



Noor & 4 others v Nextgen Auctioneers Limited & another; Premier Bank Limited (Plaintiff to the Counterclaim); Noor & 6 others (Defendant to the Counterclaim) (Commercial Case E527 of 2023) [2025] KEHC 14757 (KLR) (Commercial and Tax) (16 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14757 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E527 OF 2023

PM MULWA, J
OCTOBER 16, 2025

BETWEEN

MAHAT MOHAMUD NOOR 1ST PLAINTIFF
YUSUF ADEN MOHAMED 2ND PLAINTIFF
WAKO GALGALO OD 3RD PLAINTIFF
RICHARD MATERE LUSWETI 4TH PLAINTIFF
GVR INFRA PROJECTS LIMITED 5TH PLAINTIFF

AND

NEXTGEN AUCTIONEERS LIMITED 1ST DEFENDANT
PREMIER BANK LIMITED 2ND DEFENDANT

AND

PREMIER BANK LIMITED PLAINTIFF TO THE COUNTERCLAIM

AND

MAHAT MOHAMUD NOOR DEFENDANT TO THE COUNTERCLAIM
YUSUF ADEN MOHAMED DEFENDANT TO THE COUNTERCLAIM
WAKO GALGALO ODHA DEFENDANT TO THE COUNTERCLAIM
RICHARD MATERE LUSWETI DEFENDANT TO THE COUNTERCLAIM
GVR INFRA PROJECTS LIMITED ... DEFENDANT TO THE COUNTERCLAIM
KERUKE LEPOSO LEKINYONGO ... DEFENDANT TO THE COUNTERCLAIM



RULING

1. This ruling relates to the Notice of Motion dated 26th August 2024 brought by the Plaintiff in the Counterclaim seeking judgment on admission against the Defendants in the Counterclaim, jointly and severally, for the sum of USD 4,007,815.
2. The application is supported by the affidavit of Claris Ajwang Ogombo, the Legal Manager at Premier Bank Limited, who avers that pursuant to a Letter of Offer dated 6th June 2022 and a subsequent Variation dated 21st June 2022, the Applicant advanced a sum of USD 4,684,000 to the 5th Defendant in the Counterclaim.
3. It is deponed that the 5th Defendant defaulted in its repayment obligations and that on 15th September 2023, the 1st Defendant, being the sole director of the 5th Defendant, executed a Settlement Agreement wherein he unequivocally admitted the indebtedness in the sum of USD 4,867,614.
4. The Applicant contends that despite several promises to pay, the 5th Defendant persistently defaulted. Consequently, the Bank exercised its statutory power of sale over the charged assets but was only able to recover Kshs. 119,200,000, leaving an outstanding balance of USD 4,007,815. The Applicant argues that the admission of indebtedness is clear and unequivocal, and that justice demands judgment be entered on admission for the said amount.
5. The application is opposed through a Preliminary Objection dated 4th March 2025, in which the Plaintiffs in the main suit contend that the application is an abuse of the court process, that the substratum of the suit has been sold, and therefore, judgment cannot issue. It was further argued that the court lacks jurisdiction to entertain the application in light of the sale of the charged assets.
6. Only the Applicant filed written submissions.

Analysis and determination

7. Having carefully considered the pleadings, submissions, and evidence before the court, the primary issue for determination is whether the Applicant has met the threshold for judgment on admission pursuant to Order 13 Rule 2 of the Civil Procedure Rules.
8. Order 13 Rule 2 of the Civil Procedure Rules permits a party to apply for judgment where there has been a clear admission of facts, either in pleadings or otherwise, and such an admission warrants a judgment without the need for full trial on other issues. The principles established by jurisprudence, notably in *Choitram v Nazari* [1984] KLR 327, emphasize that such admissions must be explicit, unambiguous, and unequivocal. The Court of Appeal underscored that admissions should be as plain as a pikestaff, readily discernible on the face of the documents without requiring interpretation or further clarification.
9. A judgment on admission is not a matter of right but of discretion. The discretion must be exercised only in cases where the admission is clear and leaves no room for doubt.
10. In the present case, the evidence and documents presented, notably the proposal letter and acknowledgment of debt dated 20th July 2023, signed by the 1st Defendant, acknowledge the debt of USD 4,867,614. These documents further propose specific repayment plans, indicating an acknowledgment of liability by the Defendants. Moreover, the subsequent proposal dated 23rd August



2023 also admits the debt and commits to a sum of USD 750,000 by 15th October and another similar amount by 31st December 2023. The execution of a settlement agreement on 15th September 2023 further consolidates the acknowledgment of indebtedness.

11. The Defendants do not dispute the existence of the debt; rather, they argue that the application is an abuse of court process, contending that the "substratum" of the suit has been disposed of via the sale of the charged property. However, it is well established that the act of exercising the statutory power of sale does not extinguish the contractual obligation of the borrower to settle the outstanding debt. Section 83(1) of the *Land Act* and relevant case law, including *Habib Bank Limited v Pop-In (Kenya) Limited & Others* [1992] eKLR affirm that the debtor remains liable for any shortfall after the realization of security.
12. The Defendants have failed to produce any material evidence to controvert the explicit admissions of indebtedness in the documents. Their reliance on the sale of the substratum and jurisdictional arguments does not negate the Court's jurisdiction to determine the recovery of debts notwithstanding the sale or disposition of security.
13. Given the clarity, certainty, and unconditional nature of the admissions, and the specificity of the sum claimed, the court finds the threshold for judgment on admission satisfied. Consequently, the application is merited.
14. In light of the foregoing, the court grants the Notice of Motion dated 26th August 2024, and Judgment is entered in favor of the Plaintiff on the admitted debt. The Defendants, jointly and severally, are liable to pay the sum of USD 4,007,815 together with contractual interest accrued from the date of default until full payment, as well as the costs of this application and the counterclaim.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 16TH DAY OF OCTOBER 2025.

P.M MULWA

JUDGE

In the presence of:

Mr. Simiyu h/b for Mr. Anyiega for Plaintiffs

Mr. Mumu for Defendants

Court Assistant: Carlos

