



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NUMBER E015 OF 2022

**HAOJUE HOLDINGS (KENYA) LIMITED -----
PLAINTIFF**

VERSUS

**DIPA GENERAL STORES LIMITED -----
DEFENDANT**

RULING

1. By Notice of Motion dated 14th March 2025, the Defendant seeks relief as hereunder;-

- a) **THAT the Honourable Court be pleased to issue a hearing date on a priority basis for the Counterclaim dated. (sic)**
- b) **THAT blanket leave be granted to the parties to comply within 45 days with order 11. (sic)**
- c) **THAT stay of proceedings be and is hereby granted in respect to further processes relating to the file pending hearing and determination of the Counterclaim dated. (sic)**

d) THAT the Honourable Court be pleased to issue any other order as may seem just.

e) THAT the costs of this application be provided for.

2. One Dishon Donald swore an affidavit supporting the Application on behalf of the Defendant. Alluding to the court's Ruling of 21st February 2024 he exhibited, he fears that hearing of their Counterclaim herein would be jeopardized if stay of proceedings is not ordered. He wants a date for hearing of the Counterclaim and leave to file additional documents.

3. The Plaintiff opposes the Application through an affidavit in reply sworn by its Managing Director (Liu Xueying). It is the Plaintiff's understanding that the court's decision of 21st February 2024 conclusively determined the dispute and therefore there is nothing pending adjudication. According to the Plaintiff both the main suit and the Counterclaim herein relate to the same issue *to wit*; who is indebted to who, and to what extent. The Plaintiff's witness avers that the issue was settled by the court in the Plaintiff's favour. The Defendant's prayer in the Counterclaim for re-

computation of the debt owed to the Plaintiff is spent in light of the Court's Ruling that the Defendant admitted the debt, contends the Plaintiff.

4. The Plaintiff is therefore of the view that the court is *functus officio* as the decision of 21st February 2024 has not been set aside.
5. For the stated reasons *inter alia* the Plaintiff wants the Application be dismissed.
6. The Deponent of the Affidavit supporting the Application underscores his earlier averments. He contends that nowhere in the Ruling of 21st February 2024 did the court determine the Counterclaim and so the matter is not closed.
7. Learned Counsel for the parties filed written submissions. Counsel for the Defendant point out that the Plaintiff's Replying Affidavit and Submissions had not been filed as at the time of putting in the defence submissions. The court is therefore urged to allow the Application as unopposed {(see Re-Estate of the late **Kimilgo Arap Kukuto vs Cherono (2023) KEELC**

1885 (KLR) relied upon by Counsel in support of this submission.)}

8. Indeed the plaintiff's Replying Affidavit and submissions were filed late. In the interests of substantive justice, however, I shall consider the same there being no apparent prejudice occasioned to the Defendant.
9. The Defendant's submissions dated 27th May 2025 seem to fault the court's Ruling of 21/2/2024. The court is urged to hear both the Main suit and Counterclaim on their merits. I have carefully considered the rival affidavit evidence and submissions against the Application before the court. The Plaintiff in the main suit wants the Defendant to repay a debt of Kshs. 22,287,570/= together with costs and interest. On the other hand, the Defendant's Amended Defence and Counter Claim seeks "re-computation" of the debt by apparently reconciling the parties' accounts; General Damages for "Bad Faith Litigation" as well as General damages for illegality, fraud and/or breach of trust, and interest.

10. The court having found that the Defendant/Counterclaimant admitted the debt, the Counter Claim may not stand. The Counter Claim arises from the same cause of action subject of the main suit and is subsumed in the main claim which has been determined by the judgment on admission. I agree with the Plaintiff and find that the earlier decision resolves the Counterclaim as well.

11. The Application is in the premises dismissed in its entirety with costs.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 13th day of February, 2026.

In the presence of:

Mr. Kibet Advocate for the Plaintiff

Mr. Koome Advocate for the Defendant

Court Assistant Jeniffer)

J. M. NANG'EA, JUDGE.