

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI LAW COURTS  
COMMERCIAL AND TAX DIVISION  
HCCC NO. E767 OF 2024

NINETY NINES FLYING SCHOOL .....PLAINTIFF

~vs~

AIRWORKS KENYA LIMITED.....RESPONDENT

JUDGMENT

**Judgment On Admission**

- 1.The plaintiff seeks in the notice of motion dated 18.2.2025; entry of judgment on admission in its favour and against the defendant for USD 321,580.
- 2.The plaintiff also seeks, in the alternative, the striking out of the defendant's defence.
- 3.The application is supported by the affidavits sworn by the plaintiff's director, **Hussein Ibrahim Amin** on 24.2.2025 and 12.5.2025.
- 4.The main grounds are that: -
  - (1) The parties entered into Aircraft Dry Lease Agreements dated 18.1.2018 with the plaintiff as the lessor and the defendant as the lessee of the aircraft known as Cessna Grand Caravan (208B) and registered as 5Y-NNV.
  - (2) The defendant failed to pay the lease rentals and the debt grew to USD 321,580/-.
  - (3) The parties engaged in out of court deliberations culminating in the execution of the debt settlement agreement dated 1.3.2024 in which the defendant admitted the debt owed.
  - (4) The defendant has filed a statement of defence

constituting mere denials.

(5) The defence is frivolous and vexatious.

5. The defendant opposed the application through the replying affidavit sworn by its director, **Eric Mutinda Kivindu** on 30.3.2025. The main contentions are: -

(1) The plaintiff's application is premature and ought to have awaited the close of pleadings and for parties to comply with Order 11 of the Civil Procedure Rules.

(2) The defendant has filed an amended defence and counterclaim raising triable issues to which the plaintiff has not yet responded as it ought to.

(3) The plaintiff's allegation that it is in financial difficulties is not supported by evidence.

6. In reply, the plaintiff stated that: -

(1) Under Order 2 Rule 13, pleadings close 14 days after service of the defence.

(2) The defence was served upon on 14.2.2025.

(3) The amended defence and counterclaim were filed on 20.3.2025 after the close of pleadings without leave.

(4) The payment schedule attached to the defendant's replying affidavit shows payments made up to 26.1.2023 which precedes the debt settlement agreement confirming that the defendant admitted that it owed the plaintiff USD 321,580.

### **Submissions**

7. The plaintiff and the defendant filed written submissions dated 4.6.2025 and 28.7.2025.

8. The plaintiff relied on **Choitram v Nazari [1984] eKLR** on the principles applicable. It contended that clause 2 of the debt repayment agreement meets the test in the case as it

constitutes a clear admission of guilt and a binding commitment to remedy the default.

9. The plaintiff urged the court to strike out the defence on grounds that it consists of mere denials, is a sham, frivolous, vexatious and fails to raise any triable issues, therefore an abuse of the court process. It relied on **Order 2 Rule 15 of the Civil Procedure Rules**. It also relied on **Kenya Commercial Bank v Suntra Investment Bank Limited [2015] eKLR** and **Saudi Arabian Airlines Corporation v Premium Petroleum Company Limited [2014] eKLR** on the principles for consideration in determining whether to strike out a defence.
10. The plaintiff argued that the court ought not to consider the statement of defence which consists of mere denials. It relied on **Mugunga General Stores v Pepco Distributors Ltd [1987] KECA 68 (KLR)** and **Margaret Njeri Mbugua v Kirk Mweya Nyaga [2016] KECA 288 (KLR)**.
11. The plaintiff also argued that the amended statement of defence and counterclaim ought to be struck out for being filed after the pleadings had closed and without leave. In support, it relied on **Chairman, Secretary and Treasurer, School Management Committee of Sir Ali Bin Salim Primary School & Another v Francis Bahati Diwani & 2 others [2014] eKLR**.
12. The plaintiff also relied on **Ali & 5 others v Kimani & 8 others [2025] eKLR** on the guidelines for allowing amendments. It submitted that the proposed amendments would severely prejudice it by unduly prolonging the proceedings through introduction of new and unmeritorious claims at this advanced stage.
13. The defendant mostly relied on the amended defence to support its case against the entry of summary judgment against it. It argued that there are triable issues to be

considered at the main hearing of the case.

