



**Oudia v Parliamentary Service Commission (Civil Case 67 of 2017)  
[2022] KEHC 10790 (KLR) (Commercial and Tax) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10790 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 67 OF 2017  
WA OKWANY, J  
JUNE 23, 2022**

**BETWEEN**

**JAMES OMOLO OUDIA T/A RIPPLE MATRIX CIRCUIT SYSTEM PLAINTIFF**

**AND**

**PARLIAMENTARY SERVICE COMMISSION ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff herein, a male adult carrying on business in the name of Ripple Matrix Circuit, instituted this suit through the plaint dated 31<sup>st</sup> January 2017 seeking judgement against the defendant for: -
  - i. Payment of the outstanding amount of Kshs. 20,397,189/=(Kenya shillings twenty million, three hundred and ninety seven thousands one hundred and eighty nine)
  - ii. Interest on the (1) above at commercial bank rates
  - iii. Cost of the suit
  - iv. Interest at Court rates on (1) and (2) above until payment in full
  - v. Any other or further relief as this court may deem fit and just to grant.

**The Plaintiff's Case**

2. The plaintiff's case is that sometime in the year 2015, he entered into a contract to supply the defendant with security equipment, namely; four portable hand held vehicle inspection system, seven walk-through metal detectors and four X-ray baggage screening machines. The plaintiff states that upon delivering the equipment, the defendant instructed him to construct a wheel chair ramp at protection house, install security bollards complete with stainless steel rustproof chain link and construct drainage channels to ensure flow of water from the security screening booths.



3. The plaintiff states that he was further instructed to install and commission the equipment, train the security staff on the operation and maintenance of the equipment. He states that he thereafter raised an invoice for the total amount of goods and services supplied through Local Purchase Order (LPO) No. 2115524 to and contingent LPO. He adds that the defendant however only paid him Kshs 58,913,790 in respect to the LPO No. 2115524 thereby leaving an outstanding amount of Kshs 20,397,189 that forms the subject matter of this claim.
4. According to the plaintiff, it was an implied/express term of the contract that the defendant would, without undue delay, pay the outstanding debt as soon as the invoice was raised by the plaintiff. He contends that the defendant's refusal to pay the outstanding amount owing has caused him financial loss and suffering.
5. At the hearing of the case, which commenced on 9<sup>th</sup> May 2019, the plaintiff herein (PW1) adopted his witness statement as evidence in chief. He testified that he supplied the defendant with the equipment and constructed the booths to store equipment. He further testified that he performed his part of the contract which required him to supply and install the x-ray baggage equipment, and make them operational. He conceded that he did not get enter into any written agreement with the defendant to perform the extra word of installing the security equipment but added that he acted on verbal instructions from one Mr. Solomon Obange.
6. PW1 stated that the amount of Kshs. 58,913,490 that he received from the defendant was only in respect to the equipment and not for the extra work of installing the machinery.
7. He testified that they constructed the booths at the gates, movable booths that were to be moved after the completion of the building and heavy duty UPSS to protect the machines. He also stated that his team trained the defendant's staff on how to operate the machinery for a period of 1 year. He further stated that he did not have any written document to show that he worked with Mr. Obange as they dealt in good faith and had no reason to record their meetings. He added that the contract shows that the technical nature of the equipment was such that it could not be delivered without installation.
8. On cross-examination, he stated that the defendant fully settled the contract sum of Kshs 58,913,000. He admitted that he did not get an LPO for the extra work he did even though he installed the equipment on the defendant's premises.
9. On re-examination he stated that the additional charges were not within the contract as it consisted of work done following verbal instructions. He also stated that the equipment could not work without installation.
10. The plaintiff submitted that his quotation number PSC/126/2014-2015 included installation, testing and commissioning of the security equipment however the work of installing the walk through metal detectors but that the baggage screening equipment was different from construction of screening booths. He argued that all the additional works he performed was not included in the initial contract.
11. The plaintiff further submitted that he acted on the express instructions from the defendant when he constructed the security screening booths and the wheel chair ramp. It was the plaintiff's case that he dutifully performed his contractual obligations by doing the additional work.

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

12. The defendant herein, a body corporate with perpetual succession and common seal established under the *Parliamentary Service Act*, opposed the plaintiff's claim through its statement of defence dated 19<sup>th</sup>



- May 2017. The defendant it admits that it contracted to supply the security screening equipment but denies the claim that the plaintiff was contracted to construct the security screening booths.
13. The defendant further contended that if indeed the plaintiff constructed the security booths as alleged, then he did so at his own will and without complying with the laid down procurement procedures. The defendant however admitted that the plaintiff supplied the security equipment and was adequately compensated for the same in accordance with the terms of their contract. It is the defendant's case that it did not issue any additional instructions to the plaintiff that would warrant the payment of Kshs. 20,379,189.
  14. The defendant's witness Anthony Njoroge (DW1) similarly adopted his witness statement dated 2<sup>nd</sup> March 2020 as evidence in chief. He produced the defendant's bundle of documents dated 19<sup>th</sup> July 2017 as exhibits and testified that the tender committee awarded the plaintiff the tender to supply various security equipment's for a contract sum of Kshs. 58,913,710. He stated that the items that were subject to the tender were implied by the contract sum.
  15. On cross examination, he testified that the equipment was commissioned after the supply on delivery. He stated that he presumed that the plaintiff did the installation as part of the contract and that the contract sum was for all the work. He denied knowledge of any instructions from Mr. Solomon Obange in respect to the installation of the equipment but confirmed that the equipment delivered by the plaintiff was still in use.

