THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

HCCOMM. NO. E053 OF 2024

HON. JUSTICE ALEEM VISRAM

18TH NOVEMBER, 2025

BETWEEN

SMRUTI BUILDERS CO. LTD...PLAINTIFF

AND

SOUTHSIDE SUITES LTD…………………....………………..……RESPONDENT

RULING

1. I have considered the Application dated 23rd January, 2025, together with the affidavit sworn in support of the same on even date; the submissions of the parties; and the applicable law.
2. The Applicant is seeking judgment on admission for the Plaintiff against the Defendant for the sum of Kshs. 25,176,679.50/=.
3. The Application is not opposed. This Court will still consider whether the applicable threshold has been met to enter judgment on admission.

ORIGINAL

4. Order 13, rule 2 of the Civil Procedure Rules, provides as follows:-

> **Judgment on admissions [Order 13, rule 2.]**
>
> **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.**

5. In the seminal case of ***Choitram v Nazari [1984] eKLR,*** the Court of Appeal pronounced itself as follows in relation to said order:-

> ***"For the purpose of order XII rule 6, admissions can be express or implied either on the pleadings or otherwise, eg in correspondence. <u>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.</u> Much depends upon the language used. The admissions must leave no room for doubt that the parties passed out of the stage of negotiations onto a definite contract. It matters not if the situation is arguable, even if there is a substantial argument, it is an ingredient of jurisprudence, provided that a plain and obvious case is established upon admissions 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***

ORIGINAL

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. In considering the matter, the judge must neither become disinclined nor lose himself in the jungle of words even when faced with a plaint such as the one in this case. To analyse pleadings, to read correspondence and to apply the relevant law is a normal function performed by judges which has become established routine in the courts…" (Emphasis mine)

And Further to the above, the court stated:-

"Admissions of fact under order XII rule 6 need not be on the pleadings. They may be in correspondence or documents which are admitted or they may even be oral. ***The rule uses the words "or otherwise" which are words of general application and are wide enough to include admissions made through letter, affidavits and other admitted documents and proved oral admissions."(Emphasis mine)***

6. Guided by the above law, the applicable principle upon which the power ought to be exercised is that the admission must, first and foremost, be clear and unequivocal. This means that based on a plain perusal of the admission, it ought to be readily discernable, such that a court, looking at the documents, ought to be able to reach a conclusion that there is no point letting the matter go to trial, because nothing would be gained by going to trial.

7. Similarly, Chesoni Ag, JA stated in ***Choitram Supra*** stated that:-

ORIGINAL

"an admission is clear if the answer by a bystander to the question whether there was an admission of facts would be 'of course there was'"

8. In the present matter, the sole document relied on by the Applicant is the replying affidavit by the Respondent sworn on 20th March, 2024, in respect of the Notice of Motion dated 8th February, 2024. Paragraph five of the replying affidavit expressly states that the contract between the parties provides that all disputes are to be referred to arbitration. This has not been disputed by the Applicant.

9. However, during the course of highlighting, Counsel for the Applicant admitted that while the contract contains an arbitration clause relating to the present dispute, the debt itself has been admitted. He submitted, and the replying affidavit annexed also shows that 85% of the debt has been paid already. Counsel further submitted that that there is no dispute because it is only a question of the balance due to the Plaintiff that remains unpaid. Moreover, he submitted and counsel for the Respondent did not dispute that the Respondent has been making periodic payments by way of installments over a period of time in respect of that outstanding balance.

10. Based on the reasons set out above, the evidence on record, and the pleadings, I am satisfied that the applicable threshold has been met. I am of the view that

ORIGINAL

nothing would be gained in the present circumstances by going to trial on this issue.

11. The Application is with merit. The same is allowed and judgment for admission is entered in the sum of Kshs. 25,176,676.50/= together with costs and interest.

12. The Applicant shall have the costs of the application and the suit.

Dated and delivered virtually via Microsoft Teams this 18th day of November, 2025

ALEEM VISRAM, FCIArb
JUDGE

In the presence of;
Court Assistant: Lispa

……………….………………...for Plaintiff

……………………………………………...for Respondent

ORIGINAL