



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sehmi v Henkel Polymer Co Ltd t/a Henkel Chemical (EA) (Cause E299 of 2021) [2023] KEELRC 246 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 246 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E299 OF 2021**  
**JK GAKERI, J**  
**FEBRUARY 2, 2023**

**BETWEEN**

**RABINDER SINGH SEMHI ..... CLAIMANT**

**AND**

**HENKEL POLYMER CO LTD T/A HENKEL CHEMICAL (EA) ... RESPONDENT**

**RULING**

1. This is the claimant/applicant's application dated June 17, 2022 seeking orders that;
  1. The memorandum of response dated May 16, 2022 be and is hereby struck out.
  2. Judgement on admission be entered for the claimant against the respondent for the sum of Kshs 4,600,000/= together with interest thereon as prayed in the memorandum of claim.
  3. Leave be and is hereby granted to the claimant to set the claim down for formal proof hearing.
  4. The costs of this application be provided for.
2. The application is expressed under order 2 rule 15, order 13 rule 2 of the *Civil Procedure Rules*, 2010 and all other enabling provisions of the law and is based on the grounds set out on its face and supported by the Affidavit sworn by Rabinder Singh Semhi dated June 20, 2022.
3. The affiant deposes that he was initially contracted by the respondent as sales and marketing official before assuming the office of General Manager from January 2019 to November 2020 when he resigned by which time the respondent owed him salary arrears of Ksh 4,600,000/= as follows;  
Arrears as at October 31, 2019 Kshs 1,450,000/=  
November 2019 – December 2019 Kshs 500,000/=  
January 2020 – November 2020 Kshs 2,750,000/=



Less part payment in June 2020 Kshs 100,000/=

Total Salary arrears Kshs 4,600,000/=

4. The affiant states that he filed the claim herein by a memorandum of claim dated April 9, 2021 claiming the sum of Kshs 12,150,000/= and a certificate of service.
5. That paragraphs 5 (ii) and (iii) of the statement of response admit that his salary was not paid.
6. That by an internal memo dated December 5, 2019, the respondent admitted that the claimant's salary was in arrears between May and November 2019 at Kshs 1,450,000/=.
7. That the Human Resource was in-charge of generating the payroll for all employees contrary to the respondent's averments in the statement of response.
8. That since the respondent had admitted failure to honour its obligations, it was fair and just that judgement be entered on admission.
9. That the statement of response on record consisted of mere denials and did not disclose any bona fide issues for trial nor respond to the specific issues raised by the memorandum of claim and there was no hope of injecting life in it even through an amendment and it was in the interest of justice that the application be granted as prayed.

#### **Respondent's Case**

10. In its grounds of opposition dated July 4, 2022, the respondent stated that the application is premised provisions of the [Civil Procedure Act](#) and rules and the rules do not apply to proceedings in this court.
11. That the summary procedure proposed by the applicant was un contemplated by the rules governing the court.
12. It is the respondent's case that article 50(1) of the [Constitution](#) of Kenya, 2010 entitles a party to a suit to a hearing of the suit on merit and no admission as contemplated by the law had been made and parties had issues to be ventilated.
13. The respondent prays for dismissal of the application with costs.

#### **Claimant/Applicant's Submissions**

14. The singular issue for determination according to the applicant was whether judgement on admission should be entered for the claimant against the respondent as provided by order 13 rule 2 of the [Civil Procedure Rules](#).
15. Reliance was made on the sentiments of Madan JA (as he then was) in [Choitram V Nazari](#) (1984) KLR 327 to urge that admission need not be in the pleadings. It could be in correspondences or documents.
16. That the words "or otherwise" in order 13 rule 2 were of general application and sufficiently extensive in scope.
17. Counsel submitted that paragraphs 5(ii) and (iii) of the memorandum of response were an admission that the claimant's salary was not paid as evidenced by the internal memo dated December 5, 2019 to the claimant.
18. The court was urged to enter judgement for the claimant for Kshs 1,450,000/= on the finding that the respondent admitted the amount as owing.



19. Reliance was made on the decision in *Mark Gitbui Wachira V Seven Seas Technologies Group Ltd* (2021) eKLR where Ndolo J allowed the application for judgement on admission in an employment cause.
20. It was submitted that the court had jurisdiction to grant the orders sought.

