



**Wilmart East Africa Limited v Raveras Limited (Civil Case E072 of 2022)  
[2024] KEHC 13509 (KLR) (Civ) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13509 (KLR)

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

**CIVIL  
CIVIL CASE E072 OF 2022**

**AN ONGERI, J**

**OCTOBER 30, 2024**

**BETWEEN**

**WILMART EAST AFRICA LIMITED ..... PLAINTIFF**

**AND**

**RAVERAS LIMITED ..... DEFENDANT**

**JUDGMENT**

1. In the plaint dated 22/4/2022, the plaintiff is seeking the following reliefs against the defendant;
  - i. A declaration that the defendant is in breach of the plaintiff's consumer rights as provided for under Article 46 of *the Constitution* of Kenya.
  - ii. A declaration that the defendant has acted in contravention of the provisions of the *Consumer Protection Act*, 2012.
  - iii. A refund of kshs.138,000.00 amount paid for the purchase of 3 rolls of 8 Mil anti shutter film from the defendant.
  - iv. Exemplary and punitive damages under Section 84 of the *Consumer Protection Act*, 2012.
  - v. General damages for loss of business due to the defendant's actions.
  - vi. Costs of this suit be provided for.
  - vii. Any other or further relief that this honourable court may deem fit to grant.
2. The defendant filed a defence on 6/6/2022 denying the plaintiff's claim.
3. The plaintiff called one witness, PW1 (Mr. William Adhiambo Omoro) who is a director of the plaintiff company.



4. PW 1 produced written statement as his evidence in chief. He stated as follows in the said statement;
5. That he is a director in the Plaintiff Company herein with the knowledge of the facts attending to this matter and that he has the authority of the Plaintiff's board of directors to make this statement on its behalf.
6. That Around 24<sup>th</sup> February 2022, the Plaintiff approached the Defendant for a recommendation letter from Tirupati Kenya Ltd, the sole distributor of Llummar window films for building (safety security) and solar control films for East and Central Africa.
7. The purpose of the said recommendation letter was for approval by Seyani Brothers & Company (Kenya) Limited (SBC) a leading general building construction company in Kenya with whom the Plaintiff had a contract for installation of anti-shatter films on a project sites they were constructing. It was on the strength of this letter that the Plaintiff proceeded to secure a deposit of from SBC for them to proceed with its installation project on the site designated by their client.
8. On 1 6<sup>th</sup> March 2022, the Plaintiff proceeded to purchase 3 rolls of 8 Mil anti-shatter Llummar Film from the Defendant. The price was Kshs.46,000.00 per roll and the Plaintiff therefore paid a total of Kshs.138,000.00 and a receipt was issued to that effect.
9. On the same day, while the Plaintiff was installing the films, SBC sought proof that the film the Plaintiff is installing is indeed a LLumar product.
10. The Plaintiff called the Defendant Company where it was at this time that the Defendant expressly admitted that what was sold to the Plaintiff was not Llummar Window Film. The Defendant went on ahead to say that the Plaintiff was installing for them a product from the far east and not Llummar Window Film and that the new price for Llummar Window Film is Kshs.156,600.00 inclusive of VAT per roll and not Kshs.46,000.00 per roll as the Plaintiff had bought earlier on in the day.
11. The Defendant's actions therefore are in breach of the Plaintiff's Consumer Rights as captured in Article 46 of the Constitution of Kenya, 2010 and under the Consumer Protection Act, 2012.

#### Particulars Of Breach Of Consumer Rights

- a) Failure to disclose to the Plaintiff the full information on the product they sold to the Plaintiff including the quality and price what they were selling;
  - b) Failure to disclose the full pre-contractual information, which is clear, helpful, adequate, and which did not allowed the Plaintiff to make an informed choice;
  - c) Failure to disclose relevant information thereby breaching the Plaintiff's right of access to comparative information;
  - d) Failure to deliver the quality of goods that is stated it was selling;
  - e) Denying the Plaintiff the right to fair terms of sale;
  - f) Deceiving the Plaintiff on the billing information and thereby occasioning the Plaintiff significant loss.
12. That eventually the Plaintiff lost the business to Tirupati Kenya Ltd and will be seeking general damages for the same.
  13. Despite demand and notice of intention to sue having been issued the defendant has refused and/or neglected to heed to the Plaintiff's demand.



