



REPUBLIC OF KENYA



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**Anez Catering Company Ltd v Gems National Academy Ltd t/a Regis School Runda
(Civil Case E266 of 2021) [2023] KEHC 17799 (KLR) (Civ) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E266 OF 2021

JN MULWA, J

MAY 18, 2023

BETWEEN

ANEZ CATERING COMPANY LTD PLAINTIFF

AND

**GEMS NATIONAL ACADEMY LTD T/A REGIS SCHOOL
RUNDA DEFENDANT**

RULING

1. Pursuant to this court's ruling dated September 29, 2022, the defendant filed an Amended Defence and counterclaim dated October 14, 2022.

The plaintiff filed a reply to the defence and counterclaim dated 18/10/2022 reiterating its claim as stated in the plaint dated October 28, 2021, seeking a sum of Kshs 24,072,145/= plus interest at commercial rates and Kshs 237,690/= per day being cost of hire of the plaintiff's equipment for catering services.

2. By the counterclaim dated October 14, 2022, the defendant sought for dismissal of the suit with costs, and judgment against the plaintiff for general damages plus interest at court rates from date of filing the defence and counterclaim until payment in full.

Upon the above brief parties' pleadings, the plaintiff filed the instant application dated January 31, 2022, premised on provisions of order 13 Rule (2), Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 1A and 3A of the *Civil Procedure Act* seeking orders: -

- a That judgment on admission be entered against the defendant for the sum of Kshs 8,934,980/= together with interest and costs.
- b That the cost of the application be provided.



3. Grounds for the application are stated that the defendant, by a letter dated October 25, 2021, the defendant expressly admitted being indebted to the plaintiff to the tune of Kshs 8,934,980/= on account of catering services, and that in the interest of justice, the application ought to be allowed.
4. In opposition to the application, Ian Kuria, a legal officer for the defendant swore a replying affidavit on May 18, 2022 on grounds stated at paragraph 3 thereof as follows:
 - a. That the application was unjustifiably filed on an undisputed debt.
 - b. That invitation to this court to make orders on such undisputed matter is not merited.
 - c. The plaintiff/applicant ignored the reasonable invitation by the defendant to negotiate on terms of settlement on terms of the matter amicably and expeditiously.
 - d. That the plaintiff unjustly and without due regard to the clear provisions of the contract failed to act and ignored to refer the matter to arbitration for resolution of any differences if any.
5. It is a further disposition by the defendant that it has and continues to pay the debt as shown in a schedule of payments annexed thereto and marked “IKI”

At paragraph 7 of the replying affidavit, the legal officer avers that there is no cognitive dispute between the parties and if any, it involves the amount that the applicant seeks judgment under this application which technically renders the whole suit nugatory.

Analysis and determination.

6. I have carefully considered the parties pleadings on record, and the authorities cited by the Applicant/Plaintiff.

On the matter of judgment by admission, Order 13 Rule 2 Civil Procedure Rules 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 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.
7. The parties by their respective pleadings have placed all the material facts before the court. Their depositions by their affidavits are plain and clear. There is no dispute that the defendant admits part of the debt it owes to the plaintiff, and that is why at paragraph 7 of the replying affidavit the defendant clearly avers that there is no cognitive dispute between the parties. and if any, it involves the amount the plaintiff seeks judgment in this applications, such amount is Kshs 8,934,980/= and the specific amount claimed is Kshs 24,072,145 leaving a balance of Kshs 15,137,165/=

This amount is not the only balance, because looking at the claim, much more remains for determination by the court or if the parties are ready to negotiate, a possible settlement may be arrived at amicably.

8. It is not therefore true that the suit may be nugatory should the orders sought are granted. The reliefs sought in the plaint speaks to that extent, as the balance of the claims remain for assessment by the court. – see *Choitram vs Nazari* (1984) KLR 327.9. I have considered the defendant's letter to the plaintiff dated October 25, 2021- Exhibit “ZH2”

The said letter at paragraph 4 expressly confirms that the Defendant owes the plaintiff Kshs 8,934,980/= and further attaches a schedule of the owing sums, the reason why it had invited the plaintiff for



engagement with the plaintiff on a settlement mode. This in my view would not have been done if there was no part admission of the amount owing. The court in the Choitram case above further stated that judgment on admission is not a matter of right; rather it is a matter of the discretion of the court which is empowered under Order 13 Rule 6 to pass judgment and decree in respect of admitted claims pending disposal of disputed claims in a suit, and further that

where a defendant has raised objections which go to the very root of the case, it would not be proper to exercise this discretion.

9. In the instant suit, correspondence between the parties speak for themselves. The defendant has not denied owing the defendant the amount subject of this application nor the amount claimed in the suit, rather, it has blamed the plaintiff for bringing the application to court, as the issues and dispute between them could be easily settled and indeed has invited the plaintiff for engagement to agree on a settlement mode.

The above was the position in the case *Scanhouse Press Ltd v Times News Services Ltd* (2008) eKLR where the defendant had made proposals for settlement of the plaintiff's debt through payments by instalments, which debt had been acknowledged by letters to the plaintiff. The court thereof proceeded to enter judgment on the admitted claim.

10. To the extent that the court finds that the amount stated in the application as due and owing to the plaintiff and duly admitted by the defendant, it would be a travesty of justice to keep the plaintiff waiting for the full suit to be heard and determined.

For the going, I find that the material facts placed before me, and specifically the letters dated October 21, 2021 and October 25, 2021 speak for themselves. On that basis, I am persuaded to exercise my discretion in favour of the plaintiff by granting the prayers sought in the application.

11. Consequently,
- a. Judgement on admission is hereby entered in favour of the plaintiff against the defendant in the sum of Kshs 8,934,980/= plus interest at court rates from the date of filing of this suit, together with costs.
 - b. A stay of execution of the partial decree herein is allowed for a period of 40 days to allow the parties to engage in an amicable settlement mode of the partial decree, if they may so wish, such invitation having been made in the past, by the defendant.
 - c. The balance of the plaintiff's claim shall go for trial on merit.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF MAY, 2023

JANET MULWA
JUDGE

