



African Banking Corporation v Intex Construction Limited & another (Civil Case 282 of 2017) [2025] KEHC 13470 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 282 OF 2017
PM MULWA, J
SEPTEMBER 25, 2025**

BETWEEN

AFRICAN BANKING CORPORATION APPLICANT

AND

INTEX CONSTRUCTION LIMITED 1ST DEFENDANT

KENYA RURAL ROADS AUTHORITY 2ND DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 10th April 2025 brought by the 1st Defendant/Applicant pursuant to the provisions of Order 51 Rules 4, 5 and 13 of the [Civil Procedure Rules](#). The 1st Defendant/Applicant seeks orders, *inter alia*, that:
 - i. Spent
 - ii. A temporary injunction be issued prohibiting the release of any monies in excess of Kshs. 255,543,064/- from the escrow account held at Stanbic Bank Kenya Limited, Account No. 0100xxxxxxx, jointly operated by the Advocates for the Plaintiff and the 1st Defendant.
 - iii. The said sum of Kshs. 255,543,064/- be deemed as full and final settlement of the Plaintiff's claim upon payment to the Plaintiff, and any further withdrawal from the escrow account be stayed unless consented to by all signatories.
 - iv. In the alternative, an account be taken of the amounts owed to the Plaintiff upon payment of the said admitted sum.
 - v. The Plaintiff be compelled to release to the Applicant all securities held in respect of the present suit upon payment of Kshs. 255,543,064/-.



2. The application is supported by the affidavit of Samit Gehlot, the Managing Director of the 1st Defendant, sworn on 10th April 2025. The Applicant depones that the Plaintiff filed suit by plaint dated 6th June 2017 seeking Kshs. 775,358,760/- arising from an assignment of receivables dated 9th June 2016 relating to the Giakanja–Tetu Mission Road Project. Pursuant to orders of this Court, the receivables were to be deposited in a joint escrow account at Stanbic Bank. An audit report prepared by Ernst & Young LLP led to the deposit of Kshs. 330,000,000/- in the said escrow account, of which Kshs 282,256,062/- has since been released to the Plaintiff.
3. The Applicant contends that upon commissioning a forensic audit by Mazars LLP, it emerged that as at 30th June 2020, the correct amount due to the Plaintiff was Kshs. 536,799,126/-. After deducting the released sum of Kshs 281,256,062/-, the balance due was Kshs 255,543,064/-. The Applicant therefore seeks to pay this sum in full satisfaction of the Plaintiff's claim and prays that the Plaintiff be restrained from withdrawing further sums from the escrow account beyond this admitted amount.
4. In opposition, the Plaintiff/Respondent filed a Replying Affidavit sworn on 7th May 2025 by Kajuju Marete. The Respondent depones that the escrow account is jointly administered, with withdrawals subject to the consent of both signatories or court order. She contends that the application seeks to preempt the Plaintiff's own application dated 17th October 2022 for judgment on the admitted sum plus interest. The Plaintiff disputes the probative value of the Mazars audit, arguing that the earlier report by Ernst & Young LLP was a joint exercise by both parties. The Plaintiff also opposes unconditional release of securities, submitting that as a regulated bank, it cannot lawfully remain unsecured until the full extent of indebtedness is ascertained.
5. By the directions of the court the application was heard by way of written submissions. the 1st Defendant/Applicant filed submissions dated 25th July 2025, while the Plaintiff filed submissions dated 23rd July 2025.

Issues for Determination

6. Having considered the application, affidavits and rival submissions, the issues that arise for determination are:
 - i. Whether the 1st Defendant has established a case for the grant of interim injunctive relief restraining further withdrawals from the escrow account.
 - ii. Whether judgment on admissions for the sum of 255,543,064/- ought to be entered to constitute full and final settlement of the Plaintiff's claim.
 - iii. Whether the Plaintiff should be compelled to release securities held pending final settlement.