14. In cross examination he said he was contracted by Sayani Company to supply them with Llummar films.
15. PW 1 said he called the defendant company and ordered for the Llummar films. He said he got a letter of recommendation from Timothy to secure the job.
16. The defendant company called two witnesses Janet Nyawira Machira (DW 1) and Hesbon Mugaka Michira (DW 2).
17. The evidence of the defendant was that PW 4 ordered anti-shatter film. DW 1 produced her written witness statement dated 8/7/2022 as her evidence in chief.
18. DW1 stated in the said statement that at all material times to this suit she was and continue to be an employee of Raveras Limited (hereinafter "the Defendant").
19. That the Defendant's Company engages in the commerce of providing a diverse range of window films.
20. That she is a Sales Representative and Cashier in the Defendant's company where she has been working since 2019.
21. That as a Sales Representative and Cashier her duties include selling products to buyers, negotiating sales, handling cash and credit transactions, collecting payments and issuing receipts as well as any other duties that she may be directed to carry out by her superiors.
22. That the Plaintiff's representative is a frequent Purchaser of the Raveras construction/building films whose origin is from the far east at the Defendant's shop.
23. That on 12<sup>th</sup> January, 2022 the Plaintiff's representative made inquiries on the construction/ building films available as well as the specifications on the products.
24. That she confirmed the availability of the building/ construction films at Kshs.I.500/per meter and informed the Plaintiff's representative that they did not have the specifications of the same.
25. That later, the Plaintiff's representative confirmed that he got the specifications from his client that they needed 8Mil thick clear safety film after which he proceeded to make inquiries and negotiate on the prices with them.
26. That on 15<sup>th</sup> March, 2022, the Plaintiff's representative requested for a sample of the 8Mil thick clear safety films and went ahead to send his rider to collect the same.
27. That on 16<sup>th</sup> March, 2022, the Plaintiff's representative inquired on the availability and price of the construction/ building films.
28. That the Plaintiff's representative expressly stated that he needed three (3) rolls of the construction/ building films and went ahead to negotiate on the price initially quoted.
29. That she undertook to confirm the total price to be Kshs.46.000/- per roll and Kshs.138,000/- for the three (3) rolls.
30. That she made an order for the products from the store as they did not have any stock of the construction / building films that day in the shop.
31. That on or about 11:00a.m that day, the Plaintiff's representative arrived at the shop to collect the Products as well as make payments for the same.
32. That once the Plaintiff's representative paid for the products, she issued a receipt of Ksh.138,000/- to that effect.



33. That the Plaintiff's representative requested that the products be packaged in the Llumar boxes, however, she declined his request because he had not purchased any Llumar product.
34. That the Plaintiff's representative requested to view a sample of the Llumar packaging which was shown to him.
35. That the Plaintiff's representative was well aware that the Llumar Films came with a specific packaging and that what he had purchased that day was Raveras construction/building films because they were packaged in boxes that had Raveras labels and logo.
36. That while outside the shop, the Plaintiff's representative went ahead to remove the Raveras labels from the boxes and stated he will look for the Llumar logo to be affixed on the boxes.
37. That later, the Plaintiff's representative called her saying that he had faced challenges with the contractor on site who was asking for the Llumar packaging and asked her to share pictures of the Llumar boxes.
38. That she forwarded the pictures of the Llumar boxes to the Plaintiff's representative.
39. That the Plaintiff's representative sought communication with the Manager who confirmed that the construction/building films he had purchased that day were Raveras films whose origin is the Far East and not LLumar films as the Llumar films are packaged in LLumar boxes that have specific code numbers and indicate that they are made in USA.
40. That the Manager also confirmed the price of Llumar films to be Kshs.156,000/per roll, therefore the price for three (3) rolls, would be Kshs.468,000/
41. DW 2 also adopted his statement in which he stated that at all material times to this suit he was and continues to be an employee of Raveras Limited (hereinafter the "Defendant").
42. That the Defendant's Company engages in the commerce of providing a diverse range of window films.
43. That he is a store-shopkeeper in the Defendant's company where he has been working since 2016.
44. That as a store-shopkeeper his duties include receiving and storing products, ensuring the store is kept clean and organized as well as any other duties that he may be directed to carry out by superiors.
45. That on 16<sup>th</sup> March,2022, the Cashier ordered for three (3) rolls of Raveras construction/building films from the store as they did not have any stock of the films that day in the shop.
46. That on or about 10:00a.m. he received three (3) rolls of Raveras construction/building films which had arrived at the shop.
47. That on or about 11:00a.m., the Plaintiff's representative arrived to collect the products which were presented to him.
48. That the Plaintiff's representative went ahead to request that the products be packaged in the Llumar boxes.
49. That the Cashier refused to issue the same because he had not purchased any Llumar product.
50. That the Plaintiff's representative requested to view a sample of the Llumar packaging, which was shown to him.



