

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL & TAX DIVISION**  
**HCCC E009 OF 2025**

**BETWEEN**

**RENEGADE AIR  
LIMITED.....PLAI  
NTIFF**

**AND**

**AIRWORKS KENYA  
LIMITED .....DEFENDANT**

**RULING**

- 1.The plaintiff filed the notice of motion dated 18<sup>th</sup> February 2025 seeking entry of judgment on admission against the defendant for **USD 497,087/-** or in the alternative striking out of the defendant's defence.
- 2.The application is brought mainly under **Order 13 Rule 2 of the Civil Procedure Rules**. It is supported by the affidavits sworn by **Capt. Issack Somo** on 24<sup>th</sup> February 2025 and 12<sup>th</sup> May 2025.
- 3.The grounds are that the plaintiff and the defendant entered into an aircraft lease agreement dated 30<sup>th</sup> May 2022 as lessor and

lessee respectively. The defendant agreed to lease the aircraft known as **De Havilland Aircraft of Canada Limited Dash 8-102** aircraft bearing manufacturer's serial number 361. The plaintiff averred that it availed the aircraft as agreed but the defendant fell behind on its monthly lease payments to the tune of **USD. 497,087/-**.

4. The plaintiff contended that the parties exchanged correspondence with a view to settle the debt owed and that the defendant admitted the debt and promised to pay the debt.
5. The plaintiff further contended that the defendant filed a statement of defence comprised of mere denials, a sham, frivolous, vexatious and an abuse of the court process.
6. The plaintiff stated that it is apprehensive that it will suffer loss as the defendant is currently being pursued by numerous debtors raising the risk that it may be shortly closed or declared insolvent.
7. The plaintiff submitted that it continues to suffer loss because of the debt owed by the defendant

and that it is in the interest of justice that the orders sought are granted.

## **Response**

8. The defendant filed a replying affidavit sworn by its director, **Eric Mutinda Kivindu** on 30.3.2025. Its core contentions are: -

(1) The application is frivolous, vexatious and ought to be dismissed with costs.

(2) The application is premature and ought to have been filed after the close of pleadings and failure to comply with order 11 of the Civil Procedure Rules.

(3) It has filed an amended defence and counterclaim raising triable issues to which the plaintiff is yet to file a response.

(4) The issues raised at paragraph 11A, 14B, 14C, 14D and 16B of the amended defence and counterclaim raise triable issues which ought to proceed to hearing.

(5) The subject aircraft leased was defective to some extent and the plaintiff did not reveal the defects to it beforehand.

(6)It has counterclaimed for USD 120,000/-.

(7)It has also sought a declaration that the maintenance that took place immediately after the aircraft was inducted in the defendant's air operator certificate was the plaintiff's responsibility.

### **Reply**

9.The plaintiff retorted that: -

(1)The defendant's amended statement of defence and counterclaim has been filed after the close of pleadings without leave.

(2)The defendant committed to pay USD 200,000/- to the plaintiff by 15<sup>th</sup> January 2024 but only remitted USD 105,000/-.

(3)The plaintiff had sought partial payment of USD 95,000/-. The defendant responded that it would honour its obligations and pay to the last cent.

### **Submissions**

10.The plaintiff and the defendant filed written submissions dated 4<sup>th</sup> June 2025 and 28<sup>th</sup> July 2025 respectively.

11. The plaintiff urged the court to allow its application. It relied on: -

- (1) **Choitram & another v Nazari (Civil Appeal 8 of 1982) [1984] KECA 47 (KLR) (20 January 1984) (Judgment)**
- (2) **Kenya Commercial Bank v Suntra Investment Bank Ltd [2015] eKLR**
- (3) **Patel v E. A. Cargo Handling Services Ltd [1974] E.A. 75**
- (4) **Mugunga General Stores v Pepco Distributors Ltd [1987] KECA 68 (KLR)**
- (5) **Margaret Njeri Mbugua v Kirk Mweya Nyaga [2016] KECA 288 (KLR)**
- (6) **Sir Ali Bin Salim Primary School v Francis Bahati Diwani [2014] eKLR**
- (7) **Ali & 5 others v Kimani & 8 others [2025] eKLR**

12. The defendant urged the court to find that it has not unequivocally admitted the plaintiff's claim in its amended statement of defence and counterclaim.

13. The defendant relied on: -

**(1) BIO Food Products Limited v Neoteric Chartered Limited (Commercial Case E091of2023) [2024] KEHC 4222 (KLR) (Commercial and Tax) (19 April 2024) (Judgment)**

**(2) Choitram & another v Nazari [supra]**

### **Analysis and Determination**

14.I note that the plaintiff challenged the amendments of 20<sup>th</sup> March 2025 to the statement of defence dated 13<sup>th</sup> February 2025 for being made without leave of court after the close of pleadings on 28<sup>th</sup> February 2025.

