant claims that it was uncertain on how to liquidate the debt because the plaintiff did not reply to its application for credit dated 19-09-2023. This is an absurd and lame argument. The alleged application came before the defendant instructed the plaintiff to carry out the inspection. The fact that the same was not replied to and was not made part of the negotiations ousts it from consideration in this matter. The defendant could not force its terms on the plaintiff.

21. On interest, the defendant has argued that the rates pleaded if granted would amount to unjust enrichment. It is common ground that there was no formal agreement and I have already held that the plaintiff's standard agreement is not applicable in this matter. The plaintiff's invoice that talks of interest rate is not the basis of the contract as it came after the plaintiff performed its part of the contract. In my view, the invoice is one of the documents used in commercial transactions to call for payments. It was not issued at the time of the agreement and in that case, the terms in respect of interest rates therein were not agreed between the parties and cannot be enforced against the defendant. In the circumstances, I am persuaded that the rates of interest the plaintiff is claiming in the plaint are not justified.

22. Based on the above discussion, I do not see any triable issues and the application dated 2nd August 2024 is for allowing. The same is allowed as follows;

    a. Judgement is entered for the plaintiff against the defendant for USD 392,121.18.

    b. The decretal sum shall attract interest at court rates from the date of filing this suit until payment in full.

    c. The plaintiff shall have the costs of this suit.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JUNE 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Miss Rutvi and Mr. Mailo for the plaintiff and Miss Ngui for the defendant.