



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO E576 OF 2021

MARK GITHUI WACHIRA.....CLAIMANT

VS

SEVEN SEAS TECHNOLOGIES GROUP LIMITED.....RESPONDENT

RULING

1. By his application brought by Notice of Motion dated 8th July 2021, the Claimant asks the Court to enter judgment on admission, in his favour as against the Respondent, in the sum Kshs. 4,542,417.08.
2. The application is supported by the Claimant's own affidavit and is based on the following grounds:
 - a) The Claimant was employed by the Respondent on 21st July 2016 as Chief Technical Officer, earning a basic monthly salary of Kshs. 485,000;
 - b) On 30th September 2019, the Claimant was dismissed from employment by the Respondent, without any legal justification or sufficient notice;
 - c) The Claimant instituted the claim herein, seeking *inter alia*; compensation for unfair and/or unlawful dismissal from employment, his twelve months' salary, three months' wages in lieu of notice, unpaid leave and redundancy severance pay;
 - d) The Respondent, in its letter dated 7th January 2020, unequivocally admitted owing the Claimant the sum of Kshs. 4,542,417.08 as his terminal benefits, less statutory deductions;
 - e) The Respondent promised that in the event that the project funding for the National Government automation project is concluded, any outstanding amounts as at then shall be paid to the Claimant;
 - f) Despite the Respondent's undertaking and/or promise, it has to date refused, ignored and/or failed to honour its undertaking;
 - g) The said admission is clear and unambiguous;
 - h) Pursuant to the foregoing, this Court should first award the Claimant the said amount together with interest at court rates, before the claim herein is set down for hearing and determination of the remaining issues;
 - i) It is in the interest of justice that the relief sought herein be granted;
 - j) This Court has jurisdiction and inherent powers to make such orders as may be necessary and fair in the circumstances.
3. The Respondent's response to the Claimant's application is by way of a replying affidavit sworn by its Chief Executive Officer, Michael Kingo'ri Macharia on 14th September 2021.
4. Macharia admits that the sum of Kshs. 4,542, 417.08 is due from the Respondent to the Claimant as final dues.
5. Macharia states that the Respondent has not paid the said amount to the Claimant due to financial constraints and proposes settlement in monthly instalments of Kshs. 50,000 each.

6. The Claimant filed a further affidavit sworn on 13th October 2021, in which he accuses the Respondent of material non-disclosure regarding its financial position, asset base and sources of income.

7. In response, Macharia filed his own further affidavit sworn on 17th November 2021, stating that the Claimant was aware of the Respondent's cash flow challenges. He adds that a payment plan was to be discussed with the Claimant.

8. The law is well settled that judgment on admission is to be entered only in cases where there is clear and unambiguous admission.

9. The Claimant relied on the case of *Cassam v Sachania [1982] KLR* where **Potter JA** stated:

“The judge’s discretion to grant judgment on admission of fact...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.”

10. In the subsequent decision of *Choitram v Nazarani [1984] KLR 327*, **Madan JA** (as he then was) rendered himself thus:

“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.”

11. The foregoing position was restated in *Express Automobile Kenya Limited v Kenya Farmers Association Limited & another [2020] eKLR* cited by the Respondent.

12. In its letter dated 7th January 2020, addressed to the Claimant, the Respondent clearly and unequivocally admits owing the Claimant the sum of Kshs. 4,542,417.08, being service pay and salary arrears up to 7th January 2020. This admission is reiterated in the replying affidavit sworn by the Respondent's Chief Executive Officer, Michael Kingo'ri Macharia.

13. Indeed, the only ground advanced by the Respondent in opposition to the Claimant's application for judgment on admission, is its stated cash flow challenges which would affect its ability to satisfy the judgment sum. To my mind, this is a separate issue to be addressed by the parties and cannot impede entry of judgment on admission. At any rate, the Respondent has not made any single payment towards liquidating the admitted sum.

14. In the end, I allow the Claimant's application and enter judgment on admission in his favour as against the Respondent in the sum **Kshs. 4,542,417.08**.

15. The said amount will attract interest at court rates from the date of this ruling until payment in full.

16. The Respondent will pay the costs of this application.

17. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF DECEMBER 2021

LINNET NDOLO

JUDGE

Appearance:

Mr. Mayende for the Claimant

Miss Muthoka for the Respondent