



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL SUIT NO. 9 OF 2017

MISSION FOR ESSENTIAL DRUGS AND

SUPPLIES (MEDS) REGISTERED TRUSTEES.....PLAINTIFF

VERSUS

MURANG'A COUNTY GOVERNMENT.....DEFENDANT

RULING

1. The plaintiff prays for *judgment on admission* in the sum of Kshs 38,981,080.
2. At the hearing, the plaintiff revised the sum downwards to Kshs 28,981,080. The reason proffered was that the defendant has since liquidated the debt by a further sum of Kshs 10,000,000.
3. The grounds are set out in the *notice of motion* dated 8th May 2017; and, the deposition of Rev. Paul Kariuki, a registered trustee of the plaintiff, sworn on even date. There is also a *supplementary affidavit* sworn on 16th September 2017.
4. The plaintiff avers that on 16th September 2016, the defendant made an unequivocal admission that it owed the plaintiff Kshs 38,981,080. The defendant sought accommodation to liquidate the in four installments.
5. Default occurred. The plaintiff filed suit on 12th April 2017. Paragraph 3 of the *plaint* pleads that on 11th March 2015 and 19th January 2016, at the defendant's request, the plaintiff supplied diverse drugs and medical supplies at the price of Kshs 48,981,080.
6. By a *statement of defence* dated 2nd May 2017 the defendant denied the claim *in toto*.
7. The supporting affidavit has annexed copies of the statement, Local Purchase Orders and corresponding invoices from 11th March 2015 to 19th January 2016. They amount to Kshs 48,981,080. It is averred that the defendant executed the delivery notes which appear at pages 15 to 310 of the plaintiff's list of documents.
8. On 9th September 2016 the defendant made part payment of Kshs.10,000,000 as per the receipt marked PK2. As stated earlier, the defendant has since liquidated the debt by a further sum of Kshs 10,000,000.
9. The defendant contests the motion. There is a *replying affidavit* sworn on 20th June 2017 by J. Muthamia. There are also *grounds of opposition* dated 2nd June 2017.
10. The gravamen of the objection is that the admission is not *plain*; and, that the indebtedness of the defendant can only be determined on tested *evidence*. The defendant's position is that it has a solid defence to the action raising *triable issues*.
11. The plaintiff filed submissions on 18th August 2017. The defendant's submissions were filed on 8th June 2018.
12. Order 13 Rule 2 of the **Civil Procedure Rules** 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.”

13. In order to succeed, the applicant must demonstrate that there is a *clear* and *unequivocal* admission; and, that it would be a waste of judicial time to await the trial. The principle was well explained in **Choitram v Nazari** [1984] KLR 327-

“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”

14. Whether or not to enter judgment on admission remains at the discretion of the court. **Cassam v Sachania** [1982] KLR 191.

15. When I juxtapose those principles against the facts here, I find as follows. There is a brief letter dated 16th September 2016 on the note paper of the *County Government of Murang'a* signed by the *Director County Treasury*; and, the *Chief officer Finance*. The letter is addressed to the plaintiff and reads:

“SETTLEMENT OF UTSTANDING DEBT

“Kindly acknowledge receipt of Kshs 10 Million credited into your account by RTGS on 9th September 2016.

“Subsequently we hereby undertake to settle the outstanding balance of Kshs 38,981,080 in 4 installments of Kshs 10,000,000 per month from October 2016.

“Kindly expedite the supply of drugs as our our issued LPOs.

“Thank you for your continued support.”

16. I find the admission of the debt to be *plain and obvious; as plain as a pikestaff*. **Choitram v Nazari** (supra). The plaintiff concedes that the defendant has since paid a further sum of Kshs 10,000,000. The outstanding principal debt is hence Kshs 28,981,080.

17. I enter *judgment* in favour of the plaintiff against the defendant in the sum of Kshs 28,981,080 together with interest at court rates from the date of the *decree*. I also award the plaintiff *costs* of the suit.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 7th day of March 2019.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Mr. Kiptoo holding brief for Ms. Migiro for the plaintiff instructed by Odera Obar & Company Advocates.

Mr. Mwangi Ben holding brief for Mr. Kimwere for the defendant instructed by Kimwere Josphat & Company Advocates.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.