



**Pramukh Tyres & Retreads Limited v Metro Logistics Limited (Civil Suit E095 of 2018)  
[2023] KEHC 4023 (KLR) (Commercial and Tax) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 4023 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E095 OF 2018  
JWW MONG'ARE, J  
APRIL 27, 2023**

**BETWEEN**

**PRAMUKH TYRES & RETREADS LIMITED ..... PLAINTIFF**

**AND**

**METRO LOGISTICS LIMITED ..... DEFENDANT**

**JUDGMENT**

1. By a plaint dated 28<sup>th</sup> September 2018 the plaintiff prayed for judgment against the defendant for the sum of Kshs.23,768,820/-, together with interest at current bank rates of 13% per annum. The plaintiff also sought to be awarded costs of the suit plus interest at court rates.
2. According to the plaintiff, on diverse dates in the year 2015 the defendant purchased goods on credit which goods were duly delivered, received and partly paid for, leaving an outstanding debt of Kshs.23,768,820/-. The plaintiff stated that it issued invoices to the defendant for the said goods but the debt was not settled.
3. Subsequently and following the default in settlement the plaintiff approached the defendant and a settlement was reached on the modality of repayment of the outstanding invoices. The agreement was reduced in writing and executed by the both the defendant's and plaintiff's representatives on 17<sup>th</sup> August 2017. The terms of the settlement agreement were that the outstanding debt which stood at Kshs.14,677,755/- was to be paid by four (4) equal instalments of Kshs.3,668,938/75/- between the month of September and December 2017. The defendant subsequently issued post-dated cheques for the full amounts with instructions to the plaintiff to deposit the same on due dates without fail, unless otherwise agreed in writing between the parties.
4. Thereafter and on presentation to the Bank, some of the post-dated cheques were paid while others were dishonoured by the bank prompting the Plaintiff to withhold others for fear of injuring its



reputation with the bank. The balance at that time stood at Kshs.23,768,820/- which included the principal debt plus agreed interest rate at bank rates of 13% on the balance. The plaintiff then moved to court for the recovery of the said amount and urged the court to award it interest plus costs of the suit.

5. In its defence, the defendant denied owing the plaintiff any money and argued that if it did, the same was paid for in full. The defendant further denied the existence of a settlement agreement as pleaded by the plaintiff. The defendant further averred that if it had issued any cheques which were dishonoured, then it had replaced the same and as such there was no debt due and owing to the plaintiff as alleged. Both parties called one witness who testified on oath and produced their bundle of documents.
6. Both parties further put in written submissions which I have considered.

#### **The Plaintiff's Case:**

7. The plaintiff called one witness, to the stand, Mr Paras Motichant Shah, a director of the plaintiff company. He produced his witness statement which he adopted as his evidence before the court. Mr. Shah testified to having known the defendant company as a customer of the plaintiff and stated that both companies had a long business relationship. He testified that the defendant owed the plaintiff the sum of Kshs.23,768,820.90/- as at 28/9/2018 being payment for goods supplied to it and not paid for in full. He further testified that the debt had since appreciated as it was subject to interest as per their agreement at bank rates since they had taken a bank loan to supply the goods.
8. Mr. Shah further testified that the plaintiff and the defendant had a long running business relationship and that plaintiff sold them vehicle tyres for their vehicles used in their transport business and that the defendant always settled any outstanding dues before. In his list of documents, Mr Shah produced a statement of accounts for the defendant for the period between 24<sup>th</sup> April 2015 to 12<sup>th</sup> April 2019 with a breakdown of all the invoices for goods delivered to the defendants over the period and a repayment schedule of the same.
9. Mr Shah also produced invoices on the outstanding payments and the settlement agreement as evidence. Among the documents produced included various cheques that had been issued by the defendant. During cross examine by the defendant, Mr Shah admitted that indeed some of the cheques issued by the defendant after the settlement agreement had been honoured. He confirmed that in total, cheques totalling Kshs.2,100,000/- were paid on presentation by the defendant's bank. Another bunch of cheques amounting to Kshs,2,997,000/- was dishonoured on presentation by the bank. Mr. Shah testified that fearing ruining their reputation at the bank, they withheld the rest of the cheques totalling 14,517,000. He produced copies of the cheques and bank statements indicating the cheques that were honoured and those that were dishonoured and copies of all the cheques by the defendant.
10. Mr. Shah testified that as a result, their business relationship with the defendants was ruined and there were no more business orders made thereafter. He produced a demand letter send to the defendant to make good the debt and urged the court to find in favour of the plaintiff and award the prayers as prayed in the plaint with interest from the date of filing. He also asked for costs and interest on the same at court rates.

