



REPUBLIC OF KENYA



**Spot Trading Import Export SRL v Orbit Products Africa Limited (Civil Suit E720 of 2024)  
[2025] KEHC 12058 (KLR) (Commercial & Admiralty) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12058 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
CIVIL SUIT E720 OF 2024  
PM MULWA, J  
AUGUST 14, 2025**

**BETWEEN**

**SPOT TRADING IMPORT EXPORT SRL ..... PLAINTIFF**

**AND**

**ORBIT PRODUCTS AFRICA LIMITED ..... DEFENDANT**

**RULING**

1. The Defendant's Notice of Motion dated 31<sup>st</sup> January 2025, brought under Sections 1A, 3, 3A, and 63(e) of the *Civil Procedure Act*, as well as Order 36 Rule 5 and Order 21 Rule 12 of the Civil Procedure Rules, seeks in a nutshell:
  - i. A stay of execution of this Court's consent order dated 19<sup>th</sup> December 2024;
  - ii. Judgment to be entered in favour of the Plaintiff in the sum of USD 317,544 together with costs as may be agreed or taxed;
  - iii. That the decretal amount be paid in twenty-four (24) equal monthly instalments commencing on the 30<sup>th</sup> day of every month; and
  - iv. That costs be in the cause.
2. The application is supported by the affidavit of Alice Muigai, who depones that the claim arises from a contract for the supply of goods, and that the parties entered into a consent on 19<sup>th</sup> December 2024 requiring the Defendant to provide a bank guarantee for the disputed amount within 45 days. The Defendant avers it is unable to procure such a guarantee due to heavy liabilities, and therefore seeks to pay the sum by 24 equal monthly instalments.



3. The Plaintiff's Notice of Motion dated 6<sup>th</sup> February 2025, brought under Order 13 Rule 2 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*, seeks judgment on admission for USD 317,544 together with interest and costs. The application is supported by the affidavit of Valentine Ataka, who avers that the Defendant has expressly admitted the debt and made several proposals for payment.
4. By a consent dated 11<sup>th</sup> February 2025, the parties agreed inter alia that the Plaintiff's application dated 6<sup>th</sup> February 2025 would be deemed as a reply to the Defendant's motion dated 31<sup>st</sup> January 2025, and that judgment be entered for the Plaintiff for USD 377,544. The consent further provided for determination of specific issues, including:
  - i. Whether the Plaintiff should be awarded interest or the matter proceed to trial,
  - ii. Whether the Defendant should pay the decretal amount by instalments; and
  - iii. Whether the consent order of 19<sup>th</sup> December 2024 should be varied or set aside.
5. Written submissions were filed, the Defendant's dated 18<sup>th</sup> February 2025 and the Plaintiff's dated 28<sup>th</sup> February 2025.

### **Analysis and determination**

5. Having considered the applications, affidavits, consent and submissions, I find the following to be the issues for determination:
  - i. Whether judgment should be entered on admission.
  - ii. Whether the consent order of 19/12/2024 should be set aside and the defendant be allowed to pay the decretal sum in instalments.
  - iii. Whether the Plaintiff is entitled to interest

### **Whether judgment should be entered on admission**

6. Order 13 Rule 2 of the Civil Procedure Rules provides that:

“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 admissions 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.”
7. It is now a settled principle of law that judgment will be entered on admission only where the admission is clear and unambiguous. In *Sunrose Nurseries Limited vs Gatoka Limited* (2014) eKLR the court held that:

“The admission can be in a pleading, correspondence or other document. What is paramount is that the admission has to be unequivocal and clear”.
8. The Plaintiff's application is predicated upon the Notice of Motion dated 31<sup>st</sup> January 2025, supported by the annexed affidavit of Alice Muigai. In that affidavit, the said deponent expressly acknowledges the debt owed to the Plaintiff and proposes to liquidate the same by instalments. In addition, reliance is



placed on the consent order recorded in court on 11<sup>th</sup> February 2025 as well as the statement of defence dated 18<sup>th</sup> December 2024.

