



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 452 OF 2017**

**(Formerly Machakos ELC Case No. 109 of 2015)**

**GILBERT NYAMWEYA OMOKE & JAMES MAMBOLEO**

**T/A NYAMWEYA MAMBOLEO & COMPANY ADVOCATES....PLAINTIFF**

**VERSUS**

**FIRST COMMUNITY BANK LIMITED.....1<sup>ST</sup> DEFENDANT**

**JOSEPH N. KARIUKI**

**T/A JOSRICK MERCHANTS AUCTIONEERS.....2<sup>ND</sup> DEFENDANT**

**RULING**

The application before Court is the Defendants' Notice of Motion dated 30<sup>th</sup> November, 2016 brought pursuant to Section 1A, 3A of the Civil Procedure Act, Order 13 rule 2 of the Civil Procedure Rules and the inherent powers of the Court.

The application seeks judgement on admission against the Plaintiffs' for the sum of Kshs.5, 542, 401.20 and interest on the said sum. It is premised on the following grounds, which in summary is that the Plaintiffs are truly and justly indebted to the 1<sup>st</sup> Defendant. The Plaintiffs herein accepted the facility under the terms provided in the Letter of Offer from the 1<sup>st</sup> Defendant herein whose investment totaled Kshs.10 million at an interest rate of 22.5 % P.A (reducing). The Plaintiffs have not made any payment on the facility from 26<sup>th</sup> February, 2015 to date and at paragraph 6 and 8 of their Plaint admit owing the sum of Kshs.5,542,401.50 to the 1<sup>st</sup> Defendant which acknowledgement amounts to unequivocal admission of liability on their part.

The application is supported by the affidavit of GEORGE OBIKO who is the Manager of the Remedial Unit for the 1<sup>st</sup> Defendant and the Plaintiff's affidavit where they reiterate the facts of their claim.

On 12<sup>th</sup> July, 2017 both parties submitted on the application which submission I have considered.

**Analysis and Determination**

Upon considering the application including the supporting/replying affidavits as well as annexures thereon and submissions from the parties, the main issue for determination at this juncture is whether judgement should entered on admission for the sum of Kshs.5, 542, 401.50

It is not disputed that the applicant granted the Respondent a loan of Kshs.10 million. It is also not in dispute that the Respondent has paid some payment towards repaying the loan. What is in dispute is the interest rate on the loan. The Respondent insists the entire sum of the loan would on 7<sup>th</sup> May, 2018 and the amount being claimed is not due at the moment. The applicant contends that the Respondents admitted that they were indebted to the Plaintiff to the tune of Kshs.10 million but has so far repaid Kshs.4.457 million. The Respondents however dispute the interest rates charged on the loan. The applicant's contention is that dispute on the interest rate does not stop the principal from being paid. The applicant further states that by admitting the debt, it amounts to an admission and hence judgement should be entered on admission as against the Respondents Applicants stated that admission should be plain and obvious .

I note that from the pleadings the Respondents indeed admit their indebtedness and state that they have so far paid some amount. Order 13 Rule 2 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 judgment 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 judgment, as the court may think just.**’

**What is paramount is that admission has to be unequivocal and clear. Plaintiff expressly admitted its indebtedness to the 1<sup>st</sup> Defendant and has not controverted this in the replying affidavit.**

**On the issue of Mr. Obikos supporting affidavit being defective, the ELC Court does not rely on technicalities, Section 13**

In the Plaint I note that the Plaintiff does not deny its indebtedness to the Defendant.

In the case of Mwaura Karuga Vs. Embakasi Ranching Company Ltd (2014) eKLR where Justice Kariuki cited in approval the Case of Milimani Commercial HCC 1158/99 Bullion Bank Limited Versus James Kinyanjui and Anor where Justice Kasango J relied on the authority of Cassam Versus Sachania (1982) KLR 191 which states as follows: ‘ **Judgement on admission cannot be granted where points of law have been raised and where one has to resort to interpretation of documents to reach a decision.**’ In relying on this case and based on the for facts above, I find that the Plaintiffs’ admission in paragraphs 6 read together with paragraph 8 is indeed an **unequivocal and clear** admission that the 1<sup>st</sup> Defendant granted them a loan of Kshs. 10 million and they have so far paid Kshs. 4,457,598.50. In the circumstances, I find that no points of law have been raised to require interpretation of the amount of the principal sum which the Plaintiffs’ have so far paid. I will proceed to enter judgement on admission for the sum of Kshs. 5,542,401.50 , which is the principal amount yet to be paid.

Regarding the question of interest and since this is the issue in contention, I will defer it until it is heard and determined.

The upshot of the matter is that I will allow prayer (1) of the 1<sup>st</sup> Defendant’s application dated 30<sup>th</sup> November, 2016 and while the issue of interest which is contentious, **will abide the outcome of the final judgement.**

Dated, Signed and Delivered in Kajiado this 11<sup>th</sup> day of December 2017

**CHRISTINE OCHIENG**

**JUDGE**