



**Wachira t/a Paddy Distributors & another v Synergy Industrial  
Credit Limited & 3 others (Commercial Case E698 of 2021)  
[2025] KEHC 1379 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1379 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E698 OF 2021  
PM MULWA, J  
FEBRUARY 27, 2025**

**BETWEEN**

**JOYCE WANGUI WACHIRA T/A PADDY DISTRIBUTORS ..... 1<sup>ST</sup> PLAINTIFF**

**SYNERGY INDUSTRIAL CREDIT LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SYNERGY INDUSTRIAL CREDIT LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**FREEMAN AUCTIONEERING SERVICES ..... 2<sup>ND</sup> DEFENDANT**

**JOYCE WANGUI WACHIRA T/A PADDY DISTRIBUTORS ... 3<sup>RD</sup> DEFENDANT**

**PATRICK NTHIGA MVUNGU ALIAS GEORGE KAMANDE . 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff in the counterclaim (Synergy) has filed the Notice of Motion dated 20<sup>th</sup> August 2021 made under Sections 1A and 3A of the *Civil Procedure Act* and Order 13 Rule 2 of the *Civil Procedure Rules* seeking judgment on admission in its favour for an admitted sum of Kshs. 190,000,000.00 against the Defendants in the counterclaim together with costs of the application and the counterclaim. The application is supported by the grounds on its face and the supporting affidavit of Jacob Mbae Meeme, Synergy's Legal Officer, sworn on 20<sup>th</sup> August 2021.
2. In opposition, the 1<sup>st</sup> Defendant in the counterclaim (Joyce) filed the Notice of Preliminary Objection dated 23<sup>rd</sup> November 2021 and her replying affidavit sworn on 21<sup>st</sup> September 2022. Synergy responded to the Objection through the Grounds of Opposition dated 24<sup>th</sup> November 2021. The application was disposed by way of written submissions which are on record and which I have made reference to in my analysis and determination.



## The Application

3. Synergy states that its counterclaim is for a monetary claim of Kshs. 199,555,568.00 as at 30<sup>th</sup> June 2021 plus among others; late payment charges and the balance of an outstanding loan that the Defendants in the counterclaim have refused, failed and neglected to pay. That these Defendants have admitted indebtedness to Synergy through various letters and correspondences more expressly by their Letter to Synergy dated Friday, 28<sup>th</sup> May 2021 wherein they clearly, unequivocally and unambiguously admitted owing Synergy Kshs. 190,000,000.00 and as such, entering Judgment on Admission is the only fair and just thing to do.
4. Synergy avers that despite the unequivocal admission, the Defendants in the counterclaim have not endeavoured to settle the admitted sum but have instead instituted this suit to fetter Synergy's right of equity and redemption under Hire Purchase Agreements. That the Defendants in the counterclaim are truly and justly indebted to Synergy at the commencement of this suit and are still indebted to it to-date. Synergy urges that it is only just and fair that the orders sought are granted as nothing is to be gained at the trial since the admission is plain and obvious and that it will be prejudiced by the continued refusal by the Defendants in the counterclaim to pay the sums due and owing.

## Joyce's Response

5. In response, Joyce first attacks the competence of the application by stating it has not complied with provisions of Order 4 Rule 1(4) (5) and (6) of the Civil Procedure Rules to the extent that the deponent of the affidavits has not exhibited any authority under seal to do so and that the Affidavits aforementioned further offend the provisions of Section 37 (2) of the Companies Act. On the merits of the application, Joyce accuses Synergy of material non-disclosure and argues that the application lacks merit, is vexatious and is a waste of the Court's time and thus, it ought to be dismissed. Joyce states that she is the sole proprietor of Paddy Distributors and as such, she is the only one mandated to bind herself to any contract or agreement and that third parties cannot purport to act on her behalf. She claims that Synergy has not annexed any evidence to indicate that she had derogated her authority to be bound by a contract she did not sign.
6. Given the above, she states that it came as a surprise when Synergy instituted the instant application premised on a purported letter dated 28<sup>th</sup> May 2021, which she did not sign and claims to be a stranger to. She states that she has at no time admitted to owing Synergy the sum of Kshs. 190,000,000.00 and/or outstanding arrears of Kshs. 195,183,192.00 as alleged. Joyce depones that the present suit seeks to dispose of the present suit without the hearing of the parties' witnesses hence condemning her unheard and she believes that granting Synergy the orders sought in the application will be prejudicial to her.

## Analysis and determination

7. Before dealing with the substance of the application, let me first deal with Joyce's Objection that the deponents of Synergy's affidavits have not exhibited any authority under seal to do so and that the same have not been validly executed as per Section 37(2) of the Companies Act. Without belaboring on this so much, I am in agreement with Synergy's response that this objection is not a pure point of law capable of disposing of the counterclaim without a reference to facts and evidence as espoused in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696.
8. This court has always stated time without number that the absence of evidence of a board resolution or authority to swear an affidavit is a curable defect and that there is no requirement in the Civil Procedure Rules that an authority to file suit must be filed or that it cannot be produced at a subsequent date [see First Community Bank Limited v Cecil G. Miller t/a Miller & Company Advocates [2021] KEHC



284 (KLR) and *Leo Investments Limited v Trident Insurance Company Limited* [2014] KEHC 8664 (KLR)].