9. I have carefully considered the record. In the present case, the affidavit of Alice Muigai in support of the Defendant's own application acknowledges the debt of USD 317,544 and proposes to pay in instalments. This admission is further reinforced by the consent of 11<sup>th</sup> February 2025 and the pleadings on record.
10. In my considered view, the admission is plain and unconditional. To delay entry of judgment on the admitted sum would serve no useful purpose and would only protract the proceedings unnecessarily. Order 13 Rule 2 of the Civil Procedure Rules empowers the Court to enter judgment at any stage where such admissions exist.
11. Accordingly, I find merit in the Plaintiff's application dated 6<sup>th</sup> February 2025, and accordingly judgment is hereby entered on admission in favour of the Plaintiff against the Defendant in the sum of USD 317,544, together with interest thereon at court rates from the date of filing suit until payment in full.
12. The Costs of this application shall be borne by the Defendant.

#### **On whether the consent order of 19/12/2024 should be set aside**

13. The Defendant seeks to vary or set aside the consent order requiring it to issue a bank guarantee, arguing that it was overtaken by events following the consent of 11<sup>th</sup> February 2025.
14. The Plaintiff opposes the application. It submits that the Defendant's claim of ignorance regarding the audited funds prior to execution of the consent is without merit. The Plaintiff relies on the settled principle that a court will not interfere with a consent order except upon grounds which would justify the setting aside of a contract, such as fraud, mistake, misrepresentation, or any other sufficient cause. According to the Plaintiff, no such ground has been demonstrated.
15. The principles for setting aside a consent order are well settled. In *Brooke Bond Liebig Ltd v Mallya* [1975] EA 266, Law Ag. P. held that a court will not interfere with a consent judgment except on grounds that would justify setting aside a contract, such as fraud, mistake, misrepresentation, or any other sufficient cause. The Supreme Court in *Geoffrey M. Asanyo & 3 Others v Attorney General* [2018] eKLR reiterated that absence of such grounds precludes judicial interference.
16. Applying these principles, the consent of 19<sup>th</sup> December 2024 was entered into by counsel on record for both parties and adopted as an order of the Court. Its terms were clear and unambiguous. The Defendant does not allege fraud, coercion, collusion, or any mutual mistake that would vitiate consent. Its argument is essentially that the consent was overtaken by events when a subsequent consent was recorded on 11<sup>th</sup> February 2025. However, the latter consent did not expressly set aside or vary the terms of the earlier one. It extended the time for compliance with the orders of 19<sup>th</sup> December 2024. In the absence of express variation, both consents must be read together, and the obligations under the earlier consent remain enforceable to the extent they were not fulfilled prior to the later consent.
17. On the request for payment in instalments, Order 21 Rule 12 of the Civil Procedure Rules vests this Court with discretion to allow payment of the decreed amount by instalments where sufficient cause has been shown. The discretion is a judicial one and must at all times be exercised judiciously, not capriciously, and in the interest of justice. It is incumbent upon the Applicant to demonstrate sufficient cause to warrant the Court's indulgence.



