



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CIVIL CASE NO.58 OF 2009**

STAR FLOWER INTERNATIONAL B.V.....1<sup>ST</sup> PLAINTIFF

STAR FLOWERS KENYA LIMITED.....2<sup>ND</sup> PLAINTIFF

C.W. STAR BEHEER B.V.....3<sup>RD</sup> PLAINTIFF

**-VERSUS-**

MOHAMED HASSANALI ABDULLA.....1<sup>ST</sup> DEFENDANT

MAHMUD MOHAMED ABDULLA.....2<sup>ND</sup> DEFENDANT

**JUDGMENT**

**BACKGROUND**

1. The plaintiffs instituted the suit through a plaint which was amended on 26<sup>th</sup> May 2009 seeking judgment against the defendants jointly and severally for the following prayers: -

- a. An order restraining the defendants by themselves and/or agents from claiming, transferring or in any way interfering with or taking back the sum of Euro 165,000 paid on account of the sale of the 2<sup>nd</sup> Plaintiff and CW Star Beheer BV;
- b. An order directing Ruffmann Dhanji Elms & Virdee Advocates to retain the sum of Euros 165,000 deposited by the Defendants on account of the sale of the 2<sup>nd</sup> plaintiff's share and the same be released to the Plaintiffs.
- c. Euros 500,000 being sum due on account of damages above;
- d. A declaration that the defendants are in breach of the contract between themselves and the plaintiffs;
- e. Restitution in respect of the affairs of the 2<sup>nd</sup> Plaintiff;
- f. Accounts;
- g. Any other order the court may deem fit; and
- h. Costs of the suit.

**PLAINTIFF'S CASE**

2. Pleadings filed show that the 2<sup>nd</sup> plaintiff is a limited liability company incorporated in Kenya while the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiffs are incorporated in the Netherlands. Sometimes in August 2008 the 2<sup>nd</sup> plaintiff offered to sell and the defendants agreed to purchase 100% of its shares at a cost of 2,100,000 Euros. Of the said purchase price, a sum of 1,600,000 Euros was to be paid to outstanding creditors and employees and the balance of 500,000 Euros directly to the 2<sup>nd</sup> Plaintiff. They further agreed a sum of 50,000 Euros to be paid by 21<sup>st</sup> August 2008 and thereafter 115,000 Euro by 1<sup>st</sup> October 2008 being the completion date; and the defendants would take over the running and operations of the 2<sup>nd</sup> Plaintiff.

3. The plaintiffs contention is that a sum of 165,000 Euros was paid to the advocates by the 1<sup>st</sup> October 2008 and the defendants took over the running and management of the 2<sup>nd</sup> Plaintiff affairs in total breach of the contract for sale and installed new software system in computers and its equipment and changed the entire book keeping program, signed new lease agreements with Flora Holland for marketing of flowers abroad on behalf of 2<sup>nd</sup> Plaintiff, removed 2.2 hectares of plastic sheet in the green house and uprooted 3,000 square meters of plants and root stock.

4. In reply to the defendants' counter claim, the plaintiffs stated that the defendant is not entitled to a reimbursement of the amount claimed in the counter claim as its act of making payment is an acknowledgement and confirmation of its takeover of the affairs of the 2<sup>nd</sup> Plaintiff and compliance with its obligations under the contract. The 2<sup>nd</sup> Plaintiff suffered loss and damages as a result of the conduct of the defendants towards the 2<sup>nd</sup> plaintiff.

5. The plaintiff availed two witnesses. PW1 **Jan Joseph Dame** testified that he was the farm manager of **Star Flowers (K) Ltd** and when the farm was taken over by **Abdulla** on 1<sup>st</sup> October 2008, Abdulla appointed him to continue as farm manger and from then **Abdulla** was his employer. He testified that after 1<sup>st</sup> October, 2008, the company used a different company to export flowers. He said the new company was appointed by **Mr. Mohammed**. He further stated that on instructions of **Mr. Mohammed**, they removed 2Ha of plastic sheets and computer and software were taken from the office for 9 days. He said that he had no idea that payments were made to **Mr. Amirain** because he had no insight in the accounts neither was his signature required on cheques.