Injunction on Withdrawals From the Escrow Account

7. The law governing injunctions is well settled in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 where the Court set out the three limbs: an applicant must establish a *prima facie* case with a probability of success, demonstrate that irreparable harm would ensue if the order is not granted, and where in doubt, the court will decide the matter on a balance of convenience.
8. The Applicant's apprehension is that unless restrained, the Plaintiff may proceed to withdraw funds in excess of Kshs 255,543,064/- from the escrow account. However, the evidence shows that withdrawals from the escrow account can only be affected either by consent of all signatories or upon a court order. In my view, this arrangement already provides safeguards against unilateral withdrawals, the element of irreparable harm is therefore not established.



Whether Judgment On the Admitted Sum Ought To Be Entered as Final Settlement

9. The Applicant anchors its motion on the Plaintiff's application dated 17th October 2022, which sought judgment on admission for Kshs 255,543,064/-. It argues that payment of this amount would extinguish the entire debt.
10. The legal principles underpinning judgment on admission are well settled. Order 13 Rule 2 of the [Civil Procedure Rules](#) provides:

“ 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 thinks just.”
11. In [Choitram v Nazari](#) [1984] KLR 327, where the Court of Appeal held:

“ Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered without the court hearing the merits of the case.”
12. Similarly, in [Guardian Bank Limited v Jambo Biscuits \(K\) Ltd](#) [2014] KEHC 1796 (KLR), the Court emphasized that admissions must be clear, unambiguous and unequivocal.
13. In [Agricultural Finance Corporation v Kenya National Assurance Co. Ltd](#) Civil Appeal No. 271 of 1996, the Court of Appeal cautioned that judgment on admission is not a matter of right but of discretion: It held that:

“ Final judgment ought not be passed on admissions unless they are clear, unambiguous and unconditional. A judgment on admission is not a matter of right rather it is a matter of discretion of the court and where the defendant has raised objections which go to the very root of the case, it would not be proper to exercise this discretion.”
14. In the present case, while the Plaintiff's application dated 17th October 2022 indeed acknowledged the figure of Kshs. 255,543,064/-, the Plaintiff's position is that this represents only part of the indebtedness and that interest and other balances remain due.
15. Judgment on admission may be entered only where the admission is “clear and unambiguous.” Where there is a contest over the scope or effect of the admission, judgment on admission is not appropriate.
16. It is therefore clear that although there is an admission of liability to the extent of Kshs. 255,543,064/-, there is no admission that such payment would extinguish the entire debt. The effect and scope of that admission remain contested and require evidence and reconciliation of accounts at trial.
17. Accordingly, the court finds that judgment on admission may be entered for the admitted sum of Kshs. 255,543,064/-, but whether this constitutes full and final settlement of the Plaintiff's claim is a matter for determination at the substantive hearing.

Release of the Securities

18. The Applicant also seeks release of securities upon payment of the admitted sum. The law is that securities serve as collateral to secure the whole debt until repayment in full. In [Mrao Ltd v First American Bank of Kenya Ltd & 2 Others](#) [2003] eKLR, the Court of Appeal underscored the right of a



chargee to hold onto securities until the debt is fully settled. Further, under Section 84 of the *Land Act*, a charge is only discharged once the chargee has received all money secured by the charge. Thus, the Plaintiff, being a regulated bank, cannot be compelled to release securities while the total debt remains disputed.

19. In this case, the total indebtedness is still contested. To compel release of securities at this interlocutory stage would effectively determine the substantive dispute prematurely. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR cautioned that interlocutory applications should not dispose of disputed rights conclusively.
20. Accordingly, the prayer for release of securities is declined.
21. In the result, I find merit in part in the 1st Defendant's application dated 10th April 2025 and make the following orders:
 - a. Judgment on admission is entered in favour of the Plaintiff for the sum of Kshs. 255,543,064/-.
 - b. A reconciliation of accounts shall be undertaken to determine the balance, if any, due and owing to the Plaintiff from the 1st Defendant.
 - c. Prayer (vii) of the application, seeking release of securities upon payment of the admitted sum, is declined. The securities shall remain in place pending full determination of the suit.
 - d. Costs of this application shall abide the outcome of the main suit.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Kimani h/b for Mr. Gakunga for Plaintiff

Mr. Ochieng for 1st Defendant/Applicant

Court Assistant: Carlos

