THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 41 OF 2017

MICRO-CITY COMPUTERS LIMITED.....PLAINTIFF

-VERSUS-

NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES.....DEFENDANT

JUDGMENT

1. By way of a further amended plaint dated 30.11.2018, the Plaintiff prosecuted this suit against the Defendant seeking the recovery of sums of money as follows:-

a) General damages for breach of contract Agreement dated 8.4.2011.

b) Exemplary damages for breach of contract agreement dated 8.4.2011.

c) Loss of profit resulting from non-performance of the main contract and services contract 103,447,136/=

d) Tender preparation costs and consultancies Kshs. 9,930,000/=

e) Payment of engineers contracted for performance of the contract Kshs. 8,794,336/=

f) Interest on loss of profit Kshs. 75,166,276/=

g) Interest on contractual amounts paid to engineers contracted for the project Kshs. 7,374,324/= Total Kshs.214,544,220

h) Interest on a) and, b), c), d), e),f) and g) above at prevailing commercial rates.

i) Costs of this suit.

j) Any other or such further orders as this Honourable Court may deem fit and just to grant.

2. The Plaintiff pleads that sometime in September 2010, it participated in the Defendant's tender advertised via print media and its official website for the design, supply, and installation and commissioning of electric security surveillance system (CCTV) and Restricted Access Control which was to be installed at the Defendant's Social Security House Complex in Nairobi.

3. The Plaintiff bided for the said tender, emerged the winner and on the 8.4.2011, the Plaintiff entered into a written agreement with the Defendant regarding the said tender. It is further pleaded that the said contract was breached by the Defendant by a written letter which did not comply with the terms on termination.

4. The Defendant opposed the claim by filing an amended defence dated 11.12.2018 stating that the award of the contract to the Plaintiff was illegal and in total contravention of the procurement laws, in breach of public policy and thus unenforceable.

Plaintiff's Case

5. In support of its claim the plaintiff called two witnesses. PW1 **Paul Okolo Ananga** relied on his statements filed on the 7.4.2017 and 21.11.2017, together with a bundle of document accompanying the said statements.

6. It was PW1's evidence that the company in which he is the managing director bided and emerged the winner of the tender floated by the defendant and on the 8.4.2011, the parties formally signed the contract. In the contract, it was agreed that the Defendant was to pay the Plaintiff a sum of Kshs. 244,825,708/= as the cost of the contract and after expiry of the warranty period of two years from the time of installation of the security equipment, the Plaintiff was to remain on site and carry out maintenance of the installed security system at a cost of Kshs. 15,000,000/= per year with effect from 2013.

7. He added the Defendant in breach of the said contract failed to facilitate the Plaintiff in taking up the site by giving a lame excuse that performance of the contract was not possible because of budget constraints. As a result, the Plaintiff has suffered loss of business because of the breach of contract.

8. PW1 further testified that indeed investigation were carried out by the Director of Public Prosecutions (D.P.P) and the Ethic and Anti-Corruption Commission(E.A.C.C) but the Plaintiff was absolved from any wrongdoing with regard to the contract as there had to be a budgetary allocation before the tender was awarded to the Plaintiff.

9. PW1 testified that the plaintiff is a company of repute having undertaken similar project before and the Defendant carried out due diligence and chose it because of its expertise after site visits were conducted on a project the plaintiff had previously undertaken.

10. In cross-examination, PW1 admitted that the Plaintiff is not claiming the contractual sum but a sum of kshs. 214,544,220/= being the Plaintiff's projected profit. However, the Plaintiff abandoned the prayer for specific performance of the contract because it opted and claimed damages and the losses suffered as evidenced in the audit report.

11. The witness further stated in cross-examination that it obtained a copy of the subject contract from the procurement manager which did not have a seal had not been signed by the chairman, the procuring manager and the company secretary to the Defendant.

12. In support of the claim for loss of business, PW1 stated that the Plaintiff entered into a service contract with Atelier 2030; it employed several engineers as its employees for a period of 6 years and there was a 10% interest on the monies paid to the engineers. However, there were no payment documents to that effect and that all the Plaintiff's expenses were Kshs. 214,000,000/= and his projected profit was kshs. 26,000,000/=

13. PW1 confirmed that the award of the contract was the subject to investigations by the EACC and it was recommended that some officers be disciplined.