6. On cross examination, PW1 testified that before negotiations, he worked as consultant for Star Flowers before he was appointed manager. He said he took over management as Hotilnx Ltd and that he was in the farm 3 days a week while his manager was in the farm daily. He stated that at the end of every month, he raised an invoice to Star Flowers. He said he raised an invoice as a consultant. He said invoice No.077 for a sum of 9,978 Euros was raised to **Star Flowers** and not **Mohammed Abdulla**. He said there was a Memorandum of Understanding that they would sell flowers to **Mohammed Abdulla** said the Memorandum of Understanding was a contract by itself but the parties supposed to sign a proper contract which they never signed.

7. In further cross examination, PW1 said he had some dealings with **Dhanji Ruffman** because PW1 was sometimes the go-between the defendant and the plaintiff. He said he was informed there was adjustment to the contract but nothing official was signed by 1<sup>st</sup> October, 2008. PW1 testified that before August and October, Star Flowers International was a shareholder of Star Flowers Kenya. He said he was given Power of Attorney over 999 shares which they held in Star Flowers Kenya; and Star Flowers Kenya also gave him full power of attorney. He said he was given Power of Attorney so that him and Abdulla could operate bank account in Nairobi. He denied that he was given power of attorney to deal with 999 shares.

8. PW1 stated that it was not the first time for Abdulla to go the farm in October 2008; that he would go to the farm on average 3 times a week. He said he was aware that due diligence was ongoing. He said the defendants were interested and committed to buying the farm subject to due diligence. He said Star Flowers' debt was 165 Euros.

9. PW1 testified that he knew that the farm was not being run properly and had debt of a sum of 1.6 million Euros; that after advising Mr. Star, he opted to sell the farm Star Flowers. He said the Star Flowers wanted to sell the farm, settle debts and walk away with some money. He confirmed that purchase price was agreed a sum of 2,100,000 Euros; 1,600,000 euros to be injected in the farm and 500,000 Euros to be paid to Mr. Star and 50,000 Euros was paid to Mr. Star. He said he was hired by the defendants to run the day to day management of the 2<sup>nd</sup> plaintiff at a salary of 6,000 Euros per month. He testified with the instructions of the defendants he uprooted some and removed some plastic sheets and moved them to a place they were more needed; that they also took the computers from the farm and moved them to their other flower farms to enable them coordinate.

10. PW1 testified that there was a lot of damage and loss on the farm caused by the defendants who took possession for about 6 weeks and abandoned the farm. He said he is not aware of any contract signed between the Star Flowers and **Mohammed Abdulla**.

11. In reexamination, PW1 said he is aware that payments of 376,000 Euros came from Lake Flowers account and that Lake Flowers is a company owned by Mohammed Abdulla.

12. PW2 **Star Cornelius Wilhem** stated that he is the director of the 1<sup>st</sup> and 3<sup>rd</sup> Plaintiff. He stated that he is the owner of shares in **Star Flowers International** (1<sup>st</sup> plaintiff) in Holland and that the 1<sup>st</sup> plaintiff owns shares in **Star Flowers Kenya (Ltd)**. He confirmed that he offered for sale the shares in the 2<sup>nd</sup> Plaintiff and the defendants were willing to buy them at 2.1 Million Euros and signed the offer. He confirmed that 1.6 million Euros was to be paid to creditors while 500,000 euros was to be paid directly to the 1<sup>st</sup> Plaintiff.

13. PW2 testified that after negotiations held in July, they settled on preparing a Memorandum of understanding (MOU) but it was not signed. The defendants committed themselves by paying 50,000 Euros which was deposited in an escrow account as a show of commitment; and 200,000 euros was to be paid when taking over on 1<sup>st</sup> October, 2008 and two other installments of 125,000 euros to be paid in the year 2009. He said in total the defendants paid to his company was a sum of 165,000 euros which is held by the advocate but was returned to the defendants when their Advocate asked for the money. He said his lawyer started to prepare the contract in September and it was ready by 1<sup>st</sup> November, 2008 but Abdulla refused to sign.

14. PW2 further testified that the defendant took over the management of the farm (2<sup>nd</sup> plaintiff) by 1<sup>st</sup> October, 2008 and asked **Mr. Dame** PW1 to manage the farm for him. He said from that day, he was not involved in the day to day running of the farm; that he made independent decision without involving him; that they harvested flowers, uprooted 3,000 square meters of rose plants, removed 2.2 Ha of plastic sheets as stated by the PW1 and paid some creditors as they had agreed; he said the defendants caused damages on the farm which forced him to sell it at a lower cost.

