



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chege v Mugoya (Commercial Case E016 of 2020)**  
**[2025] KEHC 11704 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11704 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**COMMERCIAL CASE E016 OF 2020**

**MN MWANGI, J**

**JULY 31, 2025**

**BETWEEN**

**JOHN NJUGUNA CHEGE ..... PLAINTIFF**

**AND**

**JAMES ISABINYE MUGOYA ..... DEFENDANT**

**RULING**

1. The plaintiff filed a Notice of Motion application dated 8<sup>th</sup> March 2024 pursuant to the provisions of Order 13 Rule 2 and Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A, 1B & 3A of the *Civil Procedure Act* and all other enabling provisions of the law. The plaintiff prays for orders that judgment on admission for Kshs.29,000,000/= and be entered against the defendant based on the defendant's admission in his witness statement dated 7<sup>th</sup> June 2021.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. John Njuguna Chege, the plaintiff herein. He averred that he was engaged by the defendant to perform excavation and related works at a construction site in South C, but the defendant failed to pay the agreed sum, leading to the filing of this suit seeking recovery of Kshs.62,914,027/= due to him from the defendant. Mr. Chege asserted that the defendant in his witness statement dated 7<sup>th</sup> June 2021 admitted to owing him Kshs.29,000,000/= and proposed to settle it through barter trade and sought for dismissal of this suit to allow for settlement as per their barter trade agreement. He contended that this is an express admission of debt and seeks judgment on admission for Kshs. 29,000,000/=
3. In opposition to the application, the defendant filed a replying affidavit sworn on 18<sup>th</sup> June 2024 by Mr. James Isabinye Mugoya. He averred that the plaintiff was verbally engaged to perform site excavation and backfilling services at a property in South C, payment of which was to be made via



- a barter system, specifically, crushed stones from Katani Quarry. Mr. Mugoya denied that he refused to pay the plaintiff and insisted that he acted in good faith to fulfill his obligations. He disputed the plaintiff's interpretation of his witness statement and stated that he does not admit to owing the plaintiff Kshs.29,000,000/=.
4. He contended that his witness statement described an intended barter-based property transfer but the plaintiff rejected the property offer and demanded more than originally agreed. He stated that one of the properties became encumbered, rendering the offer unviable. Mr. Mugoya averred that the Kshs.29,000,000/= figure was not an express debt but an estimate of the property value. He averred that quarry operations have since resumed, allowing the original barter arrangement to continue. He asserted that there is a genuine dispute over the amount owed and there is no clear admission justifying judgment on admission.
  5. The application herein was canvassed by way of written submissions. The plaintiff's submissions were filed on 30<sup>th</sup> October 2024 by the law firm of Adera & Kenyatta Advocates, whereas the defendant's submissions were filed on 6<sup>th</sup> November 2024 by the law firm of Diro Advocates LLP.
  6. Mr. Kenyatta, learned Counsel for the plaintiff cited the provisions of Order 13 Rule 2 of the Civil Procedure Rules, 2010, and the case of Choitram v Nazari [1984] eKLR 327, and submitted that Courts must carefully examine pleadings to determine if there are no specific denials or refusals to admit facts. He further submitted that admissions of fact are not limited to pleadings, they can also be made through correspondence, documents, or orally. Counsel relied on the decisions made in Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others [2021] eKLR and TSS Investments Ltd v Blackstone Trading Company Ltd [2022] eKLR, and argued that a clear and unequivocal admission of fact is binding, and the party benefiting from it need not prove the fact, and the party who made the admission cannot later present evidence to dispute it. He asserted that the defendant has made a clear and unequivocal admission in his pleadings, which when viewed objectively, leaves no room for doubt.
  7. Mr. Diro, learned Counsel for the defendant also referred to the provisions of Order 13 Rule 2 of the Civil Procedure Rules, 2010, and cited the case of Cassam v Sachania [1982] KLR 191 and submitted that whenever the Court is seized with such an application, it must determine if there is a clear and unequivocal admission of facts and/or whether there are serious questions of law or fact to be argued. He asserted that judgment on admission is discretionary and not a right, thus the power to enter it must be exercised judiciously and guided by justice, and fairness.
  8. Mr. Diro relied on the case of Synergy Industrial Credit Limited Versus Oxyplus International Limited & 2 others (supra) and submitted that the pleadings in this suit reveal serious legal and factual issues that require to be determined on merits rather than being resolved through an interlocutory application. He asserted that the defendant's response to the instant application denies any clear admission of debt and confirms that the amount owed remains disputed. Counsel contended that since the payment agreement via barter trade has not been varied, the plaintiff has not shown a clear and unequivocal admission to justify judgment on admission.

### **Analysis and Determination.**

9. I have considered the instant application, the grounds on the face of it, and the affidavit filed in support thereof. I have also considered the replying affidavit by the defendant, as well as the written submissions by Counsel for the parties. The issue that arises for determination is whether the judgement on admission for the sum of Kshs.29,000,000.00 should be entered against the defendant.



10. Judgment on admission is provided for under the provisions of Order 13 Rule 2 of the Civil Procedure Rules, 2010, which states as hereunder –

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. The jurisprudence relating to applications for judgment on admission was set out by the Court in the case of *Choitram v Nazari* (supra) 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. (Emphasis added).

12. In the same judgment, Chesoni Ag. JA made the following observation -

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 letter, 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. (Emphasis added).

13. In order for judgment on admission to be entered, the alleged admission must not only be clear but also unequivocal. In the instant application, the plaintiff seeks an order for judgment on admission in the sum of Kshs.29,000,000/= on grounds that the defendant in his witness statement dated 7<sup>th</sup> June 2021 admitted to owing the plaintiff Kshs.29,000,000/=, proposed to settle it through barter trade and sought for dismissal of this suit to allow for settlement as per their barter trade agreement. The defendant in opposition to the application herein denied that he refused to pay the plaintiff and disputed the plaintiff’s interpretation of his witness statement. He denied owing the plaintiff Kshs.29,000,000/= and contended that his witness statement described an intended barter-based property transfer but the plaintiff rejected the property offer and demanded more than originally agreed.