14. In re-examination, PW1 stated that the figures claimed by the Plaintiff were arrived at upon calculations by its accountants and that the subject contract was procedurally signed and a copy handed to him.

15. PW2 one **George Mokua** a certified accountant from Mokua Onwonga & co. Certified Public Accountants produced his report dated 14.3.2017. He testified that their brief was to look at a fair financial loss resulting from the cancellation of the subject contract and they relied on documents availed to them by the Plaintiff.

16. Pw2 went ahead to State that their computation was based on the contractual sum; the duration taken into consideration was between the year 2012-2018; the fact that the installation of the equipment was to be for 16 weeks; costs of preparation of the tender and consultation costs at kshs. 9,930,000/=; payments to engineers in the sum of Kshs. 8, 794,336/= and interest at 14% at the prevailing rates on the three heads of losses which came to about Kshs. 92,372,747/=

17. PW2 testified further that based on the generally accepted accounting principle a financial projection of kshs. 214,544,220 was reasonable.

18. In cross-examination, PW2 admitted that the Plaint does not claim loss of profit and even other heads of losses are not disclosed and the particulars at page 14 of the report are not pleaded or prayed for in the Plaint.

19. PW2 confirmed that they only relied on the documents annexed in their report. He further confirmed that contract did not provide for any interest rate in calculating losses and he did not have documents to support the operating expenditure.

20. On being referred to annexure 15 which is an agreement with **Eng. Gitonga Murithi,** PW2 admitted that he had no documentary evidence to show that a sum of kshs. 3,305,528/= was paid to him. The same applied to agreements between the Plaintiff, **Eng. Kennedy Gichuhi Mwai** and **Eng. Dennis Kithuka Xavier.**

21. PW2 also confirmed that since the equipment for installation was not bought, no installation took place, the VAT due for the professional fees had not been paid and the expenses put on page 17-25 of the report are not supported by any payment document but are just reasonable expenses incurred in a real trading situation.

Defence case

22. DW1 **M/s. Caroline Rakama Odera** the acting Defendant's Corporation secretary adopted her witness statement filed in Court on the 20.10.2018 together with a bundle of document filed on the 13.12.2017. That evidence was to the effect that the subject tender was initiated by the Defendant and the allocated budget was 125,000,000/=.This was according to Board paper No. BFIC/55/2011 dated 22.2.2011 and the

Defendant was not permitted to enter into any contract in excess of what was budgeted for.

23. In disregard of procurement laws, a contract was awarded to the Plaintiff for the sum of Kshs. 244,825,708/= which exceeded the budgeted and allocated funds. Subsequently the board generated another board paper requesting for allocation of a sum of kshs. 245,000,000 for ICT out of the ICT budget of 1.7 billion was rejected and no money was allocated. The Plaintiff was also awarded an unfounded annual maintenance at a cost of kshs. 15,000,000/= p.a which was not provided for in the tender document.

24. DW1 testified that since the subject contract was awarded illegally, the Defendant proceeded to cancel the said contract vide letter dated 21.5.2012. The Defendant also discovered that the Plaintiff had fraudulently misrepresented that it had installed a perimeter surveillance system at the NYS yet the NYS stated that it had never had any dealings with the Plaintiff. The same goes for a letter dated 9.8.2007 allegedly from the Office of the President-Provisional Administration and Internal Security; a letter dated 13.11.2007 allegedly from the Ministry of Public Works; a letter dated 21.3.2007 and 2.11.2006 allegedly from Office of the President-Provincial Administration and various certificate of practical completion which were confirmed to be forgeries by a letter dated 3.8.2017 from the Chief Architect-State Department of Works. Therefore, the tender was procured through fraud and the same was voidable and unenforceable in law.

25. It was further stated that the letter of award was not a contract as it was subject to recognition as provided in the RFR document and the Plaintiff could not incur any loss as the contract was never entered into. Further, the letter of award provided for negotiation and a site visit before executing the contract.