9. In any event, Synergy's deponent has stated that he has authority from Synergy to swear the affidavit and there is no evidence produced by Joyce stating otherwise. This buttresses my earlier holding that this objection required the court to comb through facts and evidence and negates the whole point of a Preliminary Objection. The objection dated 23<sup>rd</sup> November 2011 therefore fails and is dismissed.
10. Turning to the substance of the application, the court is being called to determine whether Synergy has made out a case for judgment on admission. It is not in dispute that such a prayer is anchored under Order 13 Rule 2 of the Rules, which states 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.”
11. Synergy has rightly submitted that the jurisprudence relating to applications made for judgment on admission was set out in the case of *Choitram v Nazari* [1984]KLR 327 where Madan JA., stated as follows :

“For the purpose of Order XII Rule 6, admission can be expressed 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.”
12. In the same judgment, Chesoni Ag. JA, stated:

“Admissions of fact under Order XII rule 6 need not be on the pleadings. They may be in correspondence or documents which are admitted or they may even be oral. The rules used words “otherwise” which are words of general application and are wide enough to include admission made through letters, affidavits and other admitted documents and proved oral admissions...It is settled that a judgment on admission is in the discretion of the court and not a matter of right that discretion must be exercised judicially.”
13. Synergy has stated that the letter of 28<sup>th</sup> May 2021 lays out the admission by Joyce as she apparently acknowledged a debt of Kshs. 190 million. This letter has been discredited and discounted by Joyce as she said she did not sign the same and that her business is a sole proprietorship and that no one other than her is authorized to write letters on behalf of the business. I have gone through the said letter and it is indeed correct that the body of the letter expressly acknowledges a debt of Kshs. 190 million and it is also correct that the same is not signed by Joyce but by the 2<sup>nd</sup> Defendant in the counterclaim, George Kamande. The letter is also handwritten and is under the letterhead of the business, Paddy Distributors. It is also not denied that as per the Certificate of Registration of a Change of Particulars annexed in Joyce's deposition, the Business is solely in the name of Joyce.
14. At this point, I must confess that questions are abound as to the binding nature and legal effect of this letter. Who is the 2<sup>nd</sup> Defendant in the counterclaim to Joyce's Sole Proprietorship business? Are they partners? If so, does the principle of ostensible or apparent authority or agency apply to their partnership even though the business is registered as a sole proprietorship? Did the 2<sup>nd</sup> Defendant in



the counterclaim possess implied or express authority to author the said letter or was his authority limited? These questions more than not qualifies the letter and makes it an ambiguous admission and invites the court to seek for answers, which can only be found at trial.

15. I am in agreement with Joyce’s submission that Mativo J., (as he then was) in *Synergy Industrial Credit Limited v Oxyplus International Limited, Amit Kumar Aggarwal & Panna Dilip Chauhan* [2021] KEHC 13344 (KLR) urged caution in applying Order 13 Rule 2 on admissions as follows:

“ 26. It may not be safe and correct to pass judgment under Order 13 Rule 2 when a case involves disputed questions of fact and law which require adjudication and decision. Even when a party has made an admission, the court need not dismiss or allow the suit. Where questions of law and fact have been raised, which can be decided only at the time of trial, a judgment under Order 13 Rule 2 cannot be pronounced on the basis of alleged admissions in the written statement.

27. In an application for judgment on admission, the general rule is that the pleadings are to be read as a whole; admissions in pleadings cannot be dissected. The court is vested with jurisdiction to pass a decree on admission on the strength of the principle that admitted facts need not be proved and as such admissions can be considered as substantive evidence on which a decree can be passed. However, notwithstanding the admission, the court may still require the plaintiff to prove the facts pleaded in the plaint.”

16. I am of the view that this case requires further interrogation at a full hearing where the parties will have an opportunity to cross-examine each other about the effect, veracity, credibility and weight of the impugned letter of 28<sup>th</sup> May 2021 and thereafter, the court can be able to make an informed determination as to whether the Defendants in the counterclaim admittedly owe Synergy the sum of Kshs. 190 million. As such, judgment on admission cannot be entered under the circumstances herein.

### **Disposition**

17. In the foregoing, the application dated 20<sup>th</sup> August 2021 has no merit and is dismissed. The Notice of Preliminary Objection dated 23<sup>rd</sup> November 2021 is also dismissed. There shall be no order as to costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI**

**THIS 27TH DAY OF FEBRUARY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Ms. Kyalo h/b for Mr. Wachira for Plaintiff/respondent

Mr. Meeme for 1<sup>st</sup> Defendant/applicant

Court Assistant: Carlos

