



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**ELC CIVIL SUIT NO. 474 OF 2014**

**ABDULRAHMAN FARAH OSMAN**

suing as the Administrator of the estate of

**Virginia Muthoni Kabuu (Deceased).....PLAINTIFF**

**=VERSUS=**

**JULIUS KANGARA NDEGWA.....1<sup>ST</sup> DEFENDANT**

**THE COUNTY LAND REGISTRAR, NAIROBI.....2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**THE COUNTY GOVERNMENT OF NAIROBI.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is the notice of motion dated 28<sup>th</sup> September 2016 brought under order 13 rule 2 and order 51 rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3, 3A of the Civil Procedure Act.
2. It seeks orders:-
  - (1) *That this honourable court be pleased to enter judgment on admission against the 1<sup>st</sup> defendant/respondent for the sum of Kenya Shillings twenty Million (Kshs.20,000,000) plus interest at the rate of 20% p.a accruing from 17<sup>th</sup> May 2016.*
  - (2) *That in the alternative to prayer 1 above, this honourable court be pleased to strike out the 1<sup>st</sup> defendant's statement of defence dated 12<sup>th</sup> May 2015 and consequently enter judgment against the defendant in the main suit as per the plaint.*
  - (3) *That the costs of this application and the suit be borne by the 1<sup>st</sup> defendant/respondent.*
3. The grounds are on the face of the applicant and are set out in paragraphs 1 to 4.
4. The application is supported by the affidavit of Abdulrahman Farah Osman the plaintiff/applicant sworn on the 28<sup>th</sup> September 2016 and a supplementary affidavit sworn on the 5<sup>th</sup> April 2017.
5. The application is opposed. There is a replying affidavit sworn by Julius Kangara Ndegwa, the 1<sup>st</sup> defendant/respondent sworn on the 10<sup>th</sup> March 2017.
6. The court, with the consent of the parties directed that the application be canvassed by way of written submissions.
7. I have considered the notice of motion, the affidavits in support and the annexures. I have also considered the replying affidavit and the written submissions made on behalf of the parties. The issue for determination is whether this application is merited.

8. By settlement agreement dated 10<sup>th</sup> September 2015, the plaintiff/applicant and the 1<sup>st</sup> defendant/respondent agreed in part:-

***“2.1 in full and final settlement of the suits as against the defendant, the defendant agrees to pay the plaintiff the sum of shillings Twenty Million (20,000,000) as follows:-***

***2.1.1 Kenya Shillings Ten Million (Kshs.10,000,000) shall be paid in the first week of October 2015 (ready by 7<sup>th</sup> October 2015).***

***2.1.2 Kenya shillings Ten Million (Kshs.10,000,000) shall be paid by 31<sup>st</sup> December 2015.***

***2.1.3 Any amount outstanding after 17<sup>th</sup> May 2016 shall accrue interest at the rate of 20% p.a”***

9. It is not in dispute that the 1<sup>st</sup> defendant/respondent has so far paid Kshs.13,900,000/- leaving a balance of Kshs.6,100,000/-. This amount shall accrue interest at 20% p.a as per the agreement. This court cannot therefore enter judgment on admission for Kshs.20,000,000/- as sought by the plaintiff/applicant in this application.

10. As stated earlier, the 1<sup>st</sup> defendant/respondent has already paid a substantial amount towards settlement. In order to bring this matter to conclusion the 1<sup>st</sup> defendant/respondent is hereby directed to pay the plaintiff/applicant Kshs.6,100,000 within ninety (90) days from the date of this ruling in default the plaintiff/applicant be at liberty to proceed with execution. The 1<sup>st</sup> defendant/respondent shall bear the costs of this application.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 23<sup>rd</sup> day of January 2020.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Mungai for Mrs Koyugira for the Plaintiff

Ms Olung the 1<sup>st</sup> Defendants

Mr. Mokuia for the 4<sup>th</sup> defendant

Kajuju - Court Assistant