14.The defendant's main assertion is that it made an overpayment of USD. 348, 518 to the plaintiff. This is based on the contention that the lease payments were based on utilization and not on the mere fact that the Aircraft was still under the Defendant's AOC.

15.The defendant also stated that it has already paid USD. 884, 200 for the period it used the Aircraft. It added that when the aircraft was being used by the plaintiff, it paid all insurance costs amounting to USD. 39, 151 which has not been factored in the plaintiff's claim.

16.The defendant further submitted that there were informal negotiations, but the same did not crystalize and that it was under duress to enter negotiations.

17.The defendant submitted that the correspondence between parties cannot form a basis of requesting for entry of judgment on admission. It contended that admission must be expressly stated in the statement of defence and that any correspondence made between parties herein is evidence which ought to be adduced at the hearing of the case.

18.The defendant relied on **BIO Food Products Limited v Neoteric Chartered Limited [2024] KEHC 4222 (KLR)** for the submission that striking out a pleading is a draconian act, which may only be resorted to, in plain cases.

#### **Analysis and Determination**

19.From the outset, I do note that the plaintiff challenged the validity of subsequent amendments of 18.3.2025 to the defence dated 13.2.2025. It contended that the amendments were invalid because they were filed on 20.3.2025 without leave of court after the close of pleadings.

20. The plaintiff argued that the amended statement of defence and counterclaim ought to be struck out for being filed after the pleadings had closed and without leave. It submitted that the proposed amendments would severely prejudice it by unduly prolonging the proceedings through introduction of new and unmeritorious claims at this advanced stage.

21. I have not been shown any application for or extension of time to file the amended defence and counter-claim. But, without determining the objection, of relevance is whether there is any issues which may prevent entry of judgment on admission in respect of the sum subject of the Debt Settlement Agreement.

#### **Judgment on admission**

22. **Order 13 Rule 2 of the Civil Procedure Rules** provides as follows:

*“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 judgement 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 judgement, as the court may think just.”*

23. For judgment on admission to be entered: the admissions which may ‘be express or implied on the pleadings or otherwise, e.g. correspondence’, (**Order 13 Rule 2 of the Civil Procedure Rules**) must be ‘plain and obvious, as plain as a pikestaff and clearly readable’ requiring no ‘magnifying glass to ascertain their meaning’.

Nonetheless, ‘Much depends upon the language used.’

**Choitram v Nazari [1984] eKLR,**

24. And, in clear cases, no amount of argument should prevent or postpone entry of judgment on admission as the party so applying is entitled to judgment ‘without waiting for the determination of any other question between the parties.’ **Choitram v Nazari (ibid)** and **Order 13 Rule 2 of the Civil Procedure Rules (supra)**

25. The plaintiff’s case for entry of judgment on admission is that following out of court negotiations, the parties executed the debt settlement agreement dated 1.3.2024 in which the defendant admitted the debt owed.

26. The plaintiff asserted that the defendant’s defence constitutes mere denials and is frivolous and vexatious.

27. The plaintiff exhibited the debt settlement agreement dated 1.3.2024 between it and the defendant.

28. I have perused and examined **the Debt Settlement Agreement (the Deed)**. Quite foundational as well as functional in relation to the application before the court are two matters set out in Clause 7.1 and 7.2 below: -

7.1 ‘This Deed and any dispute arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Kenya’.

7.2 ‘Each Party irrevocably agrees that the courts of Kenya shall have exclusive jurisdiction’ over any dispute or claim...arising out of or in connection with this Deed or its subject matter or formation (Dispute)...’

29. Thus, the court has jurisdiction over any dispute arising out of or in connection with the Deed, and the laws of

Kenya apply thereto. Accordingly, the application for judgment on admission is properly before the court.

**Acknowledgement of debt: Core or relevant Clauses**

30. Clause 2 of the Deed reads in part: -

**“2.1 Airworks and Ninety Nines acknowledge and agree that Airworks is obliged to pay an outstanding total amount of US\$321,580.00 (Three hundred and twenty one Five Hundred and Eighty) to Ninety Nines pursuant to Lease Agreement (the “Overdue Amount”).**

**2.2 Airworks Kenya Limited has committed to be paying Ninety Nines USD 30,000.00 on or before the 30<sup>th</sup> Day of each month starting from 30 March 2024 until payment in full.”**

**31.** On its part, the defendant argued that the amended statement of defence and counterclaim raise triable issues between the parties, which require full hearing for the court to determine the issue of liability.