#### **The Defendant's Case:**

11. At the close of the plaintiff's case the defendant sought leave of the court to substitute its witness as the original one whose witness statement was on record had since left the company. The defendant then called Ms. Bella Mwamba Mbogo who testified on its behalf. Ms Mwamba testified that she was the finance manager of the defendant and wished to rely on the statement she had filed on 14/2/2023. She also produced into evidence a list and bundle of documents that she wished to rely on.



12. In her testimony, she denied the existence of a contract between the plaintiff and the defendant. She stated that the defendant was a transport and logistics company that transports goods and stores containers for various customers. She further testified that the company uses a quotation method to source its goods it consumes for its business. Once a supplier is identified, she testified that, then a purchase order is issued to the supplier, and once the goods are delivered to their premises and delivery note is signed for, an invoice is raised and payment is done to the particular supplier.
13. Ms. Mbogo further stated that she was not aware of the agreement and that she was also not aware that the plaintiff's invoice attracted interest on unpaid funds. She informed the court that she was aware of the claim of Kshs.14,000,000/- and that the same had been paid. She averred that the defendant had no outstanding balances on the account of the plaintiff. She further stated that payments were made through various methods including cheques, bank transfers and Mpesa payments as per her list and bundle of documents. She vehemently denied that there were any dishonoured cheques and insisted if any cheque was unpaid by the bank, the same were replaced by a new one. Ms Shah insisted that all issued cheques had been paid and that there was no debt to the best of her knowledge. She however did not produce any evidence in support of her arguments.
14. On Cross examination by the plaintiff's counsel, Ms Mbogo stated that she had recently joined the defendant company in June 2022 and was not an employee between 2015 and 2019 when the business relationship existed. She confirmed that she had no personal knowledge of the transaction as she had been handed the docket by her predecessor on taking over the finance department of the defendant.
15. Ms Mbogo took the court through the defendant's bank statement that was produced as part of the bundle of the defendant's documents. She identified the paid and unpaid cheques and confirmed that there was a total of paid cheques of 7,388,000. She also identified the unbanked cheques totalling to 14, 513,000.
16. Ms Mbogo denied any indebtedness by the defendant and urged the court to dismiss the plaintiff's case with costs to the defendant.

**Determination:**

17. Both parties have filed submissions which I have considered. To my mind the only issue that the court needs to determine is "whether the defendant is indebted to the plaintiff to the sum of Kshs.23, 768,820/- with interest at 13% per annum till payment in full".
18. I note that parties do not dispute that there was a long running business relationship for a considerable period of time and among their trading terms goods would be supplied to the defendant and eventually settled once invoices were issued and that the relationship was cordial.
19. The plaintiff in his evidence produced a bundle of documents in evidence and which were marked as plaintiff's exhibits 1-7. That these documents included a settlement agreement that the parties entered into towards the settlement of the debt and the same was acknowledged the plaintiff also produced copies of cheques and a detailed statement as evidence of the attempt by the defendant to pay off the invoiced debt by instalments. It was the evidence of the plaintiff's witness that part of the cheques were honoured and paid by the bank while others were dishonoured. The plaintiff also informed the court that the rest of the cheques were not presented to prevent damaging the image of the plaintiff with its bankers.
20. The defendant's witness disputed the fact that not all cheques were paid. She insisted in her testimony that from the hand over report she was informed that all the invoices had been settled. She was at pains to justify the same as no documents other than a bank statement were produced before the court.



21. Having considered the pleadings and the sworn witness testimonies of both the plaintiff and the defendants' witness. I have also examined the plaintiff's exhibit adduced and admitted into evidence and I find that the plaintiff's witness truthful. I also find that the evidence produced by the plaintiff credible. I am persuaded that the plaintiff has proved its case on a balance of probabilities. Judgment is therefore entered in favour of the plaintiff against the defendant as prayed in the plaint, in the following terms;

- i. The sum of Kshs.23,768,820.90/- from the date of filing the suit plus interest at agreed bank rates of 13% per annum.
- ii. Costs of this suit plus interest on the same from the date herein till payment in full.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF APRIL 2023.**

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**J. W. W. MONG'ARE**

**JUDGE**

**IN THE PRESENCE OF: -**

- 1. Mr. Nduati for the Plaintiff.**
- 2. Ms. Tuwei holding brief for Mr. Kirimi for Defendant.**
- 3. Sylvia- Court Assistant**

