



**Limited v Bear Afric (K) Limited (Commercial Case 361 of 2015)  
[2025] KEHC 12056 (KLR) (Commercial and Tax) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12056 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 361 OF 2015  
PM MULWA, J  
AUGUST 14, 2025**

**BETWEEN**

**EQUATORIAL COMMERCIAL BANK LIMITED ..... PLAINTIFF**

**AND**

**BEAR AFRIC (K) LIMITED ..... DEFENDANT**

**RULING**

1. This ruling determines the Plaintiff's application dated 14<sup>th</sup> March 2016 praying for summary judgment in favour of the Plaintiff against the Defendant as prayed in the plaint. The applicant also prays for costs of the application.
2. The application is supported by the affidavit of the plaintiff's Head of credit Mr. Brian Kilonzo and is premised on the grounds that the defendant is truly indebted to the plaintiff for the claimed sum.
3. The defendant opposed the application through the replying affidavit of its Director Mr. Eric Agbeko who avers that the application is overtaken by events as per the consent dated 29<sup>th</sup> October 2021.
4. In further reply to the defendant's response, the plaintiff filed the affidavit of Mr. John Wageche, its senior legal officer essentially reiterating the contents of the affidavit in support of the application.
5. Parties canvassed the application by way of written submissions which I have considered. The main issue for determination is whether the court can grant summary judgement against the defendant herein.
6. It is unfortunate that this application has been pending in court since September 2016, a period of almost ten years. Be that as it may, the legal principles underpinning summary judgment are well settled. Summary judgment is to be granted only in the clearest of cases and where there is no triable issue capable of going to trial.



7. Order 36 Rule 1(1) (a) of the Civil Procedure Rules provides that in all suits where the Plaintiff seeks judgment for a liquidated sum with or without interest he may apply for judgment.
8. In the locus classicus case of *DT Dobie Company (Kenya) Ltd v Muchina (1982) KLR*, Madan JA (as he then was) stated as follows:

“If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bid summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally, a law suit is for pursuing it. No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

9. Similarly, the Court of Appeal in *Harit Sheth T/a Harit Sheth Advocates v Sharma Charania [2014] eKLR* held that:

“This court stated that the purpose of the proceedings in an application for summary judgment is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claims. To justify summary judgment, the matter must be plain and obvious and where it is not plain and obvious, a party to a civil litigation is not to be deprived of his right to have his case tried by a proper trial where, if necessary, there has been discovery and oral evidence subject to cross-examination...”

10. The foregoing is the law guiding entry of summary judgments in Kenya.
11. In the instant suit the Plaintiff’s application was properly filed in 2016 since the Defendant failed to file a Defence within 14 days as per Order 7 Rule 1(2) of the Civil Procedure Rules.
12. However, the Defendant’s subsequent filing of a defence though 10 months late raises substantive issues of law and fact that cannot be dealt with through a summary procedure.
13. Further, the parties’ consent agreements recorded between 2016 to 2021 resolved significant portions of the dispute. The Defendant also partially settled the debt. These actions by parties extinguished the substratum of the summary judgment application.
14. In any event, the Court is guided by the overriding oxygen principles as envisaged in Sections 1A, 1B and 3A of the *Civil Procedure Act* to ensure just, fair, proportionate and expeditious administration of justice.
15. For this reason, it is my considered view that, granting summary judgment now would disregard these binding consents and partial payments made.
16. In the end, I find the Plaintiff’s application dated 14<sup>th</sup> March 2026 to be without merit and the same is dismissed with parties bearing their own costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF AUGUST 2025.**

**PETER M. MULWA**

**JUDGE**



In the presence of:

Ms. Diru h/b for Mr. Wilson for Plaintiff/Applicant

Mr. Mirie for Defendant/Respondent

Court Assistant: Godfrey

