



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. E515 OF 2020

JOSEPHINE KARIMI MIRERO.....CLAIMANT

VERSUS

BRAND WORLD COMMUNICATIONS LIMITED.....RESPONDENT

RULING

1. The Claimant/Applicant herein seeks through her notice of motion application dated 24th March 2020 for judgment on admission against the Respondent for the sum of Kshs. 458,128/- together with interest at court rates. The Respondent is opposed and filed a replying affidavit sworn by the Respondent's human resources manager Rose Nyambura on 24th September 2020. The issues that present themselves for determination is whether there is authority for this Court to enter judgment on admission.
2. The Claimant in submissions filed asserts that the issues for determination are
 - (a) Whether there is an express and/or implied admission of fact by the Respondent;
 - (b) Whether there is evidence of payment by the Respondent;
 - (c) Whether one Rose Nyambura is competent to swear the Replying Affidavit on behalf of the Respondent.
3. She submits that the motion is brought under Order 13 Rule 2 of the Civil Procedure Rules 2010 which essentially provides that

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 admissions 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.

The Claimant submits that it is well settled that for one to succeed on an application for judgment on admission, the admission by the defendant must be unequivocal. It must be plain and obvious as outlined in the case of **Cassam v Sachania [1982] KLR 191** and followed in the decision of **Choitram v Nazari [1984] KLR 327** where Madan JA (as he then was) stated that *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.* Chesoni Ag. JA (as he then was) in the same decision stated that *an admission is clear if the answer by a bystander to the question whether there was an admission of facts would be 'of course there was'.* The Claimant submitted that she relies on the admissions made by the Respondent through its letter to her dated 20th March 2019. She submitted that the Respondent through the said letter admitted that it owes her the sum of Kshs. 458,128/- which amount has not been paid. The Claimant submitted that the Respondent through its Human Resource Manager is alleging it made some payments to the Claimant. She submits that the evidential burden shifts to the Respondent to prove that indeed it made payments as alleged considering the fact that the payment schedule as provided is not conclusive proof of payment and neither can the same be admitted in Court. The Claimant relied on Sections 107 and 109 of the Evidence Act to assert that he who alleges must prove and the burden of proof as to any particular fact lies on the person who wishes the court to believe its existence. She cites Section 112 of the Evidence Act which relates to proof of facts within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him. The Claimant cited the case of **Vivo Energy Kenya Limited (Initial Party Kenya Shell Limited) v George Karunji [2014] eKLR** where the Court cited with approval the case of **Eastern Produce (K) Ltd v James Kipketer Ngetich [2005] eKLR** held

“Having revaluated the evidence on record I find that the respondent, did not produce the initial medical chits to show that he had actually been injured and then treated at the appellants dispensary on the day when he claims to have sustained the injuries. In my

mind, lack of such evidence should have raised doubts in the trial Magistrates mind, who should have found that there was no sufficient proof that the respondent was injured while at work as he had alleged.”

4. The Claimant submitted that Rose Nyambura is not competent to swear the Replying Affidavit on behalf of the Respondent as she was not the Human Resources Manager at the time of the Claimant’s employment and termination of her employment. She submitted that the Human Resources Manager at the time of her employment was one Maureen Mutia who has since left employment with the Respondent.

5. The Respondent’s Replying Affidavit sworn in opposition to the Claimant’s notice of motion is sworn by one Rose Nyambura who avers that she is the Respondent’s Human Resource Manager. She asserts that she is competent to make the affidavit. In its submissions, the Respondent argues that based on the schedule of payments annexed to the Respondent’s Replying Affidavit dated 24th September 2020, undisputed indebtedness to the Claimant is Kshs. 407,024/- and since no other inference may be made or determined therefrom, the Respondent submits that the balance of the claim proceeds to trial.

6. The Claimant has sought entry of judgment for a sum of Kshs. 458,128/- which she asserts has been admitted by the Respondent. The Respondent in its defence only admits it owes the Claimant some sums which it has been unable to pay due to harsh economic times. However, in the Replying Affidavit by Rose Nyambura the Human Resources Manager of the Respondent, who by the way is the competent person to swear the affidavit, states that the Respondent is indebted to the Claimant in the sum of Kshs. 407,024/-. The Claimant cannot cherry pick who can swear the Replying Affidavit as requiring an employer to get only the HR manager who worked when the Claimant was dismissed is not only ridiculous but incomprehensible. If that were the case then the alleged admission would not be in existence as the wrong person admitted the Respondent owes the Claimant some money.

7. As there is an admission to a sum of Kshs. 407,024/- being arrears due to the Claimant I enter judgment on admission for Kshs. 407,024/-. The balance of the claim shall be subject to formal proof which shall be fixed for hearing immediately after this Ruling.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY 2021

Nzioki wa Makau

JUDGE