



**Ahmednasir, Abdikadir & Company Advocates v Xplico Insurance
Company Limited (Commercial Civil Case E611 of 2021)
[2021] KEHC 362 (KLR) (Commercial and Tax) (3 December 2021) (Ruling)**

Neutral citation: [2021] KEHC 362 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CIVIL CASE E611 OF 2021**

**DAS MAJANJA, J
DECEMBER 3, 2021**

BETWEEN

AHMEDNASIR, ABDIKADIR & COMPANY ADVOCATES PLAINTIFF

AND

XPLICCO INSURANCE COMPANY LIMITED DEFENDANT

RULING

1. The matter before the court is the Plaintiff's application dated 24th August 2021 seeking for judgment on admission under Order 13 Rule 2 of the *Civil Procedure Rules* ("the Rules"). The application is supported by the affidavit Asli Osman, the Managing Partner of the Plaintiff firm, sworn on 24th August 2021. The Defendant, in opposition to the application, has filed Grounds of Opposition dated 8th September 2021.
2. Before I deal with the substance of the application, it is important to outline that the 3rd June 2021 suit against the Defendant is for KES. 84,000,000.00 being outstanding legal fees for services rendered. The Plaintiff pleaded that the Defendant in a letter dated 18th May 2021 admitted that it was indebted to the Plaintiff.
3. In its Statement dated 12th July 2021, the Defendant admits that it instructed the Plaintiff but the Plaintiff did not follow up on the instructions. In answer to the fact that the Plaintiff sent it fee notes for services rendered, the Defendant states, at para.5, that, "It has been making efforts to offset the owed sum and were it not for the COVID19 pandemic, the said amount would have been substantially settled. The Defendant will at the opportune moment make an application to have the owed fees settled in installments."



4. The law relating to judgment on admission is found at Order 13 Rule 2 of the Rules which 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 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. [emphasis mine]

5. The jurisprudence relating to applications made for judgment on admission is set out in the case of *Choitram v Nazari [1984] KLR 327* where Madan, JA expresses the view that:

For the purpose of Order XII Rule 6, admission can be expressed 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

In the same case, Chesoni Ag. JA, observed that:

Admissions of fact under Order XII rule 6 need not be on the pleadings. They may be in correspondence or documents which are admitted or they may even be oral. The rules used words “otherwise” which are words of general application and are wide enough to include admission made through letter, affidavits and other admitted documents and proved oral admissions It is settled that a judgment on admission is in the discretion of the court and not a matter of right that discretion must be exercised judicially.

6. The Defendant has not filed any affidavit in response and instead relies on Grounds of Opposition. This means that the facts as deposed by the Plaintiff are uncontested. This however does not relieve the Plaintiff from establishing a case for judgment on admission. It is the Defendant’s case that the Plaintiff has not made out a case for judgment on admission.
7. I have considered the Pleadings and application and I find that the Defendant admits the Plaintiff’s claim at para. 5 of its Statement of Defence whose contents I have set out above. In addition to the express admission in the Defence, the Plaintiff has furnished a letter dated 18th May 2021, where the Defendant acknowledged that it owed the Plaintiff a substantial sum under the retainers and in that regard issued 10 postdated cheques for KES. 1,000,000.00 to settle part of the amount.
8. The Defendant has not denied the Plaintiff’s case. It only seeks time to settle the outstanding amount. As it states, the Defendant is entitled to apply to pay the adjudged sum in installments at the appropriate time. The Defendant’s admission of indebtedness to the Plaintiff is clear, unequivocal and unambiguous and for those reasons, I allow the Notice of Motion dated 24th August 2021 on the following terms;
- (a) Judgment be and is hereby entered for the Plaintiff against the Defendant for the admitted sum of KES. 84,000,000.00 only.
 - (b) Interest shall accrue on (a) above from the date of filing suit until payment in full.
 - (c) The Defendant shall bear the costs of the application and the suit.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF DECEMBER 2021.



D. S. MAJANJA

JUDGE

Court of Assistant: Mr M. Onyango

Ms Osman instructed by Ahmednasir, Abdullahi Advocates LLP for the Plaintiff.

Mr Ochieng instructed by RBZ Advocates LLP for the Defendant.