15. PW2 Testified that Hotlinxs was **Dame's** (PW1's) company and that he was working for **Mr. Abdulla**. He said payments made to creditors was on the basis of agreement between the Star Ltd and Abdulla. He urged this Court make declaration that a contract existed between him and Mr. Abdulla and that, Mr. Abdulla breached the contract between them. He said they are asking for accounts because he does not know what they made from the farm. He said he had to sell the farm for lower amount, a sum of 500,000 Euros so that the workers could keep their jobs. He urged court to dismiss the defendant's claim as he earned money for the period he was in the farm.

16. In cross examination PW2 said that between 1<sup>st</sup> October, 2008 and 10<sup>th</sup> November, 2008 the sale agreement underwent 9 changes from the side of the defendants. On further cross examination, he confirmed that his Advocate **Ruffman Dhanji** amended the sale agreement. He said the agreement was not signed and when the defendant's lawyers demanded refund of 165,000 Euros paid the plaintiffs lawyers paid back. He said money paid was held in Escrow account meaning it was to be held until the contract was signed.

17. He said he lost money in the transaction and confirmed that **Joseph Dame** used to work for him before 1<sup>st</sup> October, 2008. He confirmed that he had given power of attorney to Dame. He confirmed that he was selling a company that could not pay its debts. He said he did not ask defendants to step in and pay creditors; he said **Abdulla** wanted to buy the farm and he paid kshs 378,000 Euros. He said he visited some of the creditors with **Mohammed** to negotiate but it was Mohammed to negotiate. He said the meetings took place in August; that he attended but he did not participate in discussions over debts.

18. He said he had two other prospective buyers before and that the company was sold in April 2009. He said if Abdulla put money in the farm it is his problem.

19. In reexamination he said Abdulla was not required to pay debts before completing due diligence and that from 1<sup>st</sup> October, 2008 Abdulla owned the farm and Dame was working for him. He said Abdulla paid landlord for September, October and November.

### **DEFENDANT'S CASE**

20. The defendant in opposing this suit relied on amended statement of defence and amended counter claim dated 18<sup>th</sup> June 2009. In the pleadings the defendants admit having had expressed interest to purchase 100% of the 2<sup>nd</sup> plaintiff's shares but the transaction was not completed as they did not sign the agreement. They denied existence of a valid and enforceable agreement/contract and stated that the money was to be paid through an advocate who was to hold the amount in an escrow account as the parties attempted to reach a mutually acceptable final agreement.

21. The defendants denied taking over possession and the operations of the 2<sup>nd</sup> Plaintiff but admitted having entered into the business premises to conduct due diligence and confer on details the full operations of the 2<sup>nd</sup> plaintiff. The defendants further admitted paying debt owed by the 2<sup>nd</sup> plaintiff, installing new software system but contend that they remained inactive and did not interfere with the book keeping system.

22. In their **amended counterclaim**, the defendants sought the following orders against the plaintiffs: -

- a. That the Plaintiffs' suit herein be dismissed in its entirety;*
- b. The cost of the plaintiffs' suit be granted to the Defendants;*
- c. Judgment be entered in favour of the defendants in the counter claim for a sum of 378,629.38 Euros.*
- d. Costs of the counter claim be awarded to the Defendants;*
- e. Interest in Euros 378,629.38 at court's rate from the time of filing the suit;*
- f. Interest in cost of the suit from the date of judgment*

23. The defendants contend that they are entitled to be reimbursed all the sum expended towards the 2<sup>nd</sup> Plaintiff's continued operations as the same were made in good faith to be applied as part payment of the purchase price of the shares.

24. The defendants availed two witnesses. DW1 **Richard Omwela** an Advocate of the High Court practising in the firm of HHM as senior partner; he adopted his witness statement dated 19<sup>th</sup> July 2012. He testified that he acted for the defendant in regard to the transaction subject matter of this case and **Ruffmann Danji** Advocates acted for the vendors.