### **Respondent's Submissions**

21. The respondent's counsel submitted that the application was grounded on provisions of the *Civil Procedure Act* and rules not applicable to proceedings under the court.
22. The decision in *Prisca Jepngetich V Generation Career Readiness Social Initiative Ltd* (2021) eKLR was relied upon to buttress the submission that the applicant had invoked wrong procedural rules.
23. It was further submitted that the *Civil Procedure Act* applies to specific matters and the application herein was not one of them. That it was applicable in relation to execution of the decree or order.
24. Reliance was also made on the sentiments of Manai J in *Fredrick Yaa Charo V County Government of Kilifi* (2021) eKLR.
25. Counsel submitted that the respondent raised pertinent issues that ought to be heard.
26. The court was urged to determine whether it had jurisdiction to determine the application and whether there was a clear admission by the respondent.
27. The court was further urged to dismiss the application.

### **Determination**

28. The singular issue for determination is whether the application is merited.
29. Before delving into the issue, it is essential to dispose of the critical issue of jurisdiction of the court regarding the application of the *Civil Procedure Act* and the *Civil Procedure Rules*, 2010. It requires no gainsaying that there are two schools of thought. Without rehashing the positions and justifications, this court is persuaded that it has the jurisdiction to make the orders sought. (See *Mark Gitbui Wachira V Seven Seas Technologies Group Ltd* (2021) eKLR.
30. It is common ground that the application herein is grounded on order 2 rule (15) and order 13 rule (2) of the *Civil Procedure Rules*, 2010.
31. 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 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.”
32. In *Choitram V Nazari* (Supra), Madan JA (as he then was) stated as follows;  

“Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgement 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.”



33. The applicant relies on paragraph 5(i), (ii) and (iii) of the respondent’s memorandum of response to urge that the respondent admitted certain facts.
34. Paragraph 5 states as follows;
- i. The claimant as General Manager of the respondent had the sole responsibility of preparing and processing payroll for the staff of the respondent.
  - ii. In preparation of the payroll, the claimant refused and/or neglected for his own ulterior motive to add his name to the payroll stating that he could not pay himself before he pays his staff; and
  - iii. Similarly, the claimant as the General Manager and in charge of payroll refused, abandoned and/or neglected for his own ulterior motive to remit statutory deductions belonging to him to the various government agencies.
35. According to the applicant, these foregoing paragraphs are an admission by the respondent that the claimant was not paid both the claimed salary and he did not remit statutory deductions.
36. Applying the test in *Choitram V Nazari (Supra)* as well as *Guardian Bank Ltd V Jambo Biscuits Kenya Ltd*, that the admission must be very clear and unequivocal on a plain perusal, and does not require copious interpretation or material to discern or magnifying glass, the foregoing three sub-paragraphs of paragraph 5 of the memorandum of response do not constitute an unambiguous admission of facts as submitted by the applicant.
37. However, the respondent’s internal memo to the applicant dated December 5, 2019 was an admission that the sum of Kshs 1,450,000/= was owing and the applicant signed as his acknowledgement that that was the true state of affairs.
38. The court is persuaded that it ought to exercise its discretion in favour of the applicant. Whereas other claims could await a hearing, the sum of Kshs 1,450,000/= was admitted as owing to the applicant and requires no further proof.
39. This reasoning finds support in *Synergy Industrial Credit Ltd V Oxyplus International Ltd & 2 others (Supra)* as follows;
- “The scope of the rule is that in a case where admission of fact has been made by either of the parties in pleadings whether orally or in writing or otherwise, the judgement to the extent of the admission can be granted on the application or as the court may think just. Where a claim is admitted, the court has jurisdiction to enter a judgement for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable the party to obtain a speedy judgement at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled . . . The rule should apply whenever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed. . .
- . . . It is clear that it is open to the court to base a judgement on admission on the pleadings or otherwise. The word “otherwise” in the said provision clearly indicates that it is open to the court to base the judgement on statements made by a party not only in the pleadings but also de hors (meaning other than, not including or outside the scope of) the pleadings. Such admissions may be either express or constructive.
40. The court is guided by these sentiments.



41. In its internal memo dated December 5, 2019, addressed to the applicant, the respondent clearly and unambiguously admitted owing the applicant the sum of Kshs 1,450,000/= salary arrears as at the end of November 2019 and the applicant confirmed by appending his signature on December 25, 2019.
42. The upshot of the foregoing is that the applicant's application dated June 17, 2022 is allowed in terms of Prayer No 2 and judgement is entered in his favour as against the respondent in the sum of Kshs 1,450,000/=.
43. Costs shall be in the cause.  
Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 2ND DAY OF FEBRUARY 2023**

**DR. JACOB GAKERI**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

