



REPUBLIC OF KENYA



Parbat Siyani Construction Limited v Covermax Insurance Brokers Limited (Civil Appeal E792 of 2021) [2024] KEHC 9774 (KLR) (31 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9774 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E792 OF 2021**

WM MUSYOKA, J

JULY 31, 2024

BETWEEN

PARBAT SIYANI CONSTRUCTION LIMITED APPELLANT

AND

COVERMAX INSURANCE BROKERS LIMITEDS LIMITED RESPONDENT

((An appeal arising from the judgment of Hon. MW Muraya, Senior Resident Magistrate, SRM, delivered on 11th November 2021, in Milimani CMCCC No. 5739 of 2010))

JUDGMENT

1. The suit at the primary court was initiated by the respondent, against the appellant, for a sum of Kshs. 1,504,289.00, being in respect of premiums that the appellant had not paid to the respondent, despite enjoying full insurance covers given. The appellant filed a defence, in which it denied everything pleaded in the plaint. A trial was conducted, 2 witnesses testified, 1 for the appellant, and the other for the respondent. Judgment was delivered on 11th November 2021, in favour of the respondent.
2. The appellant was aggrieved, hence the instant appeal. The grounds in the memorandum of appeal, dated 1st December 2021, revolve around the trial court not properly evaluating the evidence tendered; the trial court not misapprehending the evidence, and misapplying the law and the facts; among others.
3. It is unclear, from the appellate record, whether directions were ever given on the disposal of the appeal, by way of written submissions, but both sides did file and serve written submissions.
4. The appellant has collapsed all its 6 grounds into 1: whether the case was proved to the required standard. It cites *Eastern Produce (K) Limited – Chemoni Tea Estate v Banfas Shova* [2018] eKLR (H. Omondi, J), *Charterhouse Bank Limited (under statutory management) v Frank N. Kamau* [2016] eKLR (Makhandia, Ouko & M’Inoti, JJA) and sections 107 and 108 of the *Evidence Act*, Cap 80, Laws of Kenya. It is argued that the respondent was entitled to judgment, in its favour, only if there was



evidence that the appellant had appointed it, and it had placed business with the relevant insurance companies as authorised by it. It is submitted that no insurance policy was ever issued, to provide basis for the award sought and made. The respondent supports the decision of the trial court, it relies on the decisions in *Sedgwick Kenya Insurance Brokers Limited v Kenol Kobil Petroleum Limited & another* [2018] eKLR (Olga Sewe, J), *Cannon Assurance (Kenya) Limited v Mobansons Food Distributors Limited* [2020] eKLR (Majanja, J) and *Benson Onkoba Nyaachi & another v Victoria Insurance Brokers Limited* [2012] eKLR (Omolo, O’Kubasu & Nyamu, JJA).

5. There is only 1 issue for determination: whether the respondent had proved its case before the trial court.
6. The case by the respondent was that it had done some business for the appellant, in respect of which the appellant had not paid some Kshs. 1,504,259.00. The respondent placed documents on the record, to support its case, which included a letter from itself, dated 19th December 2008, addressed to the appellant; another letter, dated 5th February 2009, by the appellant, addressed to the respondent, in response to that of 19th December 2008; and a third letter, dated 7th April 2009, by the respondent, in reaction to that dated 5th February 2009. The 3 letters refer to the indebtedness of Kshs. 1,504,259.00, by the appellant, to the respondent. In the first letter, the respondent asks the appellant to pay that outstanding amount. In the second letter, the appellant pleads to be given 150 days to settle the same. In the third letter, the respondent counters by stating that the amount had been outstanding for 365 days. I agree with the trial court, there would be an admission there, for the appellant pleads to be given time to pay. It could not possibly have been asking for time to pay moneys that it was not owing. I note that the letter making that plea was not marked “without prejudice.”
7. I find and hold that the appeal herein has no merit, I hereby disallow it, with the consequence that the same is dismissed with costs. It is so ordered.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 31ST DAY OF JULY 2024

W MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Mogeni, instructed by Mogeni & Company, Advocates for the appellant.

Mr. Wanjohi, instructed by Theuri Wanjohi & Company, Advocates for the respondent.