25. DW1 testified that there was no contract signed in respect of the shares and the relationship between parties herein was initiated by memorandum of understanding which was to form the basis of entering into contract but no contract was signed. He added that in sale of shares, they would do due diligence which included memorandum of association (MA) of the company, certificate of incorporation which were not provided at the time they were required. He showed Court a letter dated 28<sup>th</sup> August 2008 from his law firm to plaintiff's Advocate asking for documents which were to aid in compliance.

26. DW1 testified that according to the MOU, the formalities should have been completed by 30<sup>th</sup> September 2008 but by that date, they had not received the draft of the contract for sale; that they received the draft of contract for sale on 2<sup>nd</sup> October 2008, which was after the completion period. He showed Court a letter at page 64 of the documents forwarding the draft and said that the contract did not materialise.

27. DW1 stated that deposit in the sum of 165, 000 Euros as shown in paragraph 10 of the statement was paid; and that the amount was refunded by the law firm acting for the vendor at the end of the contract/termination. He said the deposit was refunded because the agreement was not completed; that offer to sell came to an end.
28. On cross examination, DW1 testified that to conduct due diligence, require certificate of incorporation but none was provided and due diligence did not even start. He confirmed that the completion date was 30<sup>th</sup> September 2008 as per the MOU and that MOU sets out what is to be contained in the contract; that MOU is an intention to go into a contract. He said he was not involved in the MOU but his was to do the agreement.
29. He confirmed that the purchaser's Advocates issued a letter regarding the refund and said the deposit was demanded because there was no contract. He said he was not aware if there were liabilities being paid. He stated that in an ideal situation, share transfer would have been signed and transfer lodged with registrar of companies. He said he had no idea when his clients left or entered the premises.
30. On re-examination, DW1 stated that the letter dated 4<sup>th</sup> December 2008 at page 128 of the plaintiff's documents brought the matter to an end and they were asking for refund of Euros 165, 000, which had been paid as a deposit for the transaction.
31. DW2 **Mohammed Hassanali Abdulla** testified that he is the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant is his son and that both of them were involved in the transaction herein. He adopted his witness statement recorded on 19<sup>th</sup> July 2012. He testified that in the year 2008, a consultant by the name **Joseph Dame** was managing the plaintiff's flower farm together with a team.
32. He testified that on 22<sup>nd</sup> August 2008, he sent an email to the main shareholder of the plaintiff **Beheer Star** and copied the plaintiff's consultant Joseph Dame. He testified that they agreed that they would conduct due diligence before purchase of shares as it was a huge business and there were liabilities.
33. DW2 testified that they agreed that he would pay 2.1 Million Euros which included liabilities. He said the MOU led to initial deposit of 50,000 Euros to plaintiffs' Advocate and thereafter subject to MOU, everything would be subject to contract which was supposed to be signed by 30<sup>th</sup> September 2008.
34. DW2 stated that he did not sign the contract; he said that the agreement was to be signed subject to him conducting due diligence; that the amount involved was huge and due diligence was important. He said they had a meeting with suppliers as it was necessary to verify suppliers. He added that, part payment was supposed to have been effected as per paragraph 3 of the MOU and that he was required to confirm assets and liabilities of the company but they were supplied with financial statements which were not signed by auditors on 31<sup>st</sup> December 2007. He said the accounts created more disturbance than satisfaction and showed Court unaudited accounts document 7 of the defendant's document.
35. DW2 further stated that, it was evident the firm was making way too huge loses and he requested for KRA certificate but it was not supplied neither was he supplied any document with reference to employees of the farm; that they were about 500 employees. He stated that he never signed any contract between him and the plaintiff. He said he used to go the farm to see staff because **Joseph Dame** was there and since the farm was large, he depended on **Joseph Dame** to understand the operations and dealings with the farm. He said he paid him consultation fee as he informed him that Star Farm was not paying him.
36. DW2 said **Mr. Joseph** was asked to assist in due diligence as shown at page 7 of the plaintiff's documents. He said he filed counterclaim for money spent during negotiations. He said that he paid suppliers when they refused to sell to Star Farm as he realised that the farm would degrade further; he said they had an agreement to pay 25% due to each supplier and also paid for the farm to continue getting services offered by the landlord; that total disbursement to suppliers and service charges was 378,629 Euros and the payments were made on 7<sup>th</sup> October 2008 as shown by copies of cheques at page 13 to 28 of defendant's documents. He said the payments were not part of the contract and the purpose of paying was for the farm to continue operating as he had intention to purchase the company. He prayed for the amount paid in good faith to be refunded.
37. DW2 confirmed that he signed return to work formula for the employees who had called for a meeting which was meant to explain what would happen if he signed the agreement. He said upon instructing his lawyer to ask for refund, a sum of 165, 000 Euros was refunded. He said a sum of 85,000 Euros went to suppliers. He said they had initially agreed that he would pay a sum of 200,000 Euros for the shares but a sum of 85,000 Euros went to the suppliers. He further stated that he made payment of lease to the lawyers on 7<sup>th</sup> October 2008 which was paid in 2 cheques of 78,000 Euros and 12,061 Euros. He said the landlord knew they wanted to take over subject to agreement.
38. DW2 stated that all the payments made were done in good faith. He said he wrote to the plaintiffs that he still had intention of taking over and made payments to ensure that the farm was running. He confirmed that he made payments with the hope that agreement would be signed.
39. DW2 stated that plaintiffs are claiming 500,000 Euros; 200,000 Euros for loss of future business expectation, 100,000 Euros for loss of contract abroad. He said he was not shown prove of items demanded by plaintiffs; he said the claim was unreasonable and nothing like that was suffered; he urged the Court to order that he be refunded all the money he paid.
40. On cross examination by **Biko** for the plaintiffs, DW2 stated that they were to pay a sum of 500,000 Euros and 1.6M Euros as liabilities according to MOU that's how they reached a sum of 2.1M Euros. He said he knew he was to pay only 500,000 Euros and 1.6M Euros, he was to pay suppliers. He said they took long to agree on the figure and that the figure was worked but they agreed that would be approximate figure. He said he was to purchase 100% shares of star farm.
41. DW2 said they were going into and out of the farm before and after 30<sup>th</sup> September 2008 as they were going to get more information on