51. That the Plaintiff's representative was well aware that the Llumar Films came with a specific packaging and that what he had purchased that day was Raveras construction/building films because they were packaged in boxes that had Raveras labels and logo.
52. THAT while outside the shop, the Plaintiff's representative went ahead to remove the Raveras labels from the boxes and stated he will look for the Llumar logo to be affixed on the boxes.
53. The parties filed written submissions as follows; the plaintiff submitted DW1 testified that she was well aware that PW1 requested for 8 Mil Llumar anti-shatter films. It was the testimony of PW1, that Janet, DW1 – defendant's employee, was the Plaintiff's company link to all Defendant's company products. In January 2022, PW1, via WhatsApp, contacted Janet seeking intel on the availability of Llumar anti-shatter films in the Defendant's company for the purpose of purchasing the same. Janet advised him that they were available for purchase.
54. That upon request for samples, Janet sent him photos of Llumar products. Further, PW1 testified that later on, acting on that information, he paid Kshs. 138,000.00 for three rolls of 8 Mil anti-shatter Llumar films. When he and other two people went to collect the films, they found the films set aside and Janet confirmed to them that they were Llumar products and that 8 Mil films came in white boxes. They went away with the films, only for them to be rejected by the Plaintiff's client – Seyani Brothers & Company.
55. Being the consumer, it is the submission of the Plaintiff that the Defendant herein breached the Plaintiff's consumer rights entrenched in Article 46 of *the Constitution*. Precisely, this materialized when the Defendant sold inferior products from China, other than Llumar products that it had requested, and failing to provide all the necessary information to allow the Plaintiff to fully enjoy the products. While interpreting Article 46, the Court in the case of Leonard Otieno v Airtel Kenya Limited [2018] eKLR held:
- “Breach of statutory duty arises, where a person or a body is under a statutory duty to perform an act or, more rarely, to refrain from doing an act; does not perform the act, either in accordance with the terms of the statute, or at all or does the act when it should not be done; and a party suffers damage as a result of the statutory breach; and that statutory breach gives rise to ‘a right of action.’”
56. The plaintiff further submitted that Article 20(1) and (2) of *the Constitution* decree that the Bill of Rights applies to all and binds all State organs and all persons, and that every person is entitled to enjoy such rights to the greatest extent possible consistent with the nature of the right or fundamental freedom. As such, the Defendant has an obligation to supply the necessary information to the Plaintiff to enable it enjoy the full benefits of the product thereof, and supply goods or reasonable quality as well.
57. The plaintiff added that supplementary to Article 46 of *the constitution* of Kenya is the *Consumer Protection Act* which was enacted to flesh out the provisions of Article 46 of *the Constitution*. It was thus submitted by the plaintiff that the Defendant engaged in unfair practice by acting in contravention of Section 12(1) and (2)(a)(c)(g) of the CPA. The foregoing provisions provide thus:
- “ 12. False representation
- (1) It is an unfair practice for a person to make a false, misleading or deceptive representation.



- (2) Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations—
- (a) a representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities they do not have; (b)....
  - (c) a representation that the goods or services are of a particular standard, quality, grade, style or model, if they are not;
  - .....
  - (g) a representation that the goods or services have been supplied in accordance with a previous representation, if they have not;”

58. The defendant deceptively supplied a product which it was in full cognizance that it was not Llumar window film that the plaintiff had ordered and paid for. The Plaintiff pointed out that in the case of *Itakura v Odera (Civil Appeal E009 of 2022)* [2022] KEHC 3120 (KLR) (Commercial and Tax) (30 June 2022) (Judgment) the learned Judge held that “false and misleading representations are intended to induce a party to enter in a contract for goods and or services hence under section 12(1) of the CPA, it is an unfair practice to make false, misleading representations.”
59. The defendant alternatively submitted that the plaintiffs claim is that it violated its rights under Article 46 of *the constitution* of Kenya making the suit a constitutional claim. The defendant argued that the standard of proof in constitutional claims is generally higher than in ordinary civil cases. It was defendants position that the plaintiffs did not do so.
60. The defendant further maintained that it provided detailed information about the products and any perceived deficiencies in disclosure should be evaluated within the context of the plaintiff’s obligation to inspect the products and seek further information. The plaintiff acknowledged that two distinct products, namely Llumar films, which are of superior quality and therefore command a higher purchase price, and Raveras, which are more affordably priced, were discussed. The plaintiff corroborated that the products purchased and the price paid corresponded to Raveras.
61. The defendant argued that it fully disclosed all requisite information concerning the products sold to the Plaintiff fulfilling its constitutional obligation under Article 46 (b) of disclosing to the consumers the information necessary for them to gain full benefit from the goods and services. From the onset the Defendant was transparent and had clear communication regarding the film products and thus fulfilled its statutory obligation under the Competition Authority of Kenya Consumer Protection Guidelines 2017 by giving requisite information through its agents and the recommendation letter from Tirupati Kenya Limited for the Plaintiff to make an informed choice about the film products.
62. In the recommendation letter, the Plaintiff had sought from Tirupati Kenya Limited, the letter had instructions that the Plaintiff should follow to confirm that the film product supplied is the original. Thus, the Defendant through the letter from Tirupati Kenya Limited, and its agents gave the Plaintiff enough information to make an informed choice about the film products.