26. In cross-examination Dw1 stated that she did not take part in the tendering process and that the contract annexed by the Plaintiff is not in the Defendant's register of contracts as it is assigned a tender number instead of a contract number. She further confirmed that a member of the public could not be privy to the budgetary allocation once a tender is floated.

27. Dw1 also confirmed that it was in **Austine's Ouko's** witness statement that the contract had been cancelled, was never duly executed and the only signature on the contract was that of the then managing trustee. She further confirmed that fraud was alleged by the Defendant but the same was never particularized in their defence and that the investigation by the Director of Criminal investigations did not establish any wrong doing on the part of the Plaintiff.

28. In re-examination, DW1 stated there was budget allocation but the Plaintiff's bid exceeded it and without it, the Defendant was not obligated to award the contract hence the cancellation by letter dated 21.5.2012,

Submissions

29. **Mr. Mokaya** Learned Counsel for the plaintiff submitted that a contract was entered into by the parties on the 8.4.2011 and assigned a contract No.B04/2010/2011 which was breached by the defendant. He urged that the Plaintiff be entitled to compensation because evidence by the two witnesses were cogent and never controverted. In nparticular the witness said that the evidence of PW2, an expert, was never contradicted by the Defendant. For authority, Counsel relied on the decision in **Hadley – v – Baxendate**.

30. **Mr. Wafula,** learned Counsel for the Defendant submitted that the Plaintiff's claim is a special damage claim and as such the same must be strictly pleaded and strictly proved. He added that parties are bound by their pleading it being underscored that in cross –examination PW1 and PW2 conceded that that they had not particularized their claim at the close of the Plaintiff's case. An Application for amendment was allowed by the Court paving way for the Plaintiff to particularize its claim but after amendment, there was no evidence led on the amended pleadings as counsel did not recall his witnesses to testify on the particulars. For authority Counsel relied on the decision in **Kampala city v Nakaye [1972] E.A.**

31. Counsel also submitted that a contract ought to be executed by both parties but the subject contract was not executed by both parties as there was no forwarding letter of the contract and Section 26(3) of the Public Procurement and Asset Disposal Act 2005(Repealed) prohibits a procuring entity from entering into a procurement without a budget.

32. Counsel further submitted that PW2, expert opinion was a fabrication as the auditor could not state where he plucked the amounts in the report and no receipts were produced to prove the alleged expenditure and the same required no witness to rebut its contents as it was not even signed.

33. Counsel urged this Court to dismiss the Plaintiff's claim for failure of discharging its burden of proof.

Analysis & Determination

34. I have carefully considered the plaintiff's claim, the defence, the evidence adduced and the documentary evidence produced in court. I have also considered the written submissions filed by all the parties' advocates on record. In my humble view, the following issues emerge for my determination.

a) Whether the parties entered into a contract and was it binding?

b) Whether there was breach of contract on the part of the Defendant?

c) Whether the Plaintiff is entitled to any of the reliefs sought?

d) What orders should be made as to costs?

35. It is trite law the minimum essentials in creation of a contract are the intention to create legal obligations and consideration. Other terms are secondary as far as formation of a contract is concerned. The Supreme Court of the United Kingdom in the case **of RTS Flexible Systems Ltd *v* Molkerei Alois Müller GmbH & Co KG (UK Production) [2010] UKSC14,[45] :**stated as follows:

> ***"The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement."***

36. The Plaintiff has produced a copy of a contract that is dated 8.4.2011 between it and the Defendant. The said copy is signed by the Managing Trustee to the Defendant and the Managing Director to the Plaintiff. The Defendant has not challenged the authenticity of the signature of its managing trustee. Instead, it is averred that the said contract is not signed by the chairman, the Company Secretary and the same is not executed under the Defendant's seal.

