



**Corrugated Sheet Limited v Monica Hardware Limited (Civil Case 396 of 2014)
[2024] KEHC 11347 (KLR) (Civ) (25 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE 396 OF 2014**

JN MULWA, J

SEPTEMBER 25, 2024

BETWEEN

CORRUGATED SHEET LIMITED PLAINTIFF

AND

MONICA HARDWARE LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff Corrugated Sheets Limited by a Plaint dated 17/11/2014 sued the Defendant Monica Hardware limited, its long time customer for a sum of Kshs. 24,200,679.03/= together with interest being the sum owed and outstanding for goods sold and delivered by the Defendant during the period March, April and May 2010 at its request as well as general damages and costs of the suit.
2. The defendant entered appearance upon service by its advocates but failed to file a statement of defence.
3. Later by a Notice of Change of Advocates dated 14/02/2020 the defendant engaged the firm of Khaminwa & Khaminwa Advocates but despite all process being served upon the said law firm, it too failed to regularize the status by filing a defence.
4. On 28/04/2023, Interlocutory Judgment was entered against the defendant, and the case proceeded for hearing on formal proof on 23/10/2023 wherein the suit was heard, closed and scheduled for judgment.
5. However, the court notes that on 15/02/2024 the Defendant yet again filed another Notice of Change of Advocate to Mathenge Ndiangui & Co. Advocate after the suit was heard and only pending determination.

A perusal of the court file shows no action having been taken by the defendant by its new Advocates.



6. PW1 was the Plaintiff's Director Harish Patel who relied on his written witness statement dated 17/11/2024, and the bundle of documents filed together with the plaint, which were admitted as exhibits No. 1-14 during the hearing.
7. It was the plaintiff's evidence that it is a manufacturer of galvanized roofing sheets, ridges, gutters and related products for local and export markets and that at all material times, and prior thereto, the defendant was its customer.
8. He testified that at the defendant's request through the Managing Director one Monica Wairimu Mbuthia (now deceased) and substituted by her legal administrators by a confirmed certificate of grant of her estate dated 20/02/2013 (Kimaru J, as he then was) in Nairobi High Court Succession cause No. 1460 of 2011- In the matter of the Estate of Monica Wairimu Mbuthia (deceased).
The administrators are named therein as Antony Mwangi Mbuthia, David Muriithi Mbuthia, Lucy Wangari Njuguna and Mary Nyaruai Mbuthia.
9. As to the Defendant's status at the Department of the Registrar General on 16/07/2023, the Directors/ shareholders of the Company were confirmed as the above four named persons.
10. The plaintiff further testified that upon reconciliation of the defendant's company accounts after filing of this suit, the unpaid debt stands at Kshs. 23,263,633.93/=. This is the sum the plaintiff claims from the Defendant Company relying on the documents filed on 17/11/2024.
11. I have perused the list of documents admitted as exhibits – No. 1-14.
Among the documents is a demand letter to the Defendant through the plaintiff's Advocates dated 11/11/20213 before institution of the suit and others thereafter to the Defendant's various advocates.
12. Additionally, other documents include various invoices and corresponding delivery notes of the goods supplied, schedule of delivery modes duly signed by the plaintiff's agent's, motor vehicle registration numbers used for the deliveries, including the particulars of the vehicles and drivers names and their identification numbers. They are all signed on their dates of delivery, checked by the defendant's servants and or agents including affixing their rubber stamps.
13. There is therefore no doubt that the goods were ordered for duly delivered, and received by the Defendant on the various dates as shown on the delivery notes.
14. The plaintiff by its submissions dated 26/10/2023 therefore submits that the particulars of the claim as tabulated at paragraph 6 of the plaint confirm that indeed the Plaintiff is owed the sum claimed, and as no defence to the claim was filed, the plaintiff urges the court to find in its favour citing the case of Safarilink Aviation Limited vs. Trident Aviation Kenya Limited & Another [2015] eKLR where the court (Mabeya J) held:-

“.... Failure to rebut evidence tendered by one party leaves the court with no option but to draw an inference that the facts as presented are true”
15. Based on the un rebutted evidence presented before this court and upon scrutinizing the documents being the invoices and delivery notes that were indeed signed by the defendant's agents and/or servants it is clear proof that the required standard of proof upon a balance of probability has been achieved and convinced that it is more likely than not that the goods were ordered delivered and received but remained as unpaid.



16. This rationale resonates well with the holding in the case of Squirt Enterprises Kenya Limited v. Daystar University [2017] eKLR wherein judgment was entered for the plaintiff – on strength of the invoices and delivery notes presented to the court for which there was no rebuttal.
17. The court is therefore persuaded that the plaintiff has proved its case to the required standard of proof and find that the Defendant owes it the sum of Kshs. 23,363,633.93/= plus interest at court rates from date of filing the suit.
18. On the matter of General Damages, it is trite that a breach of contract entitles the injured party to damages for the loss incurred or suffered.

In the case of Peri Formwork Scaffolding Engineering (Pty) Limited v. White Lotus Projects Limited the court considered whether or not a party who has suffered loss as a result of a breach of contract is entitled to general damages and made a finding that a party who has suffered such loss is entitled to a verdict but the damages recoverable will be purely nominal.

19. The plaintiff seeks compensation in general damages and proposes Kshs. 10,000,000/=. It is true that the Plaintiff suffered inconvenience for the non-payment of the goods supplied as had been anticipated soon after delivery, but the oral contract did not include any specific default clause that may guide the court to determine the quantum of loss.
20. The Court of Appeal in Godfrey Julius Ndumba Mbogori & Another V. Nairobi County [2018] eKLR citing Anson's Law of Contract, 28th Edition Page 589 stated that such suffering, through breach is compensable albeit by nominal damages.
21. Upon consideration of the unique circumstances of the claim herein for lack of a written contract that ordinarily would have provided for relief for breach of contract, I am hesitant to award any general damages for breach of the oral contract save for interest at court rates from date of filing of the suit.
22. Consequently, Judgment is hereby entered for the plaintiff against the defendant in the sum of Kshs. 23,263,633.93/=.

The above sum shall accrue interest at court rates from 17/11/2014 (date of filing suit) until payment in full.

The defendant is condemned to pay costs of the suit to the plaintiff.

It is so ordered.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2024.

JANET MULWA

JUDGE.