32. The defendant admitted that it entered into a dry lease agreement with the plaintiff effective from 15.11.2017 then replaced with lease entered on 1.1.2018 to 31.12.2018 which was further extended by an addendum agreement dated 8.11.2018 further extending the lease period to 31.12.2019.

33. The defendant denied that the aircraft was exclusively placed under its use as the plaintiff was also utilising it for its personal use.

34. The defendant stated that under the lease agreement, it was required to pay USD 23,500 for up to 70 minimum guaranteed flight hours per month and an additional USD 350 per hour for any flight hours exceeding 70 within the month.

35. The defendant stated that no further lease agreement was entered into after 31.12.2019 and that thereafter, payments were made on utilization basis in accordance with the 2017 lease agreement.
36. The defendant contended that after the expiry of the lease, or when the aircraft was not under use, the plaintiff was also using the aircraft for its own use. That therefore, the plaintiff can't allege that the aircraft remained leased to the defendant.
37. The defendant highlighted the periods during which it exclusively used the aircraft, it was flown for 513.8 hours and that based on utilization, the amount payable was USD 571,833.00.
38. The defendant asserted that by the time the plaintiff sold the aircraft, it already paid USD 884,200.00 plus insurance premium of USD 39,151.00 totalling USD 921,351.00 which substantially covers the amount demanded. It indicated that it will be claiming for an overpayment of USD 349,518.
39. The defendant admitted that there were informal negotiations initiated but contended that the dispute remained unresolved with no formal agreement. It also contended that it executed the debt settlement agreement under duress and that it was not provided with actual figures or the original copies of the agreement.
40. The court notes that the debt settlement agreement dated 1.3.2024 exhibited by the plaintiff predates the suit instituted through a plaint dated 16.12.2024. It is executed by the defendant's director **Hussein Ibrahim Amin** and contains his signature and the defendant's stamp.
41. There is apparent inconsistency in that the defendant initially challenged the validity of the aircraft lease

agreements. Afterwards, the defendant stated that the plaintiff intentionally avoided to reveal that there was a lease agreement which erroneously gave rise to the alleged debt settlement agreement.

42. At paragraphs 3, 4 and 5 of the plaint, the plaintiff averred that the parties entered into aircraft dry lease agreement for lease of the Cessna Grand Caravan (208B) registered as 5Y-NNV and that the defendant agreed to pay lease rentals for the service. The lease agreement is also mentioned in the debt settlement agreement.

43. The defendant also contended that the debt settlement agreement was under duress and that it was not provided with actual figures or the original copies of the agreement. In the same breath, the defendant stated that it executed the alleged debt settlement agreement by mistake, without having properly tabulated the real amount due to the plaintiff.

44. The defendant did not raise the issue of duress in the initial defence and prior to filing it yet the debt settlement agreement was executed months before the suit was filed.

45. The defendant is simply and hellbent at avoiding the deed in which it expressly acknowledged and agreed to pay the debt. When parties with capacity enter into such resolutions after negotiations, none should be given veto power over the resolution. Similarly, such resolutions should only be set aside where there is clear evidence of say, illegality or duress or misrepresentation. Other than mere claims, none has been proved.

46. These arguments should not prevent or postpone entry of judgment on such express admission of debt.

47. From the foregoing, the court is not persuaded that there is any issue which may prevent entry of judgment on admission.

48.The court finds that debt settlement agreement dated 1.3.2024 is an express admission of a debt; valid and binding on the parties and enforceable through judgment on admission.

**Disposal**

49.The plaintiff's application dated 18.2.2025 is allowed, in the following specific terms: -

- (1) **Judgment on admission is entered in favour of the plaintiff against the defendant for USD 321,580.**
- (2) **Costs of the application and the suit shall be borne by the defendant.**

**Dated, signed and delivered at Nairobi through Microsoft Teams online application this 5<sup>th</sup> day March, 2026**

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**F. Gikonyo M**

**Judge**

**In the presence of: -**

Onindo for defendant  
Mumu for Plaintiff  
CA - Ivan/Aggrey