37. Looking at paragraph 6 of the Defendant's amended defence, it is admitted that the contract awarded to the Plaintiff was illegal and in total contravention of the procurement law in so far as the contract amount exceeded the budgeted amount. In my view the Defendant is custodian of the contract documents as provided under **Section 45** of **the public procurement and Disposal Act (repealed) 2005 which provides as follows:**

> **"(1) A procuring entity shall keep records for each procurement for at least six years after the resulting contract was entered into or, if no contract resulted, after the procurement proceedings were terminated."**

38. From the foregoing, it was upon the defendant to demonstrate to this Court that the subject contract was not executed properly by furnishing this Court with the original copy of the subject contract in order for this Court to ascertain that the contract was not properly executed. Failure to which, I hold that on a balance of probabilities a copy of the contract produced by the Plaintiff and the fact that the defendant indeed sought to terminate the contract, was enough to prove the existence of a valid contract between the parties as there was an intention to enter into legal relations and there was consideration. To this court it is not a valid reason that the tender was floated by the defendant beyond it allowed budget allocation.

b) Whether there was breach of contract on the part of the Defendant .

39. Section 32 of the **Public Procurement and Disposal Regulations, 2006(repealed)** provides as follows:

> **(1) A contract document shall specify the grounds on which the contract may be terminated and specify the procedures applicable to termination.**
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> **(2) The procurement unit shall obtain the approval of the tender committee which authorised the original contract, prior to terminating the contract and the request for approval shall clearly state—**
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> > **(a) the reasons for termination;**
> >
> > **(b) the contractual grounds for termination; and**
> >
> > **(c) the cost of terminating the contract**

40**.** Breach and termination of the subject contract is provided under clause 6 of the subject contract. This means that for the termination of the subject contract was supposed to adhere to the provisions of clause 6.2 of the subject contract which provides as follows:

> **"the employer shall have the right at any time and for any reason to terminate the contract in whole or in part by giving the contractor a one (1) month written notice whereupon all works on the contract shall be discontinued in which event the Employer's sole liability shall be to pay the contractor the price for the Goods or services already supplied as at the termination date but such payment shall not include loss of anticipated profit or any consequential loss"**

41. Looking at the letter of termination, the Defendant did not issue the Plaintiff with a one month written notice indicating its intention to terminate the contract as provided under clause 6.2 of the contract. Instead, it is stated in the termination letter dated 21.5.2012 that the Defendant is unable to proceed with the project due to budgetary constraints.

42. Because the mandatory one month written notice of termination was never issued and served by the Defendant, I hold that the contract was never validly and lawfully terminated and that the Defendant was in unlawfully terminating breached the terms of the subject contract.

Whether the Plaintiff is entitled to any remedies sought: -

43. The Defendant's Witness number 1 led evidence to demonstrate that the award of the tender and the subsequent contract was illegal as the award exceeded the budgetary allocation of Kshs. 125,000,000/= as factored in the Defendant's ICT budget for 2010/2011. Indeed the Defendant position is supported by a letter dated 16.12.2015 from the EACC which recommended that an administrative action be taken

against the public officers who were involved in the tendering process. The recommendation was premised on the fact that there was inadequate budgetary provisions but the contract was nevertheless awarded yet the tender committee had an obligation under regulation 10 of the public procurement and disposal regulations 2006 to ensure that there was adequate budget and the Defendant management proceeded to circumvent the decision of the Defendant's board by initiating negotiation with the plaint.

44. Having not adhered to the laws, the Defendant willingly and in full knowledge, engaged into an illegal contract. In such a scenario, the law is very clear that such contracts are unenforceable. Several decisions of the Court of Appeal make reference to that position including **Mapis Investment (K) Limited vs. Kenya Railways Corporation (2006) eKLR**, **Heptulla vs. Noormohammed (1984) KLR, Kenya Airways Limited vs. Satwant Singh Flora (2013) eKLR, Patel vs. Singh (1987) eKLR** among many others.

45. The Court of Appeal was very categorical in **Heptulla vs. Noormohammed (*supra*)** that '*…No court ought to enforce an illegal contract where the illegality is brought to its notice and if the person invoking the aid of the court is himself implicated in the illegality...'*

46. Likewise, the Court of Appeal while discussing the character of illegal contracts and enforcement in **Kenya Airways Limited vs. Satwant Singh Flora** (supra): -

> ***Ex turpi causa non oritur action. This old and well known legal maxim is founded in good sense, and expresses a clear and well recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the court not to assist him"***

47. In cross-examination, DW1 stated that it was impossible for a tenderer to be privy to the budgetary allocation as it is only the Defendant that had the information on budgetary allocation. Also, the finding by the EACC absolved the Plaintiff from any wrongdoing and placed the blame squarely on the Defendant's tendering committee.

