



**Atta (Kenya) Limited v Matthew Six Eleven Bakers Limited (Civil Suit E098 of 2022)  
[2023] KEHC 1392 (KLR) (Commercial and Tax) (24 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1392 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E098 OF 2022  
EC MWITA, J  
FEBRUARY 24, 2023**

**BETWEEN**

**ATTA (KENYA) LIMITED ..... PLAINTIFF**

**AND**

**MATTHEW SIX ELEVEN BAKERS LIMITED ..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated January 11, 2022, the plaintiff, Atta (Kenya) Limited a private limited liability company, sought judgment against the defendant, Matthew Six Eleven Bakers Limited, also a private limited liability company, for: Kshs. 63,509,824.00 and Interest at the commercial rates from the date the amount was due until payment in full; damages for breach of credit sale agreement and costs of the suit together with interest at the rate and for the period the court may deem fit.
2. The plaintiff averred that the defendant bought wheat products on credit between July 1, 2019 and September 9, 2021, but failed to pay the balance of Kshs. 63,509,824.00 in breach of their credit sale agreement.
3. Although the defendant was served with Summons to Enter Appearance on April 1, 2022 by registered post through its last known postal address, neither appearance was entered nor defence filed. The plaintiff applied for interlocutory judgment on May 17, 2022 for the of Kshs. 63,509,824 which was entered on 13<sup>th</sup> June 2022 and the matter was then set for formal proof of the remainder of the claims.
4. When the suit came up for formal proof on November 29, 2022, the defendant was absent despite again being served with hearing notice for the formal proof. The hearing proceeded.



5. The plaintiff called Victor Odhiambo Ouma, [Mr. Ouma], head of legal and director of operations, as the sole witness. Mr. Ouma adopted his witness statement dated June 17, 2022 and produced a bundle of documents dated January 11, 2022 as plaintiff's Exhibit A.
6. In the witness statement, Mr. Ouma stated on diverse dates between July 2019 and September 2021, the plaintiff the defendant. The defendant paid for the supplies leaving a balance of Kshs. 63,509,824. The witness produced invoice, delivery notes and unpaid cheques to support the plaintiff's case. These were cheques numbers 000049, 000026, 000027, 00028, 000029, 000035 and 000036.
7. I have considered the evidence on record and the exhibit produced. As earlier stated, the defendant was served with summons to enter appearance but did not enter appearance or file a defence. Interlocutory was entered for the liquidated amount of Kshs. 63,590, 824. The suit was then set down for formal proof of the claim for general damages for breach of credit sale agreement. The plaintiff called one witness who adopted his witness statement, produced exhibits and urged the court to allow the claim as prayed in the plaint.
8. As already alluded to, interlocutory judgment was entered for the liquidated amount which was the main claim in this suit. The formal proof was for what the plaintiff called general damages for breach of the credit sale agreement and which was the only issue the plaintiff was left to prove. The testimony in court and witness statement only mentioned breach of the terms of the credit sales. However, the exhibits produced did not contain credit sale agreement for the supply of wheat which was breached and which would be the basis of a claim for general damages.
9. Having considered the evidence and exhibits, the conclusion the court comes to, is that the plaintiff did not prove that there existed an agreement that was breached and which would allow an award of general damages. In the circumstances of this case, the plaintiff claimed specific amount which was due for the goods supplied and the claim, if any was for special damages which was the amount claimed in the plaint as the amount due the supply of those goods. Since that amount was allowed in the interlocutory judgment entered on June 13, 2022, no other claim remained to be proved.
10. Consequently, and for the above reasons, this court finds that the plaintiff's claim ended when interlocutory judgment was entered in its favour. The interlocutory judgment entered on June 13, 2022 for Kshs. 63, 509, 824 is hereby confirmed as the final judgment of the court. That amount will attract interest at court rates from the date of filing of the suit until payment in full. The plaintiff will also have costs of the suit. The claim for general damages is declined and dismissed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF FEBRUARY 2023**

**E C MWITA**

**JUDGE**