running the farm. He confirmed that they were also going into the farm to conduct due diligence and on further cross examination, he said due diligence ought to have been concluded on 30<sup>th</sup> September 2008. He said they would visit the farm for a few hours. He said he did what he did for due diligence but he did not get audited accounts. He said lawyers never agreed as they were not getting instructions. He said **Danji Advocate** sent an agreement in October

42. DW2 testified that interventions to pay suppliers due to low production was during the period of due diligence; he said he had confidence that the farm would do well if he injected money. He said the payments to suppliers was after October but he never advised on operations. He denied that he was not approving the manner in which the farm was managed. He said he had not taken over.

43. DW2 said the farms system of computer was not good as the documents produced could be altered and he took his software to be installed. He said he gave them the package but no one was trained on how to use it; that he did not train them; he said he installed the software with a view to buying the farm and he paid quarterly rent on the basis of existing rent between flowers and the landlord as he had no choice. He said he advised the plaintiffs on alternative markets abroad based on his experience and the advice was implemented by the plaintiff. He said money was remitted to the defendant's farm through the name Lake Flowers which the defendants gave them. He said Star Flowers used the money for its expenses. He said the defendant never bought new plants.

44. DW2 confirmed that he was aware that there was somebody who wanted to buy the Flower Farm and there was a creditor/supplier who was also interested in buying the flower farm.

45. He states that it is him who engaged Handbarkers in Holland who would take the flowers to the auction. He said a sum of 40,000 Euros paid on 23<sup>rd</sup> October 2008 was paid by him to Star Flowers through RTGS.

46. DW2 confirmed that his counterclaim is for 372,331.80 Euros. He further stated that he is claiming 378,900 Euros. He confirmed that it was paid after 30<sup>th</sup> September and 1<sup>st</sup> October 2008. He concluded that the transaction could not proceed as they were taking too long to sign the agreement.

47. On re-examination, DW2 stated that part of the due diligence required that they get list of suppliers and that they got and verified the amount due. He said most important documents for due diligence are audited financial documents. He denied having made decisions at any one point on behalf of Star Farmers and said decisions were made by **Joseph Dame** and it's him that helped the defendant understand the operations of the business.