48. The allegations by the Defendant that the Plaintiff obtained the award of the contract by fraudulent misrepresentation were neither pleaded in the amended defence nor were the particulars of fraud and misrepresentation given. As a result, I hold that the Defendant failed to prove that the Plaintiff participated in the illegalities. **See Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] eKLR)**.where it was held that the acts alleged to be fraudulent must be set out, and then it should be stated that the acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.

49. Now that I have established that the Plaintiff is an innocent party in the illegalities perpetuated by the Defendant's tender committee, I hold that the Plaintiff is entitled to remedies as a result of breach of contract. In **Disney Insurance Brokers Ltd v Mombasa County Government [2018] eKLR,** it was stated as follows:

> **"I hold the view that it has come a time when the principle of law that a court of law should never lend credence or a hand to an illegal or immoral contract should not and must not be applied blindly and in order to perpetrate injustice. If it be a principle of law, it must be seen and be applied to further justice and fairness and there cannot be justice when an outright deprivation of property is to be blessed and rewarded. The maxim has all along been applied with an exception that a party who is the victim of an illegal intent is not barred from recovering a benefit bestowed upon the party with the illegal intent. In the English case of Archbolds (Freightage) Ltd vs S. Spangletee Ltd quoted with approval by the Court of Appeal (Nyarangi, Gachuhi & Aploo JJA) in Patel vs Sing (No.2) [1987] KLR 585 laid bare the exceptions way back in 1987 as follows:-**
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> **"The effect of illegality upon a contract may be threefold. If at the time of making the contract there is intent to perform it in an unlawful way, the contract, although it remains alive, is unenforceable at the suit of the party having that intent; if the intent is held in common, it is not enforceable at all. Another effect of illegality is to prevent a plaintiff from recovering under a contract if in order to prove his right under it he has to rely upon his own illegal act;**
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> **In this excerpt, I read the Court of Appeal to say that the person with illegal intent ought not to be allowed to enforce a contract thereby entered and use the illegal intent, guilty mind, to prove his right. It is the guilty party that ought not to be rewarded but the victim need not be denied the right to remedy a wrong so committed."**

50. Further, clause 16.3 of the subject contract provide as follows:

> **"Any costs incurred by a party arising out of the breach by the other party of any provision of this agreement shall be borne by the party in breach."**

Has the Plaintiff proved its claim for damages?

51. Now that it has been established that the Defendant is in breach of clause 6.2 of the subject contract, it is trite law that the general damages that is available to the innocent party to the breach are limited to such as the law will presume to be direct, natural or probable consequences of the action complained of**.** In the case of **Strows Broks Aktie Bolog vs. Hutchison [1905] AC 515** the court while distinguishing the character and nature of general damages from special damaged for breach of contract said:-

> ***"General damages are such as the law will presume to be direct, natural or probable consequences of the action complained***

of. Special damages on the other hand are such as the law will infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character; they must be claimed specially and proved strictly."

52. More recently, the court in ***Consolata Anyango Ouma vs South Nyanza Sugar Company Ltd [2015] eKLR*** justified the need to award such damages when it said:-

> **"As a general principle the purpose of damages for breach of contract is, subject to mitigation of loss, that the claimant is to be put as far as possible in the same position he would have been had the breach not occurred. This principle is encapsuled in the Latin maxim/phrase, *restitutio integram*".**

53. The necessity for award of general damages for breach of contract may be seen to flow from the principle of law that there ought to be no injury without a remedy. The author of **Anson's Law of Contract, 28th Edition at pages 589 and 590** states the law to be that:-

