



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO 1557 OF 1996**

**KENYA COMMERCIAL BANK LTD.....PLAINTIFF**

**-versus-**

**IGNATIUS IRIGA NDERI.....DEFENDANT**

**RULING**

The plaintiff sued the defendant claiming a sum of Kshs. 29,685,145.45 said to be monies paid by the plaintiff for and on behalf of and to the use of the defendant at the latter's request.

The defendant filed a defence to the suit. Paragraph 3 thereof alleged that the defendant owes the plaintiff a sum less than the sum claimed. This prompted the plaintiff to request for particulars under Order 6 Rule 8 of the Civil Procedure Rules. The request on record is dated 14th March, 1997. Clause one(1) reads as follows:

***“ 1. of paragraph 3 of the Defence.***

***(a) of the allegation that the defendant owes the plaintiff***

***a sum less than the sum claimed.***

***(I) state the amount allegedly owed by the defendant to the plaintiff.***

***(ii) state the date of the indebtedness of the amount in***

***(I) above”***

The defendant filed an answer or reply to the request for particulars. Clause one of the particulars reads as follows:

“1 of paragraph 3 of the defence

. (a) (i) Kshs. 4,000,000/-

(ii) 1990.”

There is now before me an application by way of Notice of Motion under Order 12 rule 6 of the Civil Procedure Rules for orders that judgment be entered against the defendant for Kshs. 4,000,000/- as

admitted in the defendant's Reply to Request for particulars filed in court and costs, the balance of the claim do proceed to summary judgment and that the defendant do pay to the plaintiff the costs of this application.

The application is opposed and grounds of opposition together with a replying affidavit have been filed. I also have submissions made by both learned counsel appearing.

Order 12 Rule 6 reads as follows:

***“6 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.”***

Paragraph 3 of the defence was clear and unambiguous. The request for particulars by the plaintiff and the answer provided by the defendant in respect of paragraph 3 of the defence were equally clear and unequivocal. With respect I am unable to read any other meaning in the said answer except an admission of the defendant's indebtedness to the plaintiff in the sum of Kshs. 4,000,000/-.

Request for and answer to particulars form part of pleadings. Even if that were not the case, rule 6 aforesaid provides for admission either on the pleadings or otherwise.

On my part I find that the defendant admitted the sum stated in this application.

Accordingly, I enter judgment in the sum of Kshs. 4,000,000 on admission as prayed plus costs.

Orders accordingly.

Dated and delivered at Nairobi this 31st day of March, 1998.

**A. MBOGHOLI MSAGHA**

**JUDGE**