



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CIVIL CASE NO. 620 OF 2014**

**1. ROY MUTUA KIVUSYU**

**2. JOYCE MUTUA KIVUSYU**

**T/A JOYROYS SERVICES.....PLAINTIFFS/APPLICANTS**

**=VERSUS=**

**NAIROBI CITY COUNTY.....DEFENDANT/RESPONDENT**

**1. NAIROBI CITY COUNTY ASSEMBLY SERVICE BOARD**

**2. NAIROBI CITY COUNTY ASSEMBLY.....INTERESTED PARTIES**

**RULING**

1. This is the Notice of Motion dated 10<sup>th</sup> April 2018 brought under Order 13 rules 1 and 2; order 25 rule 5 of the Civil Procedure Rules 2010, Section 1A, 1B and 3A of the Civil Procedure Act (Chapter 21 Laws of Kenya).

2. It seeks orders:-

*(1) That judgment on admission and/or by compromise be entered for the plaintiff against the defendant in the sum of Kshs.30,000,000/- with costs and interest at the court rates from 3<sup>rd</sup> August 2017 until payment in full and final satisfaction of the decree herein.*

*(2) That the costs of this application be provided for.*

*(3) That other appropriate orders be made.*

3. The grounds are on the face of the application and are.

*(1) That representatives of the plaintiff and the defendant held a meeting on 3<sup>rd</sup> August 2017 wherein it was agreed that this suit be settled by the defendant paying to the plaintiff a sum of Kshs.30,000,000 as damages.*

*(2) That the agreement effectively compromised this suit upon admission.*

*(3) That despite the said agreement and/or admission the defendant has failed refused and/or neglected to execute a consent letter for filing before this honourable court so that a formal judgment can be entered.*

*(4) That the defendant has also not paid the agreed amount. It is therefore necessary that a formal judgment be entered so that this suit can proceed to conclusion.*

4. The application is supported by the affidavit of Eric John Mutemi, Advocate for the plaintiff/applicant sworn on the 10<sup>th</sup> April 2018.

5. The defendant/respondent was duly served with the hearing notice for the notice of motion dated 10<sup>th</sup> April 2018. The affidavit of service is duly filed. However, the defendant neglected to file any response to the said application. There was also no appearance for the defendant on 7<sup>th</sup> February 2018. Mr. Odiambo appearing for the 1<sup>st</sup> and 2<sup>nd</sup> interested parties stated that they did not oppose the application.

6. The notice of motion dated 10<sup>th</sup> April 2 018 is therefore unopposed.

7. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the oral submissions of counsel. The issue is whether this application is merited.

8. Order 13 rule 1 of the Civil Procedure Rules provides that:

*Any party to a suit may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or part of the case of any other party.”*

*Rule 2 provides that:*

*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 admissions 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.*

9. I have gone through annexure “EJM1” to the affidavit in support. The same are minutes of meeting held at the office of the Deputy Director Legal Services for the defendant on 3<sup>rd</sup> August 2017. The parties resolved that the defendant pays the plaintiff an all-inclusive sum of Kshs.30,000,000/- to resolve the matter. The minutes are duly signed by all the parties present.

10. Order 25 rule 5 (1) of the Civil procedure Rules provides that:-

*“Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith.”*

*Sub rule (2) provides that:-*

*“The Court, on the application of any party, may make any further order necessary for the implementation and execution of the terms of the decree.”*

11. I am satisfied that the agreement reached on 3<sup>rd</sup> August 2017 is binding on the defendant. I rely on the cited case of **Njihia Muoka Rashid Co. Ltd vs Cianda Holdings Ltd HCCC No. 307 of 2013** where J B Havelock J quoted with approval the case of **Choitram v Nazari (1984) eKLR** where Madan JA held thus:

*“For the purpose of Order XII rule 6 admission can be express or implied either on the pleadings or otherwise, e.g in correspondence. Admission 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.....”*

12. As stated earlier the application is not opposed. I find merit in this application and grant the orders sought namely:-

*(a) That Judgment on admission and/or by compromise be and is hereby entered for the plaintiff against the defendant in the sum of Kshs.30,000,000 with costs and interest at court rates from 3<sup>rd</sup> August 2017 until payment in full and final satisfaction of the decree.*

*(b) That costs of this application be in the cause.*

It is so ordered.

Dated, signed and delivered in Nairobi on this 9<sup>TH</sup> day of APRIL 2019.

.....

**L. KOMINGOI**

JUDGE

In the presence of:-

.....Advocate for the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiff

.....Advocate for the Defendant

.....Advocate for the interested parties

.....Court Assistant