



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**

**HCCC NO. 272 OF 2018**

**GLOBAL SCIENTIFIC & RESEARCH COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**NATIONAL VETERINARY INSTITUTE OF ETHIOPIA.....DEFENDANT**

**JUDGMENT**

**PLEADINGS**

The Plaintiff filed Plaintiff dated 5<sup>th</sup> July 2018.

The Plaintiff avers that on or about **December 2015**, the Plaintiff applied for and was awarded a tender to supply various livestock vaccines to the Food & Agricultural Organization (FAO) of the United Nations in Juba, South Sudan.

Thereafter, the Plaintiff engaged the Defendant to manufacture and deliver the livestock vaccines as per the Food and Agricultural Organization's request. The Defendant accepted the offer and issued the plaintiff with a proforma invoice for the total order for **USD 210,925**.

There was an agreement between the Plaintiff and the Defendant, where the Plaintiff issued the Defendant with a letter of credit for **USD 210,925** for the total value of the proforma invoice.

The Defendant was to ship the vaccines directly to Juba South Sudan to FAO in two consignments.

The Plaintiff avers that the Defendant was negligent in supplying and delivering both the first and the second consignment of vaccines. Particulars of which are

- i. Supplying the first consignment of vaccines without matching dosage of accompanying diluents hence making the vaccines unfit for purpose.
- ii. Shipping the vaccines and diluents without advance notification to parties concerned, using a longer route instead of going directly to Juba from Addis Ababa causing ice-packs to thaw and the vaccines to expire due to heat exposure by the time they were received by FAO.
- iii. Supplying vaccines without the required PANVAC Certification.

The Plaintiff avers that it is due to the Defendant's negligence, FAO rejected the first consignment of

vaccines and the Plaintiff had to ship them back to the Defendant in Ethiopia at a cost of **Kshs.720,000**.

Further, the Plaintiff alleges that the Defendant severally delayed in the production and delivery of the vaccines necessitating the Plaintiff to extend the letter of credit four times and each time at a cost of **Kshs.890,000**.

Contrary to the agreement between the Plaintiff and the Defendant, the Defendant shipped the second consignment of vaccines without the relevant diluent causing the Food and Agricultural Organization to reject the vaccines and to terminate the Plaintiffs contract. Thereafter, the Defendant was requested to collect the rejected vaccines from FAO warehouse in Juba, South Sudan to defray storage and disposal charges of the rejected vaccines.

Subsequently, the Plaintiff lost the benefit of the contract with FAO and lost the business and profit it would otherwise have made under it as well with FAO and has hereby suffered loss and damage for which it holds the defendant wholly liable. Reasons wherefore the plaintiff prays for judgment against the Defendant for; -

a. Special damages of **Kshs.22,529,000**.

i. **Kshs.669,000** being the cost incurred in legal fees in charging collateral as security for credit line to purchase the vaccines.

ii. **Kshs.3,560,000** being the cost incurred in extending the letter of credit to the defendant due to the Defendant's delay in production and supplying of the vaccines.

iii. **Kshs.720,000** being the cost incurred in shipping the rejected consignment of vaccines back to Addis Ababa from Juba.

iv. **Kshs.17,580,000** being the profit that would have been made after the successful supply of all vaccines requested by FAO.

b. General damages

c. An injunction restraining the Defendant from demanding the balance of the letter of credit issued to it by the Plaintiff's Bank.

### **LEAVE TO SERVE THE OUTSIDE JURISDICTION**

On **9<sup>th</sup> December 2019**, the Plaintiff was granted leave to file the Notice of Motion application dated **5<sup>th</sup> December 2019** seeking leave serve the Defendant outside jurisdiction. On **23<sup>rd</sup> January 2020**, the application to serve services and other documents outside jurisdiction and the order to serve Court process outside jurisdiction was granted.

### **DEFENCE**

The Defendant has neither entered appearance nor filed a defence against the Plaintiff. Despite service confirmed vide Affidavit of service filed on **17<sup>th</sup> October 2019** that the Defendant was served through International Courier Services.

The Plaintiff filed Affidavit of Service dated **10<sup>th</sup> June 2020**, that they served outside jurisdiction Plaintiff, Summons to Enter Appearance, Verifying Affidavit, Witness Statement and List of Witnesses, plaintiff's List and bundle of Documents and Notice of Motion of **5<sup>th</sup> July 2018** through TNT Express World Wide whose offices are at Ground floor International House. The Plaintiff's advocate was issued with Receipt No 47353 and manifest copies attached and marked IW-001 to the Affidavit of Service.

The Respondent according to the Court Record had been served 4 times earlier in the proceedings and failed to respond, enter appearance or file defence. Counsel for the Plaintiff also indicated that he served through email address [nvi-rt@ethonet.et](mailto:nvi-rt@ethonet.et) & [marthayami@yahoo.com](mailto:marthayami@yahoo.com).

This Court notes with concern, that after service of documents to the Respondent by the Plaintiff, the requisite period of 14 days there from to enter appearance and further 14 days for the Respondent to file Defence were not confirmed by the Plaintiff/Advocate writing to the Court/Deputy Registrar after effluxion of the statutory period to seek grant of Interlocutory judgment. This Court in error did not inquire as to whether the statutory period elapsed and further whether the Plaintiff applied, after the requisite period, for Interlocutory/Default judgment so as to lawfully proceed with formal proof proceedings.

In light of the glaring omission of mandatory statutory procedure, this Court has to down its tools at this stage and allows the Plaintiff to regularize this position before Formal Proof proceedings are conducted again. The formal proof proceedings undertaken are hereby expunged from the record.

### **DISPOSITION**

**The matter at this stage is stayed. The Proceedings conducted on 27<sup>th</sup> November 2020 are hereby expunged from the Court record and the Plaintiff to pursue entry of Interlocutory judgment before Formal Proof Proceedings commence. The pleadings filed remain and are valid on record.**

**DELIVERED SIGNED & DATED IN OPEN COURT ON 15<sup>TH</sup> FEBRUARY 2021 (VIDEO CONFERENCE)**

**M.W. MUIGAI**

**JUDGE**

**IN THE PRESENCE OF:**

**KARIUKI E & CO. ADVOCATES FOR THE PLAINTIFF**

**THE DEFENDANT- NATIONAL VETERINARY INSTITUTE – N/A**

**COURT ASSISTANT - TUPET**