### **Analysis and Determination**

16. I have considered the pleadings filed herein, the oral and documentary evidence presented by the parties together with their written submissions.
17. It was not disputed that the parties herein entered into a contract through a Local Purchase Order (LPO) No. 2115524 for the supply of security screening equipment. It was also not contested that the plaintiff supplied the said equipment and that the defendant settled the full contract sum of Kshs 58,913,790 as captured in the LPO. The dispute however revolves around the alleged extra work and supplies amounting to Kshs. 20,397,189/= that the plaintiff claims. The issue for determination is whether the plaintiff has made out a case for the granting of the said sum.
18. What then was the plaintiff's case? I have carefully evaluated the evidence presented by the plaintiff in support of his claim for the outstanding balance of Kshs. 20,397,189/= and I note that the plaintiff produced a bundle of 5 invoices issued to the defendant on 20<sup>th</sup> November 2015 as exhibit 8. The plaintiff also produced photographs of the alleged construction sites. He testified as follows on the amount claimed: -

“We have requested for the payment for the extra Kshs. 20 Million. We were not paid despite assurances by Mr. Obange. We do not have documentary record to show that we dealt with Mr. Obange as we dealt in good faith and saw no need to record our meetings with him.”
19. On cross examination, the plaintiff conceded that his firm had dealt with government agencies since its inception in 1997 and that he was conversant with the government procurement procedures. The plaintiff testified on the issue as follows: -

“My firm was registered in 1997. I have dealt with government since the inception of our company. Procurement by government involves a tendering process.”



20. My assessment of the plaintiff's case is that while he adhered to the government procedures in tendering for the supply of the security equipment in the sum of Kshs. 58,913,790 which was fully settled by the defendant, it is apparent that the procurement procedures were not complied with in respect to the alleged extra work that is the subject of this case. All that the plaintiff presented, as proof of his claim, are 5 invoices that he allegedly issued to the defendant. The plaintiff alleged that he received verbal instructions, from one Mr. Obange, to carry out the extra work. The said Mr. Obange was not called as a witness in this case to corroborate the plaintiff's case. In fact, no evidence was presented to show that the said Mr. Obange is defendant's employee/agent capable of awarding oral contracts to construction companies. I find it quite unusual and most unlikely that the plaintiff, who conceded that he had over the years dealt in government tenders, could accept verbal instructions to carry out work of such great magnitude and cost without any formal documentation whatsoever.
21. Moreover, the defendant herein is a public entity governed by Article 227(1) of *the Constitution* which obligates state organs and public entities to procure goods and services in accordance with a system that is fair, equitable, transparent, competitive and cost effective. I find that it is most unlikely that the defendant could have flouted the procurement rules in awarding the plaintiff the alleged extra work.
22. This court takes judicial notice of the fact that that services procured by public entities require the participation of an inspection and acceptance committee which the plaintiff did not allude. The burden of proof rested on the plaintiff to prove the existence of the contract and adherence of the law on procurement by a public body. I note that the plaintiff did not avail evidence to show that there was any tendering or procurement process for the extra work he allegedly undertook.
23. It is trite that a claim for a specific sum/loss must be both pleaded and proved, before an award can be made. This is the position that was taken by the Court of Appeal in *Hahn vs Singh*, Civil Appeal No. 42 Of 1983 [1985] KLR 716, at P. 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held:
- “Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”
24. Courts have held that a claimant of special damages must present actual proof of loss through documentary evidence of payments made such as receipts to substantiate the loss or economic injury. In this regard, courts have held that an invoice is not proof of payment and that only a receipt meets the test. (See *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited vs Janevams Limited* [2015] eKLR; *Zacharia Waweru Thumbi vs Samuel Njoroge Thuku* [2006] eKLR; *Sanya Hassan vs Soma Properties Ltd*).
25. Taking a cue from the above cited cases, I find that the invoices produced by the plaintiff herein do not meet the threshold of strict proof expected in a claim for special damages.
26. Having regard to the findings and observations that I have made in this judgment, I find that the plaintiff's case was not proved to the required standards and I therefore dismiss it. I make no orders as to costs considering the working relationship that existed between the parties herein.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF JUNE 2022.**

**W. A. OKWANY**

**JUDGE**



**In the presence of: -**

No appearance for the parties

Court Assistant- Sylvia

