



**Chapmanbdsp Limited v Two Rivers Lifestyle Centre Limited (Miscellaneous Application E484 of 2023) [2024] KEHC 3633 (KLR) (Commercial and Tax) (15 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3633 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E484 OF 2023**

**JWW MONG'ARE, J**

**APRIL 15, 2024**

**BETWEEN**

**CHAPMANBDSP LIMITED ..... PLAINTIFF**

**AND**

**TWO RIVERS LIFESTYLE CENTRE LIMITED ..... DEFENDANT**

**RULING**

1. The Plaintiff filed the Notice of Motion application dated 21<sup>st</sup> September 2023, brought under Order 13 Rule 2 of the *Civil Procedure Rules*, seeking that judgment be entered against the Defendant as prayed in the plaint. The application is supported by the annexed supporting and further affidavits sworn by the Plaintiff's director, Raymond Mcmanus on 21<sup>st</sup> September 2023 and 26<sup>th</sup> October 2023 respectively. The Plaintiff also filed written submissions and a list and bundle of authorities both dated 27<sup>th</sup> October 2023.
2. The application is premised on the grounds that the Plaintiff's claim against the Defendant is for an admitted debt of Kshs.29,775,129.28/-. By a Supplementary Agreement in writing signed by the parties in February 2019, the Defendant agreed to pay Kshs.59,550,258.56/- for services rendered by the Plaintiff in respect of the design and construction of the Two Rivers Lifestyle Centre commonly known as 'Two Rivers Mall.'
3. It is alleged by the Plaintiff that the Defendant agreed to pay the outstanding fees in two equal instalments payable on 28<sup>th</sup> February 2019 and 30<sup>th</sup> April 2019 respectively. However, despite settling the invoice for the first instalment of Kshs.29,775,129.28/-, the Defendant did not settle the invoice for the second instalment for Kshs.29,775,129.28/-. The Defendant persisted with default despite various discussions and correspondences and has expressly and unequivocally admitted its indebtedness to the Plaintiff through e-mails dated 16<sup>th</sup> May 2019; 2<sup>nd</sup> February 2022 and 19<sup>th</sup> October 2022.



4. It is the Plaintiff's position that the delay in settlement of the outstanding sum has been prejudicial to the Plaintiff's business. Therefore, it is fair and just that judgment on admission be entered against the Defendant as prayed in the Plaint.
5. The application is opposed by the Defendant through a replying affidavit sworn by its portfolio manager, Fred Murimi on 17<sup>th</sup> October 2023. In addition, the Defendant filed written submissions and a list and bundle of authorities both dated 8<sup>th</sup> November 2023 to buttress their case.
6. The Defendant's case is that the subject application is premature, unmerited, frivolous and an abuse of the Court's process and does not sufficiently disclose the material particulars and should therefore be dismissed on these grounds. The Defendant further avers that the subject application is based on misguided, wrong facts and is falls short of proof and that the Defendant having been served with the pleadings in the matter and summons to enter appearance in respect to the instant suit has already filed appearance in the usual manner and has alongside that filed a strong and comprehensive statement of defence on 17<sup>th</sup> October, 2023 to rebut the Plaintiff's claim herein.
7. The Defendant further contends that in the said statement of defence, the Defendant clearly and comprehensively raises very serious triable issues as well as points of law which warrant this Court's intervention and determination in full hearing of both parties' cases. The triable issues raised in the Statement of Defence pertain to the issues raised in the instant application by the Plaintiff herein which can only be determined by this Court by way of evidence and full hearing which include but are not limited to the fact that the Supplementary Contract referred to was not duly executed by the Defendant as well as the misrepresentation of facts by the Plaintiff to the Defendant's agents in view of eliciting payment for incomplete works.
8. It is the position taken by the Defendant that this Court cannot grant judgment on admission where points of law have been raised and where this Court has to resort to interpretation of documents to reach a decision. The Defendant maintains that the Plaintiff has not provided verifiable and sufficient proof to support his allegation that the Defendant has expressly and unequivocally admitted its indebtedness to the Plaintiff and that the evidence provided by the Plaintiff in support of the application does not meet the standard of clear, unambiguous and unconditional evidence to support the entry of a judgement on admission.
9. The Defendant maintains that it is a stranger to the said contractual documents and puts the Plaintiff to strict proof thereof. The Defendant argues that it is in the best interests of justice to allow the Defendant to defend itself in full hearing and for the Court to determine the real issues between parties upon considering the evidence by both parties.
10. The Defendant argues that the Plaintiff will not suffer any prejudice should this Court allow the matter to proceed on full hearing since the Plaintiff will have a chance to prosecute its claim therein by way of evidence and the matter be determined on merit based on the issues raised. The Defendant urges the court to find that this application is a non-starter and dismiss the same with costs to it for lack of merit.

### **Analysis and Determination**

11. I have considered the application, grounds and the parties' respective affidavits, the rival written submissions and authorities provided by the parties. To my mind, the issue that arise for determination is "whether the Plaintiff has established a case for the entry of judgment of admission against the Defendant."



12. Order 13 Rule 2 of the [Civil Procedure Rules](#) on which the application is predicated upon, provides that:-

“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 admissions 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.”

13. The principles for consideration in such an application were clearly captured by the Court of Appeal in the *locus classicus* case of [Choitram v Nazari](#) [1984] eKLR, where the court stated 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. From the record, the applicant exhibited correspondence exchanged between the parties. In an email captioned “Urgent Two Rivers- Supplementary Agreement and associated invoices- WHT component” sent to the applicant’s officer, Ray Upjohn on 16<sup>th</sup> May 2019, Samson Mwangi of Centum, states that:-

“As earlier agreed, we will make the final payment of Kshs. 23.9m in two instalments.

Kes. 11.9 in May 2019

Kes. 11.9 in June 2019

“Kindly confirm if this is in order. In the meantime, I am proceeding to start processing the first payment.”

15. In another email with the same caption sent on 2<sup>nd</sup> February 2022 to the applicant’s director RAY Mcmanus, Samson Mwangi of Centum, stated that:-

“Ray,

May I propose:-

Kes. 2Mn by 12 Feb 22



Kes 2Mn by 31 March 22

Kes 5Mn by 31 May 22...”

16. In a third email dated 19<sup>th</sup> October 2022, with the same caption, addressed to the applicant’s director Ray Mcmanus, Kenneth Mbae of Centum, wrote:-

“Dear Ray,

Good morning,

We thank you for being patient with us. We were busy putting together a sustainable solution as listed below

1. Payment 1: USD 10,000- please share a pro forma invoice to be settled before end of Nov
2. Subsequent payments of USD 4,000 per month from Dec 2022 onwards.
3. Fully amount to be paid once the fund-raise is closed in July 2023....:

17. From my reading of the above correspondence as well as the pleadings, I am convinced that the applicant has met the required threshold for entry of judgment on admission. The correspondence between the Plaintiff and various officers of the Defendant are clear and unambiguous and there is no doubt in my mind that this amounts to an admission of indebtedness.

18. I therefore find and hold that the Plaintiff’s application has merit. Accordingly, the Plaintiff’s application dated 21<sup>st</sup> September 2023 is allowed as prayed with costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI**

**THIS 15<sup>TH</sup> DAY OF APRIL, 2024.**

.....

**J.W.W. MONG’ARE**

**JUDGE**

In the Presence of:-

Mr. Owiti holding brief for Ms. Odiero for the Plaintiff.

Ms. Nderu for the Defendants.

Amos- Court Assistant

