



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. E062 OF 2018

CONSOLIDATED WITH CMCC NO. 6348 OF 2018

RUBI RANCH LIMITED.....PLAINTIFF

- VERSUS -

MERU GREENS HORTICULTURE EPZ LIMITED.....DEFENDANT

AND

CIVIL SUIT NO. E062 OF 2018

MERU GREENS HORTICULTURE EPZ LIMITED.....PLAINTIFF

- VERSUS -

RUBI RANCH LIMITED.....DEFENDANT

RULING

1. **Rubi Ranch** (hereinafter Rubi) by its amended plaint (in CMCC No 6348 of 2018) sued **Meru Green Horticulture EPZ Limited** (hereinafter Meru Green) for judgment for rental arrears and expenses incurred by Rubi for Ksh 9,150,000 being total outstanding rent, Ksh 2,997,000 interest on outstanding rent and Ksh 2,497,344 expenses paid/incurred by Rubi on behalf of Meru Green.

2. Meru Green, by its defence denied the claim of Rubi. Meru Green pleaded that Rubi unlawfully exercised its right of entry on the premises thereby causing cessation of the lease. Further that Rubi, in re-entering the property harvested the crop and sold it.

ANALYSIS

3. Rubi has filed a Notice of Motion application dated 27th August 2018 for judgment on admission for Ksh 13,200,000 together with interest. Rubi relied on correspondence by Gerald Muthomi, a director of Meru Green, whereby there is admission of indebtedness of rent due. Meru Green had leased Rubi’s property, measuring 300 acres, and the claim for rent is in that regard.

4. Rubi has brought its application under Order 13 Rule 2 of the Civil Procedure Rules which provides:

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.

5. In the case **Equitorial Commercial Bank Ltd v Microhouse Net Limited (2005) eKLR** the jurisprudence of entry of judgment was considered as follows:

The case of **CHOITRAM - V – NAZARI [1984] KLR, 327** the court found as follows: -

“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.”

The case CASSAM – V – SACHANIA [1982] KLR 191, the court found that,

“The judge’s discretion to grant judgment on admission of fact under the order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment.”

6. I have considered the correspondence of Meru Green and I am satisfied that the admissions made therein are plain and obvious. I quote some of those correspondence by email herein below:

“From: Gerald Muthoni gerald.muthomi@merugreensepz.com

Sent: Wednesday, 08 November 2017 13:18

to: Anne Mueni

CC: Edward Muriu; anthony@intraspedarcpro.com; Mchege@wakili.com

Subject: RE:RUBI RANCH LTD STATEMENT AS AT 06-11-2017

Dear Anne,

Many thanks for the statement.

Kindly correct your calculations because the months not paid are September, October, November and December.

The balance owed to Rubi is Ksh 3.3x4 =Ksh.13.2M. Please correct your figures and I have also done another private letter to Edward discussing the payments before our meeting tomorrow or Friday.

Best regards,

Gerald

Fri, May 5, 2017 at 2.58PM

Gerald Muthoni Muthomi@merugreens.com

To: Anne Mueni amueni@wakili.com, geraldmuthomi@yahoo.com

CC: Edward Muriu muriu@rubiranch.co.ke, Jessica Mwenje@wakili.com

Dear Anne,

Many thanks for your letter. Am very ashamed to disappoint my landlord, but I must admit that my business was in very difficult cycle due to the drought together with funds that were delayed.

Again we are very sorry for not keeping our words.

My humble request to my Landlord as we get out of this bad situation is shown below;

- Transfer Ksh 5M to Rubi Ranch on 30th May 2017*
- Transfer Ksh 5M to Rubi on 30th June 2017*
- Transfer Ksh 5M to Rubi on 30th July 2017*
- Transfer Ksh 10M to Rubi on 7th Sept 2017*
- Transfer Ksh 10M to Rubi on 7th October 2017*

- *Transfer Ksh 5M to Rubi on 7th November 2017*

It is my hope that our Landlord will accept our request and we are keen on finishing the payments earlier than indicated.

Kindly madam, return back to me because I will be away in Europe from 7th to 16th of May.

Best regards,

Gerald

7. Meru Green in its replying affidavit denied that its director had authority or capacity to bind it. Otherwise the debt was not denied by Meru Green in that affidavit.

8. Rubi provided a statement of the amount claimed and I do therefore find, with the evidence presented by Rubi that this is a plain case where admission of the debt is clear and unequivocal.

9. In the end, in respect to the **Notice of Motion** dated **27th August 2018** I grant the following orders:

a. Judgment on admission is entered for the plaintiff as prayed in the plaint in CMCC No. 6348 of 2018.

b. The plaintiff in CMCC No 6348 of 2018 is granted costs of the Notice of Motion dated 27th August 2018.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19 pandemic** and in light of the directions issued by **his Lordship, the Chief Justice on 15th March, 2020**, this decision has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

MARY KASANGO

JUDGE