THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HIGH COURT CIVIL SUIT NO. 310 OF 2015

SUZANA HAARBOSCH……PLAINTIFF

VERSUS

MOHAMMED KHALIL DAGHER…….DEFENDANT

BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO:

RULING:

1. **Background:**

The plaintiff instituted this suit against the defendant seeking for orders for breach of agreement, a compelling order that the defendant pays a sum of USD.27, 416, interest of 6% per month on the said sum from the time of filing the suit till payment in full, general damages and costs of the suit.

The brief facts leading to the institution of the suit are that the on the 17th day of December 2014, the plaintiff on the advise of one Ms. Rita Aceng Ogwang the corporation Secretary of Kamtech Logistics (u) Ltd entered into an agreement with the defendant in which she sold her shares in the said company to the defendant at USD.42, 500. It was also agreed at the time of execution of the sale agreement that USD.10, 000 be set off against the outstanding obligation of the plaintiff to the defendant.

At the time of execution of the agreement, the defendant promptly paid the first instalment of USD. 8,125 in accordance with agreed terms of payment leaving an outstanding sum of USD. 24, 375. The outstanding balance was to be paid by the defendant on agreed dates in instalments of USD.8,125 on each such date that is on the 28th February 2015, on the 31st March 2015 and on the 30th April 2015. The defendant failed to beat these deadlines and thus the plaintiff contends

that the defendant had breached the clear terms of the agreement thus instituted this suit against the defendant for the recovery of the instalments.

2. The Pleadings:

The court records show that the plaintiff filed this suit on the 13th day of May 2015 with a summons to file a defence extracted and subsequently served upon the defendant. The defendant filed his written statement of defence on the 1st day of June 2015. The defendant apparently denies some aspect of the claim against him by the plaintiff. However, the perusal of the written statement of defence show that at paragraph 7 (c) the defendant undertakes to pay his liability to the plaintiff in the amount of USD.32.500 with further allusion in paragraph 7 (d), that the defendant did expect to meet that obligation but was frustrated by the Ebola epidemic that ravaged Sierra Leone and which greatly affected his real estate business. The further under paragraph 7 (g) of the written statement of defence confirms his willingness to fulfil the said obligation though in the alternative indicates willingness to return to the plaintiff the unpaid for 2(two) shares.

3. The application for Judgment on admission:

Upon receipt of the written statement of defence the plaintiff applied for judgment on admission through her lawyers of M/s Murungi, Kairu and Co. Advocates through a letter to the Registrar of this court dated the 23rd day of September 2015 which the plaintiff alludes that by virtue of paragraph 7 (g) of his written statement of defence the defendant expressly admitted his liability. The Registrar, however, declined to enter judgment on admission on the basis that none existed.

The file was then forwarded to this court for mention and on the 16th day of October 2015 when both parties appeared before this court Mr. Godwin Murungi was for the plaintiff and Ms. Rita Aceng Ogwang represented the defendant. Mr. Godwin Murungi informed the court that the mediation of the suit had failed. Counsel for the plaintiff further pointed out that the reading of paragraph 7 of the written statement of defence indicates an express admission of indebtedness by the defendant to the plaintiff and that indeed the plaintiff had applied for judgment on admission previously to the Registrar of this court who however showed reluctance to grant the same on the basis that the said paragraph did not amount to an express admission. Learned counsel thus implored this court to act otherwise and find that indeed there was an admission and

so judgment on admission should be entered for the plaintiff under Order 13 of the Civil Procedure Rules accordingly.

The defendant on the other hand through his counsel concurred that indeed mediation had failed but intimated that the reason of its failure was because of the plaintiff's unwillingness to negotiate a settlement out of court in regards to the share sale and purchase agreement though he intimated to the court that he was committed to meeting his obligation under the said agreement but had faced difficulties in regards to his business in Sierra Leone. The Defendant further indicated that even the company in which he was to have purchased shares had failed to take off as planned as it had faced opposition and resistance from residents where it was to be located in Lira who had even filed a suit in Lira High Court Circuit vide High Court Civil Suit No.33 of 2015 Otto Tony v Kamtech Logistics (U) Ltd events which have led to the defendant to rethink the viability of acquiring of further shares in the said company and so the defendant intended as indicated under paragraph 7(h) of his written statement of defence to return to the plaintiff the unpaid shares with a proposal to that effect that an addendum to the main agreement be made in April, 2015. The defendant further raises other arguments in regards to interest to be paid on the unpaid shares which he states should have been calculated up to the time of the proposed addendum and that thus argues that the continuing accrual of the interest continue to be so as a result of the plaintiff's unwillingness to re-negotiate the agreement and or take back the shares with the defendant requesting the court to prevail over the plaintiff to agree to re-negotiate favourable terms or in the alternative accept to take back the unpaid for shares.

In rejoinder, Mr. Murungi for the plaintiff submitted that the defendant had breached most of the negotiated terms previously and that there seems to be no willingness to have the matter resolved due to the mistrust from the defendant and thus that since the defendant admits the amounts claimed by the plaintiff, judgment on admission should be entered pursuant to Order 13 Rule 6 of the Civil Procedure Rules.

4. **Resolution:**

Order 13 Rule 6 of the Civil Procedure Rules upon which this application is premised provides as follows:

> ‘’**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 judgment as the court may think just’’**.

The rule is an enabler to party in a suit to at any stage of the suit to apply for judgment on admission made by the other though the grant of a judgment on admission is not as of right but is at the discretion of a court as was held in the case of **Wright Kirke v North [1895] Ch 747** where it noted by the court at page 50 that the obtaining of such an order was not a matter of right but a matter for the exercise of a judicial discretion with regards being had to all the circumstances of the case.

It should be noted that an admission can be gleaned from pleadings or otherwise and it must be clear and unequivocal. This seems to be the view held by **CK Byamugisha, J** in the case of In **Sietco v Impreligo SARL JVC HCCS No 980 of 1999** as the learned judge went on to state that thus:

> “**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’”.**

Relating the above considerations to the instant matter, it is the application of the plaintiff that judgment on admission be granted based upon the defendant’s filed written statement of defence.

This application has been made at the interlocutory stage and thus satisfy the rationale in the holding in **Sietco case (Supra)** though I hasten to note that the registrar of this court declined to make the decision now sought for in the view of the registrar the there was no express admission.

I have had the benefit to peruse the written statement of defence in respect of this matter especially Paragraph 7 (g) which is the basis for the instant application. In my opinion this stated Paragraph when read in isolation of the rest of the pleadings would appear to be an

admission of the debt claimed by the plaintiff. However, I note that this stated paragraph is but one among the very other contentions raised by the defendant such that when regard is had to the circumstances of this matter they would render the stated admission to be a mere commentary to the general defence raised by the defendant thus ambivalent.

That being the case, therefore, this court would find it indeed oppressive to proceed enter judgment on admission under **Order 13 Rule 6 of the Civil Procedure Rules** as the several contentions raised by the defendant infects the so called admission paragraph requiring further investigations into the dispute between the parties herein.

That being the case, the exercise of the discretion of the court under **Order 13 Rule 6 of the Civil Procedure Rules** and as was held in the case of **Wright Kirke v North [1895] Ch 747** at this stage would be uncalled for thus accordingly, I would direct that this matter to proceed to trial for I have since noted that the process of mediation in this matter did fail.

The parties herein are thus directed to file a joint scheduling memorandum in accordance with the rules of this Commercial Court to enable the preparation of this matter for hearing.

I do so order accordingly.

HENRY PETER ADONYO

JUDGE

30TH OCTOBER, 2015