



**Saicare Enterprises Limited v Mana Pharmacy & another (Civil Case E044 of 2019)
[2021] KEHC 285 (KLR) (Commercial and Tax) (22 November 2021) (Judgment)**

Neutral citation: [2021] KEHC 285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E044 OF 2019
DAS MAJANJA, J
NOVEMBER 22, 2021**

BETWEEN

SAICARE ENTERPRISES LIMITED PLAINTIFF

AND

MANA PHARMACY 1ST DEFENDANT

SAMUEL OULULA WANGUBA 2ND DEFENDANT

JUDGMENT

1. The Plaintiff is a company whose business is to supply medical equipment and assorted medicines. In its plaint dated 26th March 2019 it seeks, a mandatory order directed against the defendant(s) for immediate payment of a sum of Kshs. 22,719,936.26, being money owned, special damages for the sum of Kshs. 18,000, costs and interest.
2. The Plaintiff's case is based on supply of goods as evidenced by invoices/delivery notes running from 9th December 2018 to 29th May 2018 which have been particularized in the plaint and have been produced in the Plaintiff's bundle of documents which were admitted without objection. In addition, it is in evidence that the Defendants paid an initial instalment of Kshs. 6,000,000.00 through RTGS and also issued 17 post-dated cheques out of which only one cleared and the rest of them were dishonoured resulting in the Plaintiff to paying bank charges which it claims in the plaint. Despite efforts to resolve the matter by issuing demand letter and emails, the Defendants failed to make good the payments.
3. The Plaintiff called one witness, its director, Minaxi Bhupendra Bhatia (PW 1) who testified along the lines set out in the Plaint and produced the documents to support its case. She was cross-examined by counsel for the Defendants, Mr. Mutuku.



4. When I called upon the Defendants to proceed with their defence, their advocate applied for an adjournment and I rejected it. Since the Defendants were not ready to proceed, I closed the defence case.
5. I have considered the entire case and the Statement of Defence dated 16th April 2020. This is a case for goods sold and delivered. In their defence, the Defendants admit that they had a business relationship with the Plaintiff. Although they deny the particulars of invoices/delivery notes signifying different transactions, the documentary evidence in support thereof is unassailable as it proves delivery of the goods. This is also augmented by the fact that part payment was made by RTGS and post-dated cheques issued.
6. In their Statement of Defence, the Defendants state that they did not agree to issue post-dated cheques out of their own free will. They state that the Plaintiff was aware of their financial capability. In my view, the fact that the post-dated cheques were issued is an admission not only of the business relationship but also indebtedness.
7. The Defendants also state that they did not have privity of contract with the Plaintiff. I reject this defence as it is unsupported by any evidence. The documents produced including the invoices/delivery notes, cheques and correspondence by email and WhatsApp messages all affirm that the Plaintiff and Defendants were involved in business.
8. The Statement of Defence is a bare denial. It cannot withstand the evidence produced by the Plaintiff in support of the claim. I reject the suggestion by counsel for the Defendants in cross-examination that there was no written contract or that the time for payment for goods delivered was not stipulated or that the parties have not gone to the Alternative Dispute Resolution or mediation to resolve the matter.
9. Having considered all the evidence, I find and hold that the Plaintiff has proved its case on a balance of probabilities. Consequently, I enter judgment for the Plaintiff against the Defendants jointly and severally as follows:
 - a. Kshs. 22,719,936.26;
 - b. Special damages for Kshs. 18,000;
 - c. Costs of the suit;
 - d. Interest on (a) and (b) from the date of filing suit until payment in full.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2020.

D. S. MAJANJA

JUDGE

Court Assistant: Mr. M. Onyango.

Mr. Khaemba for the Plaintiff.

Mr. Mutuku for Mr. Swaka for the Defendant.