#### **ANALYSIS AND DETERMINATION**

48. I have considered evidence adduced, perused documents produced in Court and submissions filed by both parties herein and consider and note that prayers (a) and (b) in the plaint captured under paragraph 1 above have been overtaken by events. I consider the following as issues for determination: -

- a. *Whether the parties herein entered into an enforceable contract.*
- b. *Whether the plaintiff is entitled to prayers sought in the plaint.*
- c. *Whether the defendants are entitled to prayers sought in the counterclaim.*
- d. *Who should bear costs of this suit?*

#### **(a) Whether the parties herein entered into an enforceable contract**

49. The Plaintiff's argument is that enforceable contractual obligations exist between the parties herein while on the other hand, the defendants contend that the transaction was not concluded and therefore no legally binding obligations capable of being enforced. The defendants argue that they only sent out an MOU to the plaintiffs, which was to be completed by a signed agreement which was not signed.

50. There are three essential requirements of a valid contract being offer, acceptance and consideration. This position was stated in the case of **Charles Mwirigi Miriti Vs Thananga Tea Growers Sacco Ltd & Another [2014] eKLR** and also in the case of **Karmali Tarmohammed & Another Vs I.H Lakham & Company [1958] EA 567** where the Courts affirmed the proposition that offer and acceptance supported with consideration equate to a contract.

51. The question which follow is whether an agreement which is not reduced into writing is void. **Section 3(1) Law of Contract Act** does not make all contracts void and unenforceable if they are not reduced into writing. Only certain agreements are required to be in writing; an agreement need not be in any special form or in writing unless statute expressly provides for it. It is trite law that not all agreements need to be in writing. An agreement can be deemed duly formed and binding where consideration is present and acceptance having been offered.

52. A contract is created by parties as stated in the case of **Mamta Peeush Mahajan [Suing on behalf of the estate of the late Peeush Premlal Mahajan] Vs Yashwant Kumari Mahajan [Sued personally and as Executrix of the estate and beneficiary of the estate of the late Krishan Lal Mahajan] [2017] Justice Onguto** stated

**“Where therefore parties reach an agreement on all the terms of contract they regard (or the law requires) as essential, a contract is deemed to have been formed. What is essential is the legal minimum to create a contract. These are the intention to create legal obligations and consideration. Other terms are secondary as far as formation of a contract is concerned. The**

**reason is that the law does not require commercially sound terms or sensible terms. Parties may agree to any terms and the court will, once it is shown that the parties agreed and valid consideration exists, always hold the parties to their bargain. The court will not seek to re-write the contract for the parties: see National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd & Another [2002] EA 503.”**

53. The case of **Brodgen v Metropolitan Railway Company [1876-77] L.R 2 App Cas 666**, is an English case which stands for the general proposition that a contract can be accepted by the conduct of party. The Court held that there was a contract which came into existence after the coal was supplied and received but not earlier.

54. In the instant case, it is not disputed that the defendants never signed the sale agreement. The Memorandum of Understanding set in motion negotiations. The defendant’s argued that the plaintiffs delayed in sending the draft agreement to the defendants; that the completion date for the transaction was 30<sup>th</sup> September 2008 but the agreement was sent to defendants for execution on 2<sup>nd</sup> October 2008.

55. The defendants however in evidence adduced in Court, admitted that payments were done before and after completion date. The defendants further admitted that they paid the landlord and even organized for marketing of the flowers in overseas auction and the payments were done through their name Lake Flowers for the benefit of the 2<sup>nd</sup> plaintiff.

56. The question that arises is why the defendants would continue making payments on behalf of the plaintiffs and even go ahead to market flowers using their name even after the completion date? Why would they say they could not go on with the transaction due to the fact that it had gone beyond completion date yet they went ahead to pay suppliers, landlord expenses and even install software even after the said completion date?

57. In my view the defendants conduct showed that they were willing to go on with the transaction despite the fact that the completion date had reached and no contract was signed; the defendants’ conduct demonstrated their intention to go on with transactions despite the failure on the part of plaintiffs to comply with set timelines.

58. The defendants admitted that the contract was amended severally. During the period the defendants were making payments debts of the company which has been admitted to amount 378,629.38 Euros. Their explanation was to ensure the farm remain as a going concern at the time of their take over. The fact that some of the payments were made after 30<sup>th</sup> day of September 2008 which was the completion date demonstrate that they were willing to go on with the transaction despite the fact that they