15.The defendant has not shown the court that it applied for leave to amend the defence after the close of pleadings.

16.However, without determining the objection, the central issue is whether there are any grounds to prevent the entry of judgment on admission against the defendant.

**17. 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.”***

18. The principles for entry of judgment on admission were discussed by the Court of Appeal in **Choitram v Nazari [supra]**, as follows: -

***“For the purpose of order XII rule 6, admissions can be express or implied either on the pleadings or otherwise, e.g. in correspondence. 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. 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 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...”*

19.The plaintiff's application is anchored on correspondence which it contends contains an admission of debt by the defendant.

20.The plaintiff exhibited the aircraft lease agreement executed by both parties.

21.The plaintiff also made specific reference to the correspondence at pages 117, 120 and 128 of the application and exhibits.

22.In an email dated 2<sup>nd</sup> January 2024 to [ismail@flyrenegadeair.com](mailto:ismail@flyrenegadeair.com) , the defendant's director, Erick, wrote: -

***“Further to your email below and our telephone conversation just now I confirm that between now and 15/01/2024 I would have made a total payment of USD 200,000.00 I also reiterate that the aircraft will be returned as per our agreement from the meeting we held at Aero club.”***

23.According to an email dated 30<sup>th</sup> January 2024, [ismail@flyrenegadeair.com](mailto:ismail@flyrenegadeair.com) wrote to Erick: -

***“As per our discussion and reaffirmation through your email dated 02<sup>nd</sup> January 2024 and phone conversation, a partial payment of***

**USD 200,000 was to be paid by 15<sup>th</sup> January 2024. However, as of today, we have received only USD 105,000.00/- ...  
Consequently, we must regrettably inform you that failure to clear the USD 95,000.00/- by 02<sup>nd</sup> February 2024 will result in us having no option but to ground the aircraft.”**

24. The plaintiff also exhibited a statement showing that the amount owing as of 1<sup>st</sup> February 2024 was USD 470,030.00/-. The plaintiff forwarded the statement to the defendant's director on 12<sup>th</sup> February 2024.

25. From the defendant's email dated 2<sup>nd</sup> January 2024, the court finds that the defendant admitted part of the debt amounting to USD 200,000/-. From the plaintiff's email dated 30<sup>th</sup> January 2024, the plaintiff acknowledged receipt of USD 105,000/- and the outstanding debt was USD 95,000/-.

26. Therefore, the court finds that the plaintiff has made out a case for entry of judgment on

admission against the defendant for part of the amount claimed, being USD 95,000/-.

27. The plaintiff urged the court to strike out the defendant's amended defence and counterclaim.

**28. *The power to strike out pleadings must be sparingly exercised. It can only be exercised in clearest of cases.* Ramji Megji Gudka Ltd v Alfred Morfat Omundi Michira & 2 others [2005] eKLR and DT Dobie & Company (Kenya) Ltd v Muchina [1982] KLR 1**

29. The defendant argued that the amended defence and counterclaim raise triable issues which ought to proceed to hearing.

**30. *"A bona fide triable issue is any matter raised by the defendant that would require further interrogation by the court during a full trial."* Job Kilach v Nation Media Group Ltd, Salaba Agencies Ltd & Michael Rono (2015) eKLR**

31. The court has read the amended defence and counterclaim. The defendant denied the plaintiff's claim of USD. 497,087/-. It contended that it was invoiced for maintenance reserved using block

hours instead of flight hours as per the original agreement. It stated that the aircraft was involved in a ground incident in South Sudan where it was hit by another uninsured aircraft and that as a result it incurred aircraft repair costs of USD 128,835.00 and additional penalties of USD 75,833.68 due to the failure to provide flight services during the period.

32. From the above, the court finds that the defence raises triable issues.

### **Disposal**

33. The plaintiff's application dated 18<sup>th</sup> February 2025 is partially allowed, in the following terms: -

- (1) Judgment on admission is entered in favour of the plaintiff against the defendant for USD. 95,000/-.**
- (2) The residual part of the plaintiff's claim of USD 402,087/- to go for trial.**
- (3) The plaintiff shall have half the costs of the application.**

**Dated, signed and delivered at Nairobi this 12<sup>th</sup> day of March, 2026**

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**F. Gikonyo M**

**Judge**

**In the presence of: -**

**Mumu for Plaintiff**

**Onindo for defendant**

**CA - Ivan/Aggrey**