> **"Every breach of a contract entitles the injured party to damages for the loss he or she has suffered. Damages for breach of contract are designed to compensate for the damage, loss or injury the claimant has suffered through that breach. A claimant, who has not, in fact, suffered any loss by reason of that breach, is nevertheless entitled to a verdict but the damages recoverable will be purely nominal".**

54. In this case I have found that the parties indeed negotiated by a tender process and executed an agreement. I presume it that in the entire tender process there were cost and professional exertion by the plaintiff of course with a legitimate expectation that a financial benefit would accrue once the contract was executed. That is a loss I consider needs to be compensated

55. The court has further found that the defendant did breach the contract by termination against the law. In those circumstances, I hold that the plaintiff is entitled to general damages for the loss suffered when the contract was breached. This loss is independent of any special damages that may have been incurred by the plaintiff provided it is not capable of being viewed as duplication. All considered, and doing the best with the fact of the matter, including the value of the contract and thus the possible profits, I do assess the plaintiff to be entitled to damages in the sum of Kshs 10,000,000. In coming to this award I have taken regard of the fact that there was a prayer for loss of business profits.

56. The plaintiff also sought special damages under different heads as well as exemplary damages. In my view no evidence was led to satisfy the award of exemplary damages. There was no allegation or proof that the defendant was propelled by bad faith or design to gain a financial benefit. I hold that no exemplary damages are awardable to the plaintiff in the circumstances of this case.

57. On special damages, the law remains trite that the same must not only be specifically proved but also strictly proved. Having reviewed the evidence I find that the plaintiff did not produce evidence in support of the particulars of loss of business profits and costs. In cross-examination, PW2 stated that the expenses put on page 17-25 of the report are not supported by any payment document but are just reasonable expenses incurred in a real trading situation. That does not meet the threshold for proof of special damages. In addition, even the usual basic business operation documents like of bank statement to prove payment of the preliminary expenses that it incurred in the preparation of the tender document and the cost of all the consultancies which it is entitled to by dint of clause 16.3 of the subject contract, were never produced in evidence yet these are document which be with the plaintiff if indeed they exist.

58. The specific claim of 103,447,136/=, called for specific proff in my view by way of some documents. The evidence of loss of profits resulting from non-performance of the main contract by PW1 and PW2 remained largely speculative with credible probative value thus falling short of the plaintiff's onus of proof. In the case of **"KENYA BREWERIES LIMITED KIAMBU vs. GENERAL TRANSPORT AGENCY LIMITED [2000] eKLR**, the court said –

> **"It is the duty of the Plaintiff to prove its claim for damages as pleaded. It is not enough simply to put before the court a great deal of material and expect the court to make a finding in his favour. It was said by Lord Goddard, CJ in Bonham Carters Hyde Park Hotel Limited [1948] 64TR 177 –**
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> **The Plaintiff must understand that if they bring actions for damages it is for them to prove damage. It is not enough to write down particulars and, so to speak, throw them at the head of the court, saying, "this is what I have lost, I ask you to give me these damages." They have to prove it. See OUMA vs. NAIROBI CITY COUNCIL [1976] KLR** 297 at 304 –
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> **I am not obliged to go through the charade of making my own discounts from the expert's figure. I therefore make no award in favor of the Plaintiff for the claimed loss of profits."**

59. The upshot after considering all the above is that I find the plaintiff's has not proved the claim for loss of anticipated profit. Be that as it may, the Plaintiff failed to prove the loss of profit resulting from non-performance of the contract as the figures given were speculative and payment to engineers contracted for performance of the contract on tender preparation cost and consultancies was not proved.

60. I however find that the claim for a performance bond of Kshs. 246,128/=, the tender security of kshs 10,250/ together with the Accountant's professional fees for the preparation of the audit report at kshs. 5,800,000/=VAT inclusive. The aggregate of the three heads of expenses give me a figure of Kshs 6,056,378/=

61. In conclusion, judgment is hereby entered for plaintiff against the Defendant in the sum of Kshs. 16,056,378/= plus interest at court rates from the date of the suit until payment in full. The Plaintiff is awarded costs of this suit.

Dated, signed and delivered at Mombasa

this 30th day of April 2020.

P J O Otieno

Judge