



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT 676 OF 2008

DUBAI BANK KENYA LIMITED PLAINTIFF

- VERSUS -

TRANS ENTERPRISES LIMITED 1ST DEFENDANT

SAJID REHIMTULA SULEIMAN 2ND DEFENDANT

R U L I N G

By a Plaint dated 29th September, 2008, the Plaintiff claimed against the Defendants, jointly and severally, a sum of Kshs.68,751,604/07 as at 30th September, 2008 together with interest at 27% per annum and costs. A joint statement of defence denying the claim was filed on 12th March, 2009 raising various issues.

By a Motion on Notice dated 4th May, 2012 and filed on 8th May, 2012 the Plaintiff applied for judgment on admission against the 1st Defendant for Kshs.68,317,636/37. That application came up for hearing before me on 22nd May, 2012 and being satisfied that the same had been properly served and acknowledged in terms of the Affidavit of Service Joseph Musangi Musila sworn on 22nd May, 2012 which was on record, I allowed the same to be argued exparte.

The application was supported by the Affidavit of Rajab Ahmed Karume sworn on 4th May, 2012. The Plaintiff contended that the Plaintiff's relationship started in or about July, 2004 when the 1st Defendant opened a current Account Number 81040559 with the Plaintiff, that the Account opening application incorporated the Plaintiff's Rules and Regulations Governing the Account, he produced the documents relating to those assertions as "RAK1" and "RAK2".

Mr. Karume proceeded to give a detailed account on how various credit facilities were availed to the 1st Defendant overtime starting with an overdraft facility of Kshs.1,700,000/- given on 19th July, 2004, until the one for Kshs.65,000,000/- given vide a sanction letter dated 18th December, 2006 and produced as "RAK9". That when the Plaintiff demanded on 16th April, 2007 that the 1st Defendant make arrangements to clear the overdraft within fourteen (14) days, the 1st Defendant wrote on 11th June, 2007

unequivocally admitting being indebted to the Plaintiff in the sum of Kshs.68,317,636.37 and requested for the restructuring of the facility into a term loan repayable in 36 months. Further, that vide a letter dated 12th June, 2007, the 1st Defendant gave proposals to the Plaintiff on how to settle the outstanding overdraft. The said letters dated 11th and 12th June, 2007 were produced as “RAK10” and “RAK11” respectively.

Mr. Kipng’eno, learned Counsel for the Plaintiff relied on the Supporting Affidavit and submitted that the letter dated 11th June, 2007 and produced as “RAK10” was an irrevocable and unequivocal admission by the 1st Defendant and that on that basis, the application should be allowed. Counsel referred the court to the case of **Choitram –vs- Nazari (1982 - 88) I KAR 437** in support of his application. Counsel urged the court to allow the application.

I have considered the pleadings on record and the Affidavit in support of the application. I have also considered the submissions of Counsel and the authority relied on.

This is an application for judgment on admission. The principles applicable were considered in detail by the Court of Appeal in the case of **Choitram –vs- Nazari (Supra)** wherein at page 441 Madan J.A observed:-

“For the purpose of order 12 Rule 6 admissions can be express 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. Much depends on the language used. The admissions must leave no room for doubt that the parties passed out of the stage of negotiations to a definite contract. It matters not if the situation is arguable, even if there is a substantial argument, it is an ingredient to jurisprudence provided that a plain and obvious case is established by analysis. Indeed there is no other way and analysis is unavoidable to determine whether admission of fact has been made either on the pleadings or otherwise to give such judgment as upon such admissions any party may be entitled to without waiting for the determination of any other question between the parties.” (Emphasis supplied)

To my mind, the admission alleged by a party must be so clear that no other meaning can be inferred thereto except an admission of the fact contended.

I have examined the letter dated 11th June, 2007 and produced as “RAK 11”. The same is clear as to its meaning and purport. The same reads:-

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11th June, 2007

The Managing Director

Dubai Bank Kenya Limited

P.O Box 1129-00400

NAIROBI

Dear Sir,

RE: OVERDRAFT ACC81040559 TRANS ENTERPRISES LIMITED

The above refer and our meeting with yourselves in your offices today. We hereby acknowledge being indebted to you the sum of Kshs.68,317,636/37 (Shillings Sixty Eight Million Three Hundred Seventeen Six Hundred Thirty Six Cents Thirty Seven Only)

We hereby request that you restructure the facility into a term loan repayable in 36 months. We further undertake to provide you with additional security including a debenture. We shall be forwarding to you our detailed proposal tomorrow.

***Thanking you,
Yours faithfully,
Sajid Rahemtulla Suleiman.”***

It is clear that the said letter was in respect of the overdraft account No.81040559 belonging to the 1st Defendant with the Plaintiff. There is a clear admission that it was written after some meeting held on the same day it was written, in the Plaintiff’s offices. It acknowledges the 1st Defendant’s indebtedness of Kshs.68,317,637/37 to the Plaintiff and makes a request on the restructuring of the debt.

Having examined all the other documents produced in support of the application, I am satisfied that there is a clear admission of indebtedness by the 1st Defendant to the Plaintiff in the sum of Kshs.68,317,636/37. The said admission is plain, obvious and unequivocal.

Accordingly, I am satisfied that the Plaintiff’s application dated 4th May, 2012 is meritorious and I allow the same and enter judgment in favour of the Plaintiff as against the 1st Defendant in the sum of Kshs.68,317,636/37 together with the costs of the suit to that extent. I also award the Plaintiff the costs of the application.

Orders accordingly.

DATED and delivered at Nairobi this 4th day of July, 2012.

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A. MABEYA
JUDGE