



**Juanco Contech Ltd v Triple Eight Construction (K) Ltd (Civil Case 117 of 2012)  
[2022] KEHC 14370 (KLR) (Commercial and Tax) (21 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14370 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 117 OF 2012  
A MABEYA, J  
OCTOBER 21, 2022**

**BETWEEN**

**JUANCO CONTECH LTD ..... PLAINTIFF**

**AND**

**TRIPLE EIGHT CONSTRUCTION (K) LTD ..... DEFENDANT**

**JUDGMENT**

1. Vide a plaint dated February 24, 2012, the plaintiff moved this court seeking judgment against the defendant for Kshs 3,000,000/=. The plaintiff was a limited liability company and a supplier of construction materials while the defendant was in the business of construction.
2. The plaintiff's case was that around years 2006 and 2007, it supplied the defendant with 875 litres of con-aid valued at Kshs 3,500,000/= for projects being undertaken by the defendant at Kiaburu-Kiandara/Access to Kiine Road Project and Mweiga-Endarasha-Bellevue Naintia Road Project.
3. That the full amount was to be payable within 90 days of the supply, but the defendant only paid Kshs 500,000/=. leaving a balance of Kshs 3,000,000/= which the plaintiff now claims.
4. The defendant entered its defence dated April 12, 2012. It did not deny that the plaintiff supplied con-aid to it. It alleged that only Kshs 2,000,000/= was approved for the Kiburu-Kiandagae project out of which Kshs 500,000/= was paid to the defendant leaving a balance of Kshs 1,500,000/=. That as for the Mweiga-Endarasha Project, the con-aid materials failed for allegedly being of poor quality and the payment of Kshs 1,500,000/= was omitted including a further Kshs 300,000/= that the defendant had already spent on the preparatory works.



5. The defendant thus admitted to owing the plaintiff only Kshs 1,200,000/=. On June 28, 2012, a partial decree was issued against the defendant and it settled the admitted amount of Kshs 1,200,000/= leaving a balance of Kshs 1,800,000/= on the plaintiff's claim which proceeded for trial.
6. The matter was heard on March 20, 2017. The plaintiff called one witness, Mr Junghae Wainaina who was PW1. He adopted his witness statement and also produced the plaintiff's list of documents dated June 30, 2014 as PEXH1.
7. It was his testimony that upon the defendant's request, the plaintiff supplied it with con-aid material worth Kshs 3,500,000/= for two different projects in Nyeri and Kirinyaga around 2006. That the defendant only paid Kshs 500,000/= and the plaintiff made many attempts to secure payments, including a joint meeting between the parties held at Grand Regency on February 27, 2007.
8. That in the meeting, the defendant admitted owing the debt of Kshs 3,000,000/= and undertook to pay in three monthly installments but failed to do so. He thus testified that the plaintiff having supplied materials worth Kshs 3,500,000/=: only Kshs 1,700,000/= was paid, leaving a balance of Kshs 1,800,000/= which was long overdue.
9. On cross examination, PW1 stated that the products supplied were to be used in road construction by the defendant who was working on several roads at the time. That he was unaware that the engineer roads declined to approve payment because the materials supplied were substandard. That payment was to be on delivery but the defendant delayed the payment.
10. On re-examination, he told the court that he was not to follow up with the resident engineer, and that he was the shareholder and CEO of the plaintiff thus had authority to file the suit.
11. The defendant sought a multitude of adjournments, and in the end, its advocates made an application to cease acting and the same was allowed. The defendant was served by way of substituted service but it failed to attend court and adduce any evidence or call a witness in its defence.
12. The plaintiff filed submissions dated July 15, 2020. It was submitted that the plaintiff had proved the debt vide the statement of account, supplier's invoices, local purchase order dated March 4, 2006 and the demand letter.
13. That the defendant did not controvert any of the documents, thus there was substantial proof that the defendant owed the plaintiff Kshs 1,800,000/=. The plaintiff relied on the case of [Capital Fish Kenya Ltd v Kenya Power & Lighting Company Ltd](#) Civil Appeal No 189 of 2014 in its submissions that it had specifically pleaded and proved the special damages.
14. The court has considered the pleadings, evidence and submissions before it. The claim is for special damages. The court is to determine whether the plaintiff has made a case for the prayers sought.
15. The law is settled that a claim for special damages must not only be specifically pleaded but must also be strictly proved with as much particularity as circumstances permit. (See [Capital Fish Limited v Kenya Power and Lighting Company Limited \[2016\] eKLR](#)).
16. In *Provincial Insurance Co EA Ltd v Mordechai Mwanga Nandwa*, (KSM Civil Appeal No 179 of 1995,) the court stated:

“It is now well settled that special damages need to be specifically pleaded before they can be awarded. Accordingly, none can be awarded for failure to plead.”



17. In *Union Bank of Nigeria PLC v Albaji Adams Ayabule & another (2011) JELR 48225 (SC) (SC 221/2005 (16/2/2011))*, Mahmud Mohammed, JSC. delivering the judgment of the supreme court of Nigeria stated;

“I must emphasize that the law is firmly established that special damages must be pleaded with distinct particularity and strictly proved and as such a court is not entitled to make an award for special damages based on conjecture or on some fluid and speculative estimate of loss sustained by a plaintiff.... Therefore, as far as the requirement of the law are concerned on the award of special damages, a trial court cannot make its own individual arbitrary assessment of what it conceives the plaintiff may be entitled to. What the law requires in such a case is for the court to act strictly on the hard facts presented before the court and accepted by it as establishing the amount claimed justifying the award.”
18. In the present case, it is not in dispute that the plaintiff supplied the defendant with con-aid material. Indeed, at paragraph 3b of the defendant’s defence, the defendant pleaded that the con-aid works were included in the bills of quantities as provisional sums for a total of Kshs 3,500,000/=.
19. This court has seen PEXH1. There is a statement of account which shows that as of December 31, 2006 the defendant owed a balance of Kshs 3,500,000/=. On February 21, 2007, the defendant paid Kshs 500,000/= leaving a debt of Kshs 3,000,000/= which is indicated as over 90 days due. The same position is reflected on the statement of account as at February 28, 2007.
20. The court has also seen the invoices dated November 13, 2006 and March 7, 2006 sent to the defendant by the plaintiff for con-aid materials totaling to Kshs 3,500,000/=. There is also a local purchase order dated March 4, 2006 issued by the defendant for 375 litres of con-aid material for Kshs 1,500,000/=. There is also before court a series of communication between the parties as regards the balance of Kshs 3,000,000/=, including reference to a meeting that occurred on February 27, 2007 at Grand Regency as testified by PW1.
21. All the foregoing was positively testified to by PW1 whose testimony remained unshaken. Further, there was no evidence to displace the plaintiff’s case as stated by PW1.
22. From the above, the court is satisfied that the parties were engaged in a supply construction and that the defendant did not fully pay the purchase price. The defendant only admitted to owing Kshs 1,200,000/= which it paid, leaving a balance of Kshs 1,800,000/=.
23. In as much as the defendant pleaded that the materials were substandard thus the reason behind its refusal to pay the balance, it failed to produce any evidence to support that claim. Further, it failed to call any witness to state its case.
24. The upshot is that the plaintiff has proved its case against the defendant to the required standard. The court thus finds that the balance of Kshs 1,800,000/= is due and owing to the plaintiff.
25. In *Kenya Women Microfinance Ltd v Martha Wangari Kamau [2021] eKLR*, the court held;

“A claim for special damages is in the nature of restitution and, where proved, it is meant to restore the claimant to the position he would have been save for the action complained of.”
26. The court reiterates the foregoing and enters judgment for the plaintiff against the defendant for Kshs 1,800,000/- together with interest thereon at court rate from the date of filing suit until payment in full. The plaintiff will also have the costs of the suit.



It is so decreed.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER, 2022.**

**A MABEYA, FCIArb**

**JUDGE**

