



Diamond Trust Bank Kenya Limited v Cheyne Row Investments Limited & 3 others; Replay Trading Limited (Proposed Interested Party) (Commercial Case E417 of 2022) [2025] KEHC 11632 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11632 (KLR)

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

COMMERCIAL CASE E417 OF 2022

AA VISRAM, J

JULY 31, 2025

CHEYNE ROW INVESTMENTS LIMITED.....PLAINTIFF

AND

DIAMOND TRUST BANK KENYA LIMITED...DEFENDANT

AND

(BY WAY OF COUNTERCLAIM)

BETWEEN

DIAMOND TRUST BANK KENYA LIMITED PLAINTIFF

AND

CHEYNE ROW INVESTMENTS LIMITED 1ST DEFENDANT

MUKESH MEGHJI SHAH 2ND DEFENDANT

DHRUPUN SUDHIR SHAH 3RD DEFENDANT

KAMAL L SHAH 4TH DEFENDANT

AND

REPLAY TRADING LIMITED PROPOSED INTERESTED PARTY

RULING

Introduction and Background

1. Before the Court is a Notice of Motion dated 22nd January, 2025, filed by the Plaintiff in the counterclaim, Diamond Trust Bank Kenya Limited (“DTB”), seeking judgment on admission based



on a Deed of Settlement dated 28th December, 2023, and for the matter to be marked as fully settled, with each party bearing its own costs.

2. The Application is supported by affidavits sworn by Faith Ndonga, DTB's Legal Manager, dated 22nd January, 2025, and 13th March, 2025. It is brought pursuant to Article 159(2)(c) of the Constitution, sections 59C, 1A, 1B, and 3A of the Civil Procedure Act, and Order 13 Rule 2 of the Civil Procedure Rules.
3. The Plaintiff in the main suit, Cheyne Row Investments Limited ("Cheyne"), opposes the Application through a Replying Affidavit sworn by Mukesh Shah on 3rd March, 2025. The 2nd to 4th Defendants to the counterclaim have similarly opposed the Application via a Replying Affidavit sworn by the same Mukesh Shah on 4th April, 2025.

DTB's Submissions

4. DTB argues that under Order 13, rule 2 of the Rules, judgment on admission can be entered at any stage of a suit where there is an admission of facts. It also relies on Article 159(2)(c) of the Constitution, which promotes alternative dispute resolution (ADR), and Section 59C of the Civil Procedure Act, which provides that any settlement reached through ADR is enforceable as a judgment of the Court.
5. DTB contends that a valid Deed of Settlement was executed on 28th December, 2023. Cheyne had initially sought a declaration that debits of Kshs. 43,594,723.84/- were unlawful and requested a refund. DTB filed a Defence and Counterclaim, joining Cheyne's directors as Defendants and alleging that the debits were valid or, alternatively, seeking indemnity, contribution, and damages for fraud. Negotiations ensued, leading to the Deed of Settlement.
6. DTB submits that Cheyne's contention, that the Deed is invalid for want of a board resolution, is unfounded since a Board Resolution dated 28th December, 2023, duly executed by the company's directors/shareholders as per the CR12 dated 2nd November, 2023, authorized execution of the Deed. DTB argues that account signatories are not the ones responsible for executing such agreements, relying on Sections 33, 34, 35, and 37 of the Companies Act.
7. DTB emphasizes that parties are bound by their contracts and courts do not rewrite contracts absent coercion, fraud, or undue influence. The Deed explicitly provided for filing a Consent Order, sale of property LR No. 1870/232/1 Nairobi, and using the proceeds to settle Malplast Industries Limited's account, after which guarantors would be released, and all parties would have no further claims against each other.
8. DTB therefore submits that the Deed constitutes a final and binding settlement enforceable under Section 59C and prays that judgment be entered accordingly.

Cheyne's Submissions

9. Cheyne argues that the Application is misconceived, as Order 13, rule 2 applies only where there is a clear, unambiguous, and unconditional admission of facts, which is not the case here. The matter is already set down for hearing on 6th and 7th May, 2025.
10. Cheyne contends that the Deed of Settlement is not an admission but rather a conditional settlement proposal. Clause 2 of the Deed expressly required a duly executed Consent Order adopted by the Court to finalize the settlement.



11. Cheyne further asserts that the Deed was not executed by all directors, investors, and signatories as per the company mandate. Moreover, the Deed was prepared by advocates not on record for the matter, and Cheyne's Advocates had requested but were not provided a copy for review.
12. Cheyne maintains that because the purported settlement was neither approved by all necessary signatories nor finalized by a Consent Order, no admission of facts exists, and the Application should be dismissed with costs.

Analysis and Determination

13. The issue for determination is whether DTB has established a proper basis for judgment on admission. Order 13, rule 2 of the Civil Procedure Rules provides: -

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.

14. In *Choitram v Nazari* (1984) KLR 327, Madan JA stated: -

“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.”

Chesoni Ag. JA further held that admissions need not be on pleadings but may be found in correspondence, documents, or even oral statements.

15. DTB submits that the Deed of Settlement constitutes such an admission and is enforceable under Section 59C(3) of the *Civil Procedure Act*: -

Any settlement arising from a suit referred to any other alternative dispute resolution method by the Court or agreement of the parties shall be enforceable as a judgment of the Court.

16. While Cheyne disputes execution by all directors, I agree with DTB that, under the *Companies Act*, company affairs are managed by directors and not account signatories. As held in *Samuel Mureithi Murioki & Another v Kamahuha Limited* [2018] KECA 38 (KLR), a third party dealing with a company is not concerned with the company's internal management or procedures regarding execution of contracts.

17. I am therefore satisfied that the Deed of Settlement was properly executed by authorized directors and is binding upon the parties. The Deed expressly records that the parties negotiated and agreed to settle the suit out of court, an ADR method falling squarely within Section 59C (3).

18. Accordingly, the Deed constitutes a settlement enforceable as a judgment of the court. Further to the above, I am satisfied that in the present circumstances, nothing may be gained by proceedings to a full trial based on the substantive issues raised by the parties.

Disposition

19. For the foregoing reasons, I make the following orders: -



- a. The Application dated 22nd January, 2025, filed by Diamond Trust Bank Kenya Limited is hereby allowed.
 - b. Judgment is entered on admission in accordance with the terms of the Deed of Settlement dated 28th December, 2023, which is hereby adopted as an order of this Court.
 - c. The matter is marked as fully settled.
 - d. Each party shall bear its own costs.
20. The file is accordingly marked as closed.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 31ST DAY OF JULY, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Sakina

.....for Plaintiff
for 1st Defendant
for 2nd Defendant
for 3rd Defendant
for 4th Defendant
for proposed Interested Party

