



REPUBLIC OF KENYA



KENYA LAW
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**Laborex Kenya Limited v Njimia Pharmaceuticals Limited (Civil Suit E426 of 2022)
[2024] KEHC 3518 (KLR) (Commercial and Tax) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3518 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E426 OF 2022
PM MULWA, J
MARCH 21, 2024**

BETWEEN

LABOREX KENYA LIMITED PLAINTIFF

AND

NJIMIA PHARMACEUTICALS LIMITED DEFENDANT

RULING

1. Before me is a Notice of Motion application dated 2nd February 2023 filed pursuant to the provisions of Order 13 Rule 2 of the *Civil Procedure Rules*, Sections 1A & 1B of the *Civil Procedure Act*, the inherent powers of the Court, and all other enabling provisions of the law. The plaintiff/applicant is seeking the following orders: -
 - i. That judgment on admission be entered in favour of the Plaintiff against the Defendant in the sum of Kshs. 21,883,362.22 together with interest thereon at the court's rate from the date of supply till payment in full; and
 - ii. That costs of this application be in the cause.
2. The application is premised on the grounds on the face of the motion and is supported by an affidavit sworn on 1st February 2022 by Renaud Bauchamp, the plaintiff's finance director. It is to be noted that the defendant/respondent did not file any responses to the instant application, and therefore the application proceeded unopposed.
3. The plaintiff's case is that sometime in 2016, the parties herein got into a business relationship. It was agreed between the parties that the plaintiff would supply the defendant with various pharmaceutical products at the defendant's request, and the defendant would pay for the said products upon delivery. The plaintiff averred that on diverse dates in the years 2016, 2020, 2021 & 2022, it supplied the



defendant with pharmaceutical products amounting to Kshs. 21,883,362.22 which were duly received and acknowledged by the defendant. However, the defendant failed to pay the aforementioned amount owed to the plaintiff. As a result, the plaintiff instructed its Advocates on record to issue the defendant with a demand letter for the aforesaid amount, which was done vide a letter dated 18th July 2022.

4. The plaintiff contended that upon receipt of the said letter, the defendant/respondent via a letter dated 12th August 2022 admitted owing the plaintiff Kshs. 21,883,362.22, then proposed a payment plan and a restructure of the debts owed. It asserted that the defendant has expressly and unequivocally admitted owing it the sum of Kshs. 21,883,362.22 in the said letter and therefore, in the interest of justice judgement should be entered for the said amount.
5. The instant application was canvassed by way of written submissions. The plaintiff's submissions were filed by the law firm of Mwaniki Gachoka & Company Advocates on 9th June 2023. The defendant neither filed written submissions nor made oral submissions in opposition to the application.
6. Mr. Gachoka, learned counsel for the plaintiff, submitted that under the provisions of Order 13 of the *Civil Procedure Rules* 2010 an admission of liability can be inferred from either the defendant's pleadings or any correspondence. And therefore, the defendant's letter dated 12th August 2022 is a clear admission of the debt owed to the plaintiff by the defendant.
7. Reliance was placed on the Court of Appeal case of *Choitram v Nazari* [I984] eKLR and it was further argued that a keen look at the letter of 12th August 2022, the defendant clearly acknowledged its indebtedness the plaintiff and went further to propose a payment plan. For this reason, the defendant's letter dated 12th August 2022 fits the description of a clear, unambiguous and unequivocal admission.
8. Relying on the case of *Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others* [2021] eKLR, counsel urged this Court to find that the defendant's letter was a voluntary and forthright admission of liability on the defendant's part as the same leaves no doubt in the mind of any reasonable person that the sum of Kshs.21,883,362.22 was owed. He asserted that this Court has discretion to grant the orders sought herein.

Analysis and Determination.

9. I have considered the application herein, the grounds on its face, the affidavit filed in support thereof, and the written submissions by counsel for the plaintiff. The issue for determination is whether the application herein is merited.
10. Order 13 Rule 2 of the *Civil Procedure Rules*, 2010 provides for judgment on admission and it 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. The Court of Appeal in the case of *Choitram v Nazari* (*supra*) expounded on the issue of judgment on admission where Madan, JA stated that:

“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 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 and that discretion must be exercised judicially.”

13. The plaintiff averred that the defendant admitted to owing it in its letter dated 12th August 2022 addressed to the plaintiff, and went ahead to offer a payment plan for the debt due and owing. Upon perusal of the defendant’s letter dated 12th August 2022, I note that it is referenced; debts owed payment schedule (Kshs. 21,530,981.03), and thereunder at paragraph 1 states thus:

“As per our conversation during our meeting we agreed as follows:

1. Payment of Kes. 5 million monthly in four instalments to clear old debts.”

14. The letter proceeds to give a breakdown and/or a schedule of how the defendant will pay the said amount to the plaintiff.

15. This Court is bound by the Court of Appeal finding in the case of *Cassam & Another v Sachania & Another* [1982] KECA 1 (KLR) where in dismissing an appeal, it held that:

“The Judge’s discretion to grant judgment on admissions of fact under the Order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment.”

16. Again, in the case of *Express Automobile Kenya Limited v Kenya Farmers Association Limited & another* [2020] eKLR the Court in dealing with a similar application held that in law, an admission should reflect a conscious and deliberate act of the person making it showing an intention to be bound by it.

17. It follows that, for this Court to enter judgment on admission in favour of the plaintiff against the defendant, it has to ensure that the admission relied on by the plaintiff is clear and unequivocal.

18. In the defendant’s letter dated 12th August 2022, the defendant refers to a meeting that was held between the parties herein and states that it was agreed that the debt of Kshs. 21,530,981.03 was due and owing and would be paid in four installments by the defendant making payments of Kshs. 5,000,000/= per month. The defendant then proposed to the plaintiff a payment schedule of the said debt.

19. It is my finding that the foregoing averments by the defendant are not only clear and simple but also amount to an obvious, unequivocal and unconditional admission of the debt on the part of the defendant. That admission as is clearly shown in the letter dated 12th August 2022 is for Kshs. 21,530,981.03 (and not Kshs. 21,883,362.22 as stated by the plaintiff) and is in respect of goods supplied to the defendant by the plaintiff.



20. As a consequence, the application dated 2nd February 2023 is merited and is allowed in the following terms:
- i. That judgment on admission be and is hereby entered in favour of the plaintiff against the defendant for the admitted sum of Kshs. 21,530,981.03;
 - ii. The said amount shall accrue interest at court's rate from the date of filing suit until payment in full;
 - iii. Any remaining sum will be subject to trial; and
 - iv. Costs of this application will be borne by the defendant.
- Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF MARCH 2024.

P. MULWA

JUDGE

In the presence of:-

Mr.Kioko for Mr. Gachoka for the plaintiff/applicant

Mr. Maina for the defendant/respondent

Court Assistant: Carlos