14. In determining the instant application, I find it appropriate to reproduce the pertinent portions of the defendant’s witness statement dated 7<sup>th</sup> June 2021–

...So, the Plaintiff was verbally requested to organize the removal of black-cotton soil and backfill with hardcore at Plot: 209/10211, Nairobi, South C in which I had an interest. The Plaintiff quoted the following rates inclusive VAT:

\* Excavation of Black Cotton Soil including carting away and dumping - KES500/ m3.

\* Hardcore/Murram delivery - KES770/ m3

\* Spreading and Compaction - KES150/m2 (although this was never done by the Plaintiff)

Payment to the Plaintiff was again agreed to be by way of a barter system involving the usual crushed stone from the Katani Quarry at a rate of KES650.00 plus VAT ex-Quarry.



Subsequently, work started on both fronts. Black Cotton Soil was removed, hardcore was brought back and the spreading/compaction were simultaneously carried out by ourselves. Transfleet Limited equally joined in the bringing from our Embakasi Site about 30% of the back-filling that was needed. In the middle of all these activities there were plenty of disturbances and distractions from the neighbors using both the Kenya Police and the Nairobi City County officials.

Further, at the quarry whose the crushed stones were expected to be carried away by the Plaintiff and/or his agents, we experienced equipment breakdowns and some labour unrests. This led me to temporarily shut-down the quarry for a few weeks. This action led to the disruption of the carrying away of the crushed stone by the Plaintiff as per our arrangement. At this point in time, the Plaintiff had already collected KES 6,510,257.00 + VAT worth of crushed stones.

As a result of the above, I offered, out of goodwill, to transfer to the Plaintiff some properties belonging to the group of companies I am associated with so as to accelerate the rate of compensating him for his work at the South C site. The following properties were offered and accepted:

- \* Nairobi/Block 103/434, Nairobi, South C - Transfer Value: KES 19,000,000.00
- \* 12715/7002, Mavoko Sub-County, Syokimau - Transfer Value: KES 2,500,000.00 |
- \* 12715/7025, Mavoko Sub-County, Syokimau - Transfer Value: KES 2,500,000.00
- \* 12715/7032, Mavoko Sub-County, Syokimau - Transfer Value: KES 2,500,000.00
- \* 1271/7033, Mavoko Sub-County, Syokimau - Transfer Value: KES 2,500,000.00

All these properties were meant to off-set KES 29,000,000.00 from the monetary value of the Plaintiff's activities at Plot: 209/10211, Nairobi. According to our agreement, the transfers of all the properties were to be handled by Gladys Gichuki Associates Advocates on payment of all the expenses involved by the Plaintiff.

....

I therefore pray that this suit be dismissed with costs to allow me to settle the amounts owing to the Plaintiff as per our initial barter arrangement to which we mutually agreed.

15. From the foregoing excerpts of the defendant's witness statement, it is evident that there is no dispute regarding the fact that the defendant engaged the plaintiff to carry out excavation and related works at a construction site in South C, and that the plaintiff performed those works. It is however noteworthy that while the defendant maintains that the parties had agreed on a payment arrangement through a barter system, specifically involving the supply of crushed stone from the Katani Quarry at a rate of Kshs. 650/= plus VAT ex-Quarry, he was unable to fulfill this arrangement. This was due to equipment breakdown and labour unrest at the quarry, which hindered the plaintiff's ability to collect the crushed stone, ultimately leading to a temporary shutdown of the quarry.
16. The defendant in his witness statement contends that before the said quarry was shut down, the plaintiff had already collected crushed stones worth Kshs.6,510,257/= plus VAT, and in a bid to hasten the plaintiff's compensation, the defendant offered to transfer some properties belonging to the group of companies he is associated with to the plaintiff. This Court however disagrees that this offer was merely an act of goodwill and is of the finding that the plaintiff having executed and/or carried out the works he was engaged to do by the defendant, the latter had a duty to ensure that the plaintiff was paid for the completed work whether through the barter system, property transfer, or cash payment.



17. It is significant to note that the defendant indicated the properties he intended to transfer to the plaintiff as compensation for the work done, had a total value of Kshs.29,000,000/=. He further stated that these properties were meant to offset Kshs.29,000,000/= owed to the plaintiff by him. Considering this and the defendant's assertion that transfer of the said properties was intended to cover all expenses incurred by the plaintiff, I am inclined to agree with the plaintiff that the defendant in his witness statement dated 7<sup>th</sup> June 2021 admitted to owing the plaintiff Kshs.29,000,000/=.
18. I am therefore persuaded that the contents of the defendant's witness statement dated 7<sup>th</sup> June 2021 amount to a clear, obvious and an unequivocal admission of the defendant's indebtedness to the plaintiff, to warrant this Court to enter judgment in admission in favour of the plaintiff as against the defendant.
19. I am therefore persuaded that the plaintiff has made out a case to warrant being granted the orders sought herein.
20. The upshot is that the instant application is merited. I hereby make the following orders –
- i. Judgment on admission for the sum of Kshs.29,000,000/= is hereby entered against the defendant based on the defendant's admission in his witness statement dated 7<sup>th</sup> June 2021; and
  - ii. Costs of the application herein shall be borne by the defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 31<sup>ST</sup> DAY OF JULY 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:-

Mr. Kenyatta for the plaintiff/applicant

Mr. Oriasi for the defendant/respondent

Ms B. Wokabi – Court Assistant.

