

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT. NO. 411 OF 2015

APEX SECURITY SERVICES LIMITED.....PLAINTIFF

VERSUS

KENYA MEDICAL RESEARCH INSTITUTE.....DEFENDANT

RULING

1. The law regarding judgments on admission is relatively clear.
2. Put shortly, the discretionary power to enter judgment on admission is to be exercised sparingly. To be favoured with a judgment on admission, the claimant must show that the admission relied upon is clear, unequivocal, unconditional and unambiguous. It must also relate to the cause of action as exhibited on the face of the pleadings without more. The themes run through the various cases on the subject: see **Choitram vs. Nazari [1984] KLR 327**, **Consolidated Bank of Kenya vs. Mombasa Development Ltd [1997] eKLR** and **Momanyi vs. Hatimy [2003] KLR 545**. The admission may be made before or after the action has been commenced and, indeed, even in the pleadings.
3. In the instant case the Plaintiff sued the Defendant seeking the amount of Kshs. 39,503,016/=. The amount is stated to have accrued off services rendered by the Plaintiff to the Defendant under a security guards' service contract. In response to the claim the Defendant generally denies owing the stated amount. The Defendant also admits that it is indebted to the Plaintiff in the sum of Kshs. 14,325,000/= being amounts due for services rendered up to 10 of August 2016. The Defendant however states that it should not be held liable to effect payment of the said amount as there is in existence wrangles and disputes between or amongst the Plaintiff's directors. The Defendant adds that the wrangles led to the parties filing a suit in court but, gleefully, the Defendant also reveals that the said suit was summarily disposed of.
4. I have read through the affidavit of the Defendant in reply to the application for summary procedure to be invoked and for judgment. The Replying Affidavit consists of an unequivocal and unambiguous admission with regard to the amount of Kshs. 14,325,000/=. In so far as this amount is concerned, the admission is as "clear as a pikestaff" :see **Choitram -v- Nazari (Supra)**.
5. The Defendant's position that there exists some undisclosed dispute between or amongst the Plaintiff's directors holds no water and should not be reason to deny the Plaintiff its rightful entitlement. There is however an admission of indebtedness to the Plaintiff.
6. The law is clear that a company, is a distinct entity from its directors and shareholders: see **Salomon -v- Salomon [1897] AC 22**. In the instant case the contractual obligation was for the Plaintiff to render services and the Defendant conversely to pay the Plaintiff. The Directors were not to be involved and that line of defence must be ignored. The Defendant cannot use internal wrangles of the Plaintiff company to avoid its own contractual obligations.
7. I have to exercise my discretion in favour of the Plaintiff. The claim was for the amount of kshs. 39,503,016/=. The admitted sum is kshs. 14,325,000/=. As the court may enter judgment on the admitted amount and allow the case to proceed with regard to the sum not admitted: see **Colour Print Ltd vs. Open University [2008] 1 EA 81**, I am inclined to so proceed.

8. I enter judgment for the Plaintiff against the Defendant in the sum admitted of Kshs. 14,325,000/= . The rest of the claim will proceed to trial in the ordinary manner. The costs of the summary procedure are reserved to await the final determination of the balance of the Plaintiff's claim.

Dated, signed and delivered at Nairobi this 9th day of February, 2017.

J.L.ONGUTO

JUDGE