



REPUBLIC OF KENYA



**KENYA LAW**  
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**Soigwa v Centsavvy Credit Limited (Civil Miscellaneous Application  
E257 of 2023) [2024] KEHC 1205 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1205 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL MISCELLANEOUS APPLICATION E257 OF 2023  
DKN MAGARE, J  
FEBRUARY 13, 2024**

**BETWEEN**

**THOMAS OMBASA SOIGWA ..... APPELLANT**

**AND**

**CENTSAVVY CREDIT LIMITED ..... RESPONDENT**

**RULING**

1. The Ruling relates to an application dated 19/9/2023.
2. The Application seeks the following orders: -
  - a. The Honourable Court be pleased to order for stay of execution of the Ruling and order made on 28/7/2023 and all further consequential and subsequent orders pending hearing and determination of this Appeal (sic).
  - b. The court be pleased to grant leave to the Appellant/Applicant to Appeal out of time against the Ruling made by G. Sogomo (PM) in Mombasa CMCC NO> E1611 of 2022 on 28/7/2023.
  - c. N/A
  - d. Costs.
3. The Applicant stated that they have chances of success. They intended to appeal from the Ruling given on 28/7/2023. The Respondent filed a suit for 4,471,600 via a plaint dated 9/11/22 and the Respondent disputed the claim by a defence dated 16/11/2022. The court made a ruling striking out the defence. The court found that the defence were general denials and relied on the *locus classicus* case



of *Ragbir Singh Chatte v National Bank of Kenya Limited* [1996] eKLR, where the Court of Appeal stated as doth: -

“The main object of this rule and r.14 is to bring the parties by their pleadings to an issue, and indeed to narrow them down to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing (per Jessel M. R. in *Thorp v Holdworth* (1876) 3 Ch. D. 637). This object is secured by requiring that each party in turn should fully admit or clearly deny every material allegation made against him. Thus, in an action for a debt or liquidated demand in money, a mere denial of the debt is wholly inadmissible”, (underling supplied).

I will also add that the crucial deficiency of a general denial which I have already described, also applies to the evasive, inconsistent and contradictory alternative general traverse in the appellant’s defence. This was that if the respondent had extended any overdraft facilities without stating the amount involved, to the appellant which was moreover, denied, then the same and here again, without stating how and when, had been paid. Such a spurious pleading in the alternative cannot give any merit to the defence and so also makes it one which discloses no reasonable defence for all purposes including that of 0 6 r 13(1)(a).”

4. In *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & Another* [1980] eKLR, Justice C B Madan, stated as doth: -

“per Swinfen Eady, L.J. in *Moore v. Lawson and Another*,/31 ff.L.lf. 418 at p. 419... 31 T.L.R. 418 at p. 419.

“It is a very strong power indeed. It is a power which, if it is not most carefully exercised, might conceivably lead a court to set aside an action in which there might really, after all, be right, and in which the conduct of the defendant might be very wrong, and that of the plaintiff might be explicable in a reasonable way. Unless it is a very clear case indeed, I think the rule ought not to be acted upon.....

Therefore, unless the case is absolutely clear, I do not think the statement of claim ought to be set aside as not showing a reasonable cause of action.

5. The Court simply found that the Application is allowed as prayed. I have seen a Decree for Ksh. 10,561, 275 arising with interests from 14/11/2022. of Kshs. 4,292,736 and another for Ksh. 1,788,640. I am unable to understand the magic with which the decretal sum agreed by a factor of more than in a span of half a year.
6. I do not think that it is a correct Decree. I have perused the Draft Memorandum of Appeal and found that it raises triable issues. The Respondent will have to convince the court, where the decree emanated from. Nevertheless, before a court drives away a party from the seat of justice, it must really be careful. An injustice of waiting longer is usually ameliorated by costs but being driven away when there is even one issue, which need not succeed, leaves a sour test in the mouth of justice.
7. Regard stay, I am unable to find the proper amount. The decree is weird, to say the least. There is no amount named in the Ruling.
8. The Replying Affidavit of Jackline Kiaruiie did not help. It did not provide for the origin of the liquidated claim. The court, is unable to resist the temptation to allow the application.



9. The Application filed further affidavit showing that auctioneers are demanding Kshs. 989,500. I note the auction related to the claim of 10 million. This cannot be the decree arising from a suit filed over Kshs. 4,471,600 as at 2/10/2022. The exponential growth of interest in less than one year, sends cold shivers to any shoulders of justice. I therefore shall order stay of execution pending appeal. The Applicant shall guide a bank guarantee for 1,000,000/= within 60 days from today.
10. Leave is hereby granted to the applicant to file an Appeal within 21 days from the date hereof.
11. Given the marked departure from the amount claimed, the Auctioneers will be paid by the instructing clients.

#### **Determination**

12. ...
  - a. Leave is granted to the Applicant to file an appeal out of time from the Ruling and Order given on 28/7/2023.
  - b. There be the stay of execution of the Decree in Mombasa CMCC 1611 of 2022 pending a hearing and determination of the Intended Appeal.
  - c. The Applicant is to provide Kshs. 1,000,000 bank guarantee as security pending Appeal within 60 days from the date hereof.
  - d. The instructing client bears the Auctioneer's costs.
  - e. Each party to bear their own costs.
  - f. Meanwhile the decree extracted is recalled and be drawn in terms of the Court order.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2024.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Miss Juma for the Respondent

Ms Mbae for the Applicant

Court Assistant - Brian

