

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CIVIL APPEAL CASE NO.E065 OF 2025**

**GIDEON**

**NGETICH.....APPELLANT**

**- V E R S U S -**

**CHERUIYOT K. ERICK.....**

**.....RESPONDENT**

**JUDGMENT**

1. ***Cheruiyot K. Erick***, the Respondent herein filed a Claim before the Small Claims Court whereof he sought from ***Gideon Ngetich*** the Appellant herein to be paid Kshs.524,000/= vide a statement of claim dated 29<sup>th</sup> November, 2024.
2. The Appellant filed a response to the claim whereof he admitted to have received by instalment a sum of Kshs.461,000/= from the Claimant (Respondent). The Appellant also stated in response that he had repaid Kshs.33,000/= to the Respondent and that he is ready to settle the balance of kshs.417,000/= by instalments also.

3. The Appellant averred that the claim was filed in bad faith to settle scores of transactions that never materialized and in tainted with inflation of figures.
4. On 14<sup>th</sup> July, 2025, Learned Counsels from both sides appeared before **Hon. C. Odunga, Learned Resident Magistrate. Mr. Mwita, Learned Advocate** for the Appellant informed the Court that the Respondent had approached the Appellant with a view to settle the matter. The Learned Advocate sought to be given 14 days to settle and also applied for leave to amend the defence.
5. In response, **Miss Jausiku, Learned Advocate** for the Respondent pointed out the fact that the Appellant had admitted the claim. She sought for Judgment on admission to be entered. She urged the Court not to grant leave to the Appellant to amend the defence because he may introduce new facts.
6. The Learned Adjudicator/Resident Magistrate concluded and stated that the Appellant had admitted the debt of

Kshs.461,000/=. She formed the opinion that the Appellant in seeking for leave to amend the admission was disingenuous and an attempt to delay the closure of the matter.

7. She consequently proceeded to dismiss the application for leave to amend and went ahead to enter Judgment on admission with costs of the suit and interest at Court rates. She also gave the parties liberty to settle the claim on a payment plan.

8. Being aggrieved, the Appellant preferred this Appeal putting forward the following grounds:-

**(i) THAT this application be certified as extremely urgent and the matter be heard exparte in the first instance.**

**(ii) THAT pending the hearing and determination of the Application herein, there be temporary Stay of Execution of the Decree of this Honourable Court issued on the 2<sup>nd</sup> day of September, 2025 pursuant to the impugned Judgment entered**

**against the Respondent on the 14<sup>th</sup> days of July, 2025.**

**(iii) THAT there be Stay of Execution of the Judgment and Decree of the Honourable Court in this suit delivered on 14<sup>th</sup> July, 2025 pending the hearing and determination of the filed Appeal.**

**(iv) THAT necessary directions be given.**

**(v) THAT costs of and incidentals to this application be provided for.**

9. This Court gave directions to the effect that the Appeal be disposed of by written submissions.

10. I have examined the grounds put forward on Appeal. Grounds 1, 2, 3 and 4 can be determined together while grounds 5 can be dealt with separately. On the first three grounds of appeal, it is the submission of the Appellant that he was not given the opportunity to be heard before the Court could enter Judgment on admission. The Respondent is of the submission that the Appellant's Counsel was accorded a right of hearing before the Trial Court.

11. I have examined the recorded proceedings presented to this Court. The record clearly shows that Mr. Mwita, the appellant's Advocate was actually heard. The Learned Advocate made an oral application seeking for leave to amend the defence. The Learned Advocate further stated before the Trial Court that the parties needed time to settle the claim.
  
12. In response, **Miss Jausiku, Learned Advocate** for the Respondent urged the Court to reject the application for amendment because the Respondent may introduce new facts in his defence to defeat the fact that he had admitted the claim. It is apparent that both parties were heard by the Adjudicator before making her decision to decline the application for leave to amend and before making an order to enter Judgment on admission.
  
13. It is not in dispute that the Appellant expressly admitted the claim in his defence and or response to the claim. The appellant argued that the Adjudicator was biased

in entering Judgment on admission when the Appellant had not admitted the claim.

14. This Court finds this submission untenable. A careful look at paragraphs 4 and 5 of the Appellant's response to the statement of claim dated 25/1/2025 will reveal that the Appellant expressly admitted the claim and had even settled part of the claim. It is therefore not correct to that the Learned Resident Magistrate was biased.

15. In final Ground of Appeal, the Appellant argued that the Learned Resident Magistrate failed to appreciate the provisions of Order 8 or the Civil Procedure Rules which allows for amendment of pleadings at any stage of the proceedings.

16. The Respondent opposed this grounds stating that Order 8 of the Civil Procedure Rules does not apply to Small Claims Court. It is pointed out that the Small Claims Court (Procedure) Rules contains distinct amendment procedure. It clear from the record that the Learned Adjudicator

considered the Oral Application for amendment made by the Appellant's Counsel and rejected the same on the basis that the same is disingenuous and was likely intended to delay closure of the matter.

17. With respect, I am also persuaded that the Provisions of Order 8 of the Civil Procedure Rules do not apply. Even if it were to apply, it is not automatic for a Court to grant an Order for amendment upon application. Each application must be considered on its own merits.

18. In the end, I find no merit in this appeal. The same is dismissed in its entirety with costs to the Respondent.

**Dated, signed and delivered at Kericho this 3<sup>rd</sup> day  
of December, 2025.**

.....  
**J. K. SERGON  
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Mwita for the Appellant

Miss Jausiku for the Respondent