18. The burden is therefore upon the Applicant to show that it is entitled to the indulgence of the Court. In the present case, the Defendant admits owing the sum of USD 377,544 and seeks to liquidate the same in instalments on the ground that it is facing financial constraints as it allegedly owes huge liabilities and is unable to settle the decretal sum in a lump sum.
19. The Plaintiff strongly opposes the proposal to pay the decretal sum by instalments. It contends that the Defendant has demonstrated a consistent pattern of non-compliance with court orders. In particular, it is pointed out that despite previous indulgence by the Plaintiff, the Defendant failed to honour earlier orders and instead filed an application dated 31<sup>st</sup> January 2025 seeking stay of execution of the consent order. Thereafter, the parties entered into a subsequent consent on 11<sup>th</sup> February 2025 in which they agreed, inter alia, that:
- “ Pending determination of the application herein, the Defendant shall pay the Plaintiff a sum of USD 15,500 plus party and party costs of the Plaintiff as per the Advocates Remuneration Order on or before 28<sup>th</sup> February 2025.”
20. The principles governing the grant of orders for payment of decretal sums by instalments are settled. In *Keshavji Jethabhai & Bros Limited v Saleh Abdulla* [1959] EA 260, the Court held that:
- “ Such orders are a matter of the Court’s discretion, which should be exercised upon sufficient proof of the debtor’s bona fides and genuine inability to pay at once, and upon consideration of whether the creditor’s interests will be prejudiced. The Court further observed that mere inability to pay, without evidence of good faith and willingness to meet the obligation, is insufficient.”
21. In the present case, while the Defendant asserts financial hardship, there is no credible evidence placed before this Court to demonstrate concrete efforts made towards partial payment or compliance with earlier agreements. The history of default, even after consensual arrangements, militates against the exercise of discretion in the Defendant’s favour. The pattern of non-compliance, particularly in respect of the consent order of 11<sup>th</sup> February 2025, is inconsistent with the bona fides required under Order 21 Rule 12.
22. This Court is therefore not persuaded that the Defendant has shown sufficient cause to justify payment by instalments. To grant such indulgence in the circumstances of this case would not only prejudice the Plaintiff’s right to the fruits of its judgment but would also amount to rewarding a party who has consistently disregarded binding orders of the Court.
23. Consequently, the prayer for payment of the decretal amount by instalments is declined.

**Whether the Plaintiff is entitled to interest.**

24. The Plaintiff prays to be awarded interest at court rates from February 2023 until payment in full, contending that the debt was readily admitted and fell due in February 2023. It argues that under the terms of the contract, invoices were to be settled within 90 - 150 days after the respective shipped-on-board dates. The Plaintiff avers that although the Defendant received the goods, it failed and/or refused to make payment as agreed. According to the Plaintiff, being deprived of the use of its capital for an extended period has caused it financial loss, for which it is entitled to compensation by way of interest. It relies on the provisions of Section 26 of the *Civil Procedure Act* to buttress its claim.



25. Section 26(1) of the *Civil Procedure Act* grants the Court discretion to award interest on the principal sum adjudged from the date of filing suit to the date of judgment, and further interest from the date of judgment to the date of payment in full, at such rate as the Court deems reasonable.
26. In the case *PremLata v Peter Musa Mbiyu* [1965] EA 592, it was held that an award of interest on the principal sum is generally to compensate a plaintiff for the deprivation of any money or specific goods through the wrongful act of a defendant. Similarly, in *Highway Furniture Mart Ltd v Permanent Secretary Office of the President & Another* [2006] eKLR, the Court affirmed that interest is intended to recompense a party for the deprivation of capital that ought to have been paid when due.
27. In the present case, the Plaintiff has established that the debt was due and payable by February 2023, and the Defendant has not denied receiving the goods. The failure to make payment within the agreed credit period constitutes a breach of the contractual terms. The Court is satisfied that the Plaintiff has been unjustly deprived of its capital since the debt fell due, thereby justifying the award of interest.
28. Considering the provisions of Section 26 of the *Civil Procedure Act*, the admitted nature of the debt, and the absence of any lawful justification for the Defendant's default, the Court finds it just and equitable to award interest at court rates from February 2023 until payment in full.
29. Consequently, I make the following orders
  - i. Judgment is entered for the Plaintiff in the sum of USD 377,544 together with interest at court rates from February 2023 until payment in full.
  - ii. The prayer to set aside the consent order of 19<sup>th</sup> December 2024 is declined.
  - iii. The prayer to pay the decretal sum by instalments is declined.
  - iv. Costs of both applications are awarded to the Plaintiff.

It is so ordered.

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

**PETER M. MULWA**

**JUDGE**

In the presence of:

Mr. Ataka for Plaintiff

Mr. Vincent Olale h/b for Mr. Litoro for Defendant

Court Assistant: Godfrey

