

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS

CIVIL SUIT NO. E691 OF 2024

LOCAL AUTHORITIES PENSION TRUST

REGISTERED TRUSTEES

PLAINTIFF/APPLICANT

VERSUS

INSTITUTE OF ADVANCED TECHNOLOGY LIMITED

.....DEFENDANT/RESPONDENT

RULING

Introduction

1. By a Notice of Motion dated **21st February 2025**, the Plaintiff seeks judgment on admission against the Defendant for Kshs. 29,696,485.75, together with costs. The Motion is expressed under Order 13 Rule 2 of the Civil Procedure Rules, 2010.
2. The Motion is supported by the affidavit of **Beatrice Kuria**, and the Plaintiff's written submissions, which, in substance, rely on an asserted acknowledgment of indebtedness contained in a **Rent Arrears Settlement Agreement dated 11th April 2021**, subsequent correspondence - including a letter dated 8th December 2021 and a payment proposal- and an addendum (variation) to the lease.

3. The Motion is opposed. The Defendant filed a Replying Affidavit, sworn on 3rd March 2025 by **Wilson Methu**, contending that there is no clear and unequivocal admission of Kshs. 29,696,485.75; that the defence raises triable issues; that the figures exhibited by the Plaintiff are inconsistent; and that the Settlement Agreement itself allegedly covered future periods and is thus not an admission of an accrued debt as at 11th April 2021.
4. The application proceeded by way of written submissions. The Applicant, through Kosekei Monda Advocates, filed submissions dated 1st April 2025, whilst the Respondent's Advocates, Mare & Company Advocates, filed their submissions dated 2nd April 2025.

Analysis and Determination

5. Having carefully considered the pleadings filed herein, the parties' respective submissions, and the applicable law, the Court finds the following issues as requiring determination:
 - i. Whether there is a clear and unequivocal admission by the Defendant of the debt claimed by the Plaintiff within the meaning of Order 13 Rule 2.
 - ii. If so, of what amount (if any) may judgment on admission properly be entered?
 - iii. Who is to bear the costs of the application?
6. Before proceeding to consider the issues as identified, the Court finds it necessary to outline a brief factual background of the case, as appears on the material now before Court.

7. It is common ground that the Defendant was a tenant in the Plaintiff's premises (Pension Towers) under lease arrangements culminating in the lease dated 14th February 2018, subsequently varied. The Plaintiff avers that arrears stood at **Kshs. 25,339,431.00 as at 11th April 2021**; the parties executed a **Rent Arrears Settlement Agreement** on that date; and the addendum/variation extended the relationship into 2022 with specified monthly rent.
8. The Plaintiff further averred that the arrears later increased to **Kshs. 31,467,631.75 by 3rd November 2022**, and distress was levied, which realized **Kshs. 1,275,886.75**, hence the net claim of **Kshs. 29,696,485.75** for which judgment on admission is now sought.
9. The Defendant, for its part, maintained that no unequivocal admission exists of the sum claimed. The Defendant underscores divergent figures appearing across the Plaintiff's own documents (**Kshs. 31,467,631.75; Kshs. 29,696,485.75; Kshs. 25,339,431; Kshs. 25,838,431**), and emphasizes that its **defence raises issues** warranting trial; among them are alleged waivers/concessions, the effective date and coverage of the Settlement Agreement, and reconciliation of accounts.
10. With this background, the Court now proceeds to evaluate each of the issues identified above.

Whether there is a clear and unequivocal admission by the Defendant

11. The governing framework on applications for judgment on admissions is Order 13 Rule 2 of the Civil Procedure Rules, which empowers the Court to enter judgment at any stage if there is an admission of facts, "either on the pleadings or otherwise."

12. The jurisprudence is settled that such admissions must be plain, clear, unambiguous, and unequivocal. In **Choitram v Nazari [1984] KLR 327**, the Court of Appeal held that admissions must be “as plain as a pikestaff.” Similarly, in **Momanyi v Hatimy & Another [2003] 2 EA 600**, the Court emphasized that judgment on admission cannot be founded on contested or inferred admissions.
13. The discretion to enter judgment on admission must be exercised sparingly and only in obvious cases. The Court of Appeal in [Cassam & another v Sachania & another \[1982\] KECA 1 \(KLR\)](#), stated as follows:
14. “The Judge’s discretion to grant judgment on admissions of fact under the Order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment. It is far from being a plain case where one has to resort to the interpretation of documents. Once a case raises points of law it falls outside the ambit of the Order. It made no difference whether the points of law had been fully argued or not.
15. The Plaintiff anchors the Motion primarily on the **Rent Arrears Settlement Agreement dated 11th April 2021**, which, it says, records and binds the Defendant to pay **Kshs. 25,339,431.00** by instalments, with further obligations as to ongoing rent and remedies on breach. The Plaintiff also points to the 8th December 2021 letter and a payment proposal allegedly acknowledging indebtedness, and to a subsequent addendum/variation of the lease in January 2022.
16. On the material before me, and without purporting to try the suit on affidavit evidence, the existence of the Settlement Agreement and the Defendant’s commitment therein to settle specified arrears is not

seriously controverted at this interlocutory stage. The Agreement, together with the cited correspondence, does plainly bear an acknowledgment of substantial arrears then outstanding.

