



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 552 OF 2014

EDWIN NG'ONG'A K'OGWE..... PLAINTIFF

-VERSUS-

**DAVID OKOTH & MICHAEL KADENGE T/A AFROGRAINS EAST AFRICA.....
DEFENDANTS**

RULING

1. The Notice of Motion before the court is dated **6th May 2015** filed by the Plaintiff seeking an order that Judgement be entered against the Defendant for the liquidated amount of Kshs.19,200,000/= together with interests thereon as well as the costs of both the suit and this application.
2. The application is also premised on the suit filed herein on 27th November 2014 by the Plaintiff/Applicant claiming the same amount of money. The Defendant has not filed defence to the suit. However, for this application the Defendant appointed an advocate called Mr. Gichuru, who appeared on 11th June 2015 and successfully sought an adjournment to enable him file a replying affidavit to the application. The court adjourned the matter to 27th July 2015. When that day came, the said Defendant's advocate was not in court, and he had failed to file a replying affidavit for the Respondent. The court allowed Mr. Muganda to proceed with the application in the absence of the Respondent's counsel.
3. The application seeks an order for summary judgement on admitted facts and that there is no defence to the suit. The application is supported by an affidavit of Edwin Ng'ong'a K'ogwe, sworn on 6th May 2015 and is premised on the grounds:-
 - a. *That the Plaintiff entered into an agreement with the Defendants wherein the Plaintiff was to advance a loan amount of Kshs.10,000,000/= to the Defendants.*
 - b. *The Defendants were to pay the loan amount of Kshs.10,000,000/= plus the return on the principle amount of Kshs.1,200,000/= totalling to Kshs.11,200,000/= on or before February 28 2013.*
 - c. *As per the agreement, any outstanding amounts would accrue at the interest rate of 6% of the principle amount per month which until the month of October 2014 had accumulated to the amount of Kshs.19,200,000/=.*
 - d. *That the Defendants have only paid the amount of Kshs.3,400,000/= as part payment of the amount owed and the balance is yet to be paid.*
 - e. *As per a letter dated the 18th July 2013 the Defendants have expressly admitted owing*

the sum in question.

- f. *That on the 10/01/2015 the Plaintiff via a court process server did serve the summons on the Defendants.*
 - g. *The Defendants acknowledge service and appointed an advocate, who served the Plaintiff's advocate with the Notice of Appointment on the 30th January 2015.*
 - h. *To date the Defendants have not filed a Defence in the said matter in any case they have no viable defence to this suit.*
 - i. *The judgement sought in the Plaint is for a liquidated amount which has been specified and is due and payable.*
 - j. *The Defendants are truly and justly indebted to the Plaintiff and thus it is equally against natural justice to keep the Plaintiff out of his dues in a proper case.*
4. I have carefully considered the application. First to note is that there is no defence filed to the suit, and that the Defendant has full knowledge of the existence of the suit. On this ground alone, the judgement herein should have been entered for lack of defence.
 5. Secondly, I have considered the facts of the case and the supporting affidavit and attachments. Attachment ENK 1 to the supporting affidavit is a copy of RTGS payment form through which the transfer of the Kshs.10,000,000/= was made to the Defendant pursuant to the agreement they entered into. Annexure ENK 3 is a copy of a letter dated 18th July 2013 in which the Defendant acknowledged his indebtedness to the Plaintiff in the amount being claimed. Their only request was to be given more time to reply the same. It is clear to me that the sum being claimed in the Plaint is a liquidated claim which has been expressly admitted and in fact that is why there is no defence to the suit or defence to this application.
 6. In the circumstances the most important thing to do is to find if this application has support in law.
 7. Order 36 Rule 1 (a) of the Civil Procedure Rules provides that where the Plaintiff seeks judgement for a liquidated demand with or without interest, and where the Defendant has appeared but not filed a defence the Plaintiff may apply for judgment for the amount claimed, or part thereof and interest.
 8. In my view the sum being claimed is liquidated and is undisputed due on account of the agreement on interest between the parties. It would therefore make little sense to prolong this suit, in a manner which will violate the overriding objectives under Sections 1A, 1B and 3A of the civil Procedure Rules.
 9. The upshot is that the application is allowed and judgement is hereby entered against the Defendant in the sum of Kshs.19,200,000/= with interests thereon at court rates from the date of this Ruling.
 10. The costs of both the application and the suit shall be paid by the Defendants.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 2ND DAY OF OCTOBER 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Muganda for the Plaintiff

No appearance for the Defendants

Teresia – Court Clerk