



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**CIVIL SUIT NO. E428 OF 2018**

**CONTINENTAL REINSURANCE CO. LTD ..... PLAINTIFF**

**VERSUS**

**TRIDENT INSURANCE CO. LTD..... DEFENDANT**

**RULING**

1. Through the Notice of Motion application dated 11<sup>th</sup> March 2019, the applicant herein seeks orders for judgment on admission against the defendant. The application is premised on the grounds that the applicant agreed to reinsure the respondent subject to an agreed payment plan out of which an outstanding sum of Kshs 53,586,156/= remains unpaid despite several admissions of the debt by the respondent. The applicants case is that the defence filed by the respondent is therefore a sham as it raises no triable issues.

2. The respondent opposed the application through the replying affidavit of its advocate, **Mr. Martin Bett**, sworn on 27<sup>th</sup> May 2019. He avers that the defendant's defence raises triable issues as the amount claimed by the applicant is disputed and that the parties have commenced negotiations to determine the actual amount owed.

3. The defendant also filed grounds of opposition dated 28<sup>th</sup> May 2019 wherein it reiterates that its defence is arguable as it has denied every allegation made against it. It is the defendant's case that it should not be deprived of the right to have the suit heard on its merits.

4. At the hearing of the application, parties intimated to the court that they had filed written submissions to the application. A perusal of the court file however reveals that no such submissions have been filed. This court will therefore determine the application on the basis of the parties' pleadings.

5. The plaintiff's claim against the defendant is for the sum of kshs 53,686,156 together with costs and interest. The plaintiff's case is that through a cover note signed on 27<sup>th</sup> December 2017, it agreed to reinsure the defendant subject to an agreed payment plan which the defendant did not fulfill thereby leaving a balance of kshs 53,586,156/=.

6. The defendant however denies owing the plaintiff the said sum of kshs 53,586,156 or at all and further states that the amount owed, if any, is not kshs 53,586,156 as alleged by the plaintiff. The defendant further states that it indeed there was an agreement to reinsure it, the plaintiff subsequently agreed to a renegotiated payment plan and acquiesced to the defendant's proposal. It is the defendant's case that the plaintiff is therefore stopped from claiming the sum of kshs 53,586,156/=.

7. I have considered the instant application and the respondent's response. Order 13 Rule 2 of the Civil Procedure Rules stipulates as follows on judgment on admission:

***Judgment on admission***

***“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.”***

8. The leading case on judgment on admission is case of **Choitram v Nazari** (1984) KLR wherein it was held:-

***“Admissions have to be plain and obvious, as plain as pike staff 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.”***

9. In *NIC Bank Limited –vs- Tausi Assurance Company Limited* [2017] eKLR the court held that:

***“In our view, if there ever was a plain obvious and unequivocal admission of a claim, this is it. The appellant mischievously avoids the central issue, namely whether the above paragraphs constitutes a clear admission of the respondent’s claim, by recourse to sophistry.”***

10. In the instant case I find that the defendants defence is not an express and unequivocal admission of the plaintiff’s case. I note that the defendant expressly denied owing the plaintiff the amount of money claimed and further claimed that even though they had a reinsurance agreement, the same was subsequently renegotiated.

11. Considering the defendants defence, one cannot say that it amounts to a sham or an admission of the debt that qualifies for an order of summary judgment on admission. My finding is that the defence raises issues that may require to be interrogated through a hearing.

12. I also note that the applicant attached email correspondence that it had with the respondent over the reinsurance transaction and the payments due. I note that nowhere in the email communication did the defendant expressly admit that it owes the claimed sum of kshs 53,586, 156/= as the sums mentioned in the said correspondence vary between 35 million to 87 million.

13. My finding therefore is that it may not be in dispute that the parties herein had a reinsurance contract, what is disputed however, is the actual amount due to the plaintiff which, as I have already stated in this ruling, is an issue that can only be determined after a full hearing.

14. For the above reasons I find that the instant application is not merited and I therefore dismiss it with orders that costs shall abide the outcome of the main suit.

**Dated, signed and determined in open court at Nairobi this 7th day of November 2019.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Mr. Kimani for Okullo for plaintiff.

Mr. Terer for defendant/respondent

Court Assistant