17. On the face of the submissions and annexures as summarized, there is a clear admission to at least Kshs. 25,339,431.00 as arrears, the Defendant undertook to settle.
18. The Defendant's answer that the Agreement purportedly covered future rent (because of an effective date said to be 31st December 2021) and therefore cannot amount to an admission of an accrued debt is noted. However, what operates for present purposes is not the timing of performance but the acknowledgment of arrears and the Defendant's express undertaking to settle an identified figure.
19. Whether any portion of that figure encompassed elements that, in substance, were prospective is a matter of account and proof, but it does not erase the acknowledgment of the arrears as captured in the Settlement Agreement and contemporaneous correspondence. The threshold of "plain and unequivocal" admissions required under Order 13 of the Civil Procedure Rules is, in my view, met to that extent.

Whether the admission is for the entire Kshs. 29,696,485.75 claimed

20. The amount sought in the Motion of **Kshs. 29,696,485.75** is explained as the post-distress balance after arrears had grown to **Kshs. 31,467,631.75** by 3rd November 2022, less **Kshs. 1,275,886.75** realized from distress.
21. The Defendant disputes this computation and underscores divergences in figures across the Plaintiff's own papers (**Kshs.**

29,696,485.75; 31,467,631.75; 25,339,431; 25,838,431), contending that reconciliation is necessary and that further waivers/credits may apply.

22. Having considered the record now before Court, I am not satisfied that the entire claimed sum of Kshs. 29,696,485.75 is plainly and unequivocally admitted. The composition of that figure: post-2021 accruals, the **allocation** of the distress proceeds, and any adjustments, raises triable issues which ought to be tested at trial.
23. The Court's power under **Order 13 Rule 2** is obviously not an all-or-nothing scenario. Where a discernible, admitted portion is shown, the Court may enter partial judgment and remit the balance to trial.
24. On the material before me, the Defendant's acknowledgment clearly attaches to **Kshs. 25,339,431.00**, as reflected in the Settlement Agreement and later instruments. By contrast, the increment from that base to **Kshs. 31,467,631.75** and thereafter to the net claim of **Kshs. 29,696,485.75** is not the subject of a similarly clear, unequivocal admission and must proceed to proof.
25. As to credits/payments (including distress proceeds) potentially applied to the admitted portion, nothing presently placed before Court demonstrates with clarity what part (if any) of the post-distress remittance was appropriated to the admitted arrears as opposed to later accruals. That too is a matter for accounting evidence.
26. The appropriate course in the view of the Court is to enter judgment on admission for the admitted principal and direct that any payments/credits proved to have been appropriated towards that principal be accounted at the time of final judgment/settlement of the decree.

Who is to bear the Costs

27. The next question is the issue of costs. The principle codified under section 27(1) of the Civil Procedure Act is that while the award of costs is a matter of judicial discretion, the general rule is that costs follow the event, meaning that the successful party is entitled to costs unless the court, for good reason, orders otherwise.

28. The Supreme Court set forth guiding principles applicable in the exercise of the Court's discretion on costs in the case of **Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012; [2014] eKLR**, as follows: -

"It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice."

29. In this case, the plaintiff's claim against the defendant has substantially succeeded. In line with the guidance of the Supreme Court in **Jasbir Singh Rai & 3 others (supra)**, and taking into account that there remain issues for trial, I direct that the costs be in the cause.

Disposition

30. In the result, the Plaintiff's Motion dated **21st February 2025** succeeds **in part**, and I make the following **orders**:

- i. Judgment on admission is hereby entered in favour of the Plaintiff against the Defendant in the sum of **Kshs.25,339,431.00** (Kenya Shillings Twenty-Five Million Three Hundred Thirty-Nine Thousand Four Hundred Thirty-One only).
- ii. The said admitted sum shall attract interest at Court rates from the date of filing suit until payment in full.
- iii. The balance of the Plaintiff's claim (being the difference between **Kshs. 29,696,485.75** and **Kshs. 25,339,431.00**) together with any interest and charges thereon shall proceed to full trial for determination.
- iv. For the avoidance of doubt, any payments or credits (including distress proceeds) proved to have been appropriated to the admitted amount shall be taken into account at the stage of settlement of decree upon production of proper accounts and/or by further order of the Court.
- v. Costs of the Motion shall be in the cause, given the partial success and the accounting issues reserved for trial.

17. It is so ordered.

SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS

19TH JANUARY 2026

ADO MOSES
JUDGE

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