63. The defendant argued that it is imperative to underscore the role of due diligence that the Plaintiff, as a discerning consumer, ought to have exercised in evaluating the products prior to the purchase. The testimonies of DW1 and DW2 unequivocally establish that the product code marked on the day of collection explicitly identified the product as Raveras, indicated by the code 'RVS6174'—with 'R' denoting Raveras. That further the Plaintiff's affiliation with Seyani Brothers & Company, coupled with their involvement in construction projects, endowed them with a considerable level of expertise relevant to the products in question.
64. Guided by the provisions of Section 35 of the *Sale of Goods Act*, the Plaintiff is deemed to have accepted the products after having a reasonable opportunity to examine them. As a commercial entity engaged in the commerce of distribution and sale of various automotive and protective window film products, the Plaintiff had a duty to inspect goods upon delivery before providing them to its client, Seyani Brothers & Company. The Plaintiff's failure to inspect the goods and verify the authenticity of the purchased products from the information conferred by Defendant's agents and the recommendation letter from Tirupati Kenya Limited constitutes negligence and wilful deceit.
65. It is the duty of the plaintiff to prove its case to the required standard in civil cases which is on a balance of probabilities.
66. The issues for determination in this case are as follows;
- a. Whether the plaintiff has proved its case to the required standard.
  - b. Whether the plaintiff is entitled to the remedies it is seeking against the defendant.
  - c. Who pays the costs of this suit?
67. On the issue as to whether the plaintiff has proved its case, the plaintiff's evidence was that PW 1 ordered for Llumar anti-shulter films from the defendant.
68. Further, that PW 1 made payment for the said products but he was supplied with Raveras products and not Llumar products which he ordered.
69. DW 1 said that the representative of PW 1 made inquiries on the films available and she told them she did not have the specifications of the sample of the 8mil thick clear safety films from Llumar that were requested.
70. The representative made the order for the 8mil thick clear films from RAVERAS LIMITED and requested that the films be packages in Llumar boxes but DW 1 declined because the products packaged were not Llumar.
71. DW 1 said while outside the shop, the representative removed the Raveras labels and logo and said he would look for Llumar logo.
72. I find that the plaintiff has not proved that the defendant was in breach of contract.
73. I find that the plaintiff was aware the product they purchased was Raveras but they wanted Llumar packaging which the defendant declined to give them.
74. The plaintiff did not rebut the defendant's evidence that on 15<sup>th</sup> March, 2022, the Plaintiff's representative requested for a sample of the 8Mil thick clear safety films and went ahead to send his rider to collect the same.
75. Further that the Plaintiff's representative went ahead to request that the products be packaged in the Llumar boxes.



- 76. That the Cashier refused to issue the same because he had not purchased any Llummar product.
- 77. I find that the defendant fully disclosed all requisite information concerning the products sold to the Plaintiff fulfilling its constitutional obligation under Article 46 (b) of disclosing to the consumers the information necessary for them to gain full benefit from the goods and services.
- 78. From the onset the Defendant was transparent and had clear communication regarding the film products and thus fulfilled its statutory obligation under the Competition Authority of Kenya Consumer Protection Guidelines 2017 to enable the Plaintiff to make an informed choice about the film products.
- 79. There is evidence that the plaintiff’s representatives removed the Raveras logo from the boxes and wanted the same to be packaged in Llummar packaging but the defendant declined.
- 80. In the circumstances, I find that there is no evidence that the Defendant herein breached the Plaintiff’s consumer rights as entrenched in Article 46 of *the Constitution*.
- 81. I find that the plaintiff has failed to prove it’s case to the required standard.
- 82. On the issue as to whether the plaintiff is entitled to the remedies it is seeking against the defendant, I find that the answer is in the negative.
- 83. I dismiss the plaintiff’s case with costs to the defendant.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER, 2024.**

**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant

