

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0176 -2008
(Arising from HCT-00-CC-CS-043-2008)

CENTRAL ELECTRICAL INTERNATIONAL LTD..... APPLICANT

VERSUS

EASTERN BUILDERS & ENGINEERS LTD RESPONDENT

BEFORE HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an application by Notice of Motion brought under Order 13 rule 6 of the Civil Procedure Rules and sections 16- 29 of the Evidence Act whereby the Applicant, Central Electricals International Ltd, who is the plaintiff in Civil Suit No 43 of 2008, is seeking for orders that:-

1. A judgment on admission be entered against the Respondent/Defendant in favour of the Applicant/Plaintiff for US\$48,598.79.
2. Cost be provided for

The grounds of the application are that:-

- (a) An admission of indebtedness to the Applicant/Plaintiff has been made by the Defendant/Respondent in its pleadings in another case vide their plaint in H.C.C.S. No. 856 of 2005.
- (b) That it is just and equitable and in the interest of Justice that a judgment on admission be entered against the Respondent/Defendant.

Representation was Mr. Tendo Kabenge for the Applicant and Mr. Richard Obonyo for the Respondent.

The Application is supported by an affidavit deposed to by Zahir Premji, the Operations Manager of the Applicant. He therein avers that the Respondent/Defendant made an admission of indebtedness to the Applicant/Plaintiff in its pleadings in another case vide their plaint in paragraph 4 (h) in H.C.C.S. No. 586 of 2005. The said plaint is Annexure A to the affidavit and in paragraph 4 (h) it states:-

“Under the sub-contract agreement referred to in paragraph 4(g) above, the Plaintiff agreed to pay consideration of USD79,086.13 (Seventy nine thousand eighty six United States Dollars thirteen cents) to M/S Central Electrical International. M/S Central Electrical International Ltd executed the works in accordance with its sub-contract with the plaintiff and a sum of USD48,589.76 (Forty eight thousand five hundred eighty nine United States Dollars seventy cents) remains outstanding to it which the plaintiff claims from the Defendant by way of special damages. A copy of

M/s Central Electricals International Ltd's invoice in this regard is attached hereto and marked 'H'.

Order 13 rule 6 provides:-

"6. Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties, and the court may upon the application make such order or give such judgement, as the court may think just."

The rule enables either party at any stage of the suit to apply for judgment on the admission which have been made by the other party. However, a judgment on admission is not a matter of right but at the discretion of the Court. If a case involves questions which cannot be conveniently disposed of on a motion under this rule, the Court may in the exercise of its discretion, refuse the motion.

In Wright Kirke Vs North (1895) Ch 747 it was stated at page 50:-

"The obtaining of such an order was not a matter of right, but was a matter for the exercise of a judicial discretion regard being had to all the circumstances of the case"

The admission can be in pleadings or otherwise. But such admission must be clear and unequivocal. See Eriaza Magala Vs Rev. Kefa Sempangi (1994) I KLAR 93

The applicant contends, in paragraphs 4- 6 of the affidavit in support that the Respondent's pleading above is an admission which is unequivocal as a statement, documentary which proves that the Applicant executed the works to completion in accordance with its sub-contract with the Respondent, the fact that the Respondent agreed to pay a consideration of USD 79,086.13 to the Applicant for works to be executed and the fact that the Respondent remains indebted to the Applicant in the sum of USD 48,589.79

The Respondent filed an affidavit in reply deposed to by its Managing Director Gurdial Sigh. The Respondent therein contends that it is not true that it admits the indebtedness. That in its Written Statement of defence the Respondent unequivocally stated that its liability to pay the Applicant was subject to prescribed terms and conditions which have not been satisfied, and further that the Applicant's claim against it is premature and improper.

The admissions which are claimed to have been made by the Respondent are contained in the Respondent's plaint filed in H.C.C.S. No. 856 of 2005 where the parties were Eastern Builders and Engineers Ltd (Plaintiff) and Attorney General of Uganda (defendant). The instant suit was filed in February 2008. The Applicant is not a party to the suit wherein the alleged admission was made. My considered view is that the admission upon

which judgment can be based should be made either on the pleading or otherwise in the suit before court. I am strengthened in my view by the holding by Justice CK Byamugisha in Sietco Vs Impregico Salim J.V. HCCS No 980 of 1999 where she stated:

“In the instant case the admissions which the defendant made are at an interlocutory stage and therefore satisfied the requirement of ‘at any stage for the suit’”

In the instant case the admissions upon which the Applicant based its application were not made at any stage of this suit but made in 2005 before the filing of this suit and in another suit.

In paragraph 4 (iii) of the plaint in this suit the Applicant states that it executed the works and procured certificates of completion for it in accordance with its sub-contract with the Respondent and that the sum of USD 48,589.79 remains outstanding to the Applicant which it is seeking to recover. In its Written Statement of Defence the Respondent denies paragraph 4(iii) of the plaint and contends that the Respondent's liability was subject to prescribed terms and conditions which have not been satisfied. Further that the Applicant's claims is premature and improper. The relationship between the Applicant and the Respondent was governed by a sub contract annexure B to the Respondent's affidavit. That agreement spells out the terms and conditions upon which payment would become due to the Applicant. Judgment can only be entered in favour of the Applicant in respect of payment claimed if such payment was payable and due from Respondent. Neither the pleadings or any of the documents

filed by any of the parties in this suit shows an admission of the Applicant's claim by the Respondent. The defence raises the issue whether payment was due to the Applicant. Even if Court was to consider paragraph 4(h) of the Respondent's pleadings in HCCS No.856 of 2005, that pleading does not unequivocally answer this issue.

The application therefore fails and is dismissed with costs to the Respondent.

Hon. Mr. Justice Lameck N. Mukasa
Judge
22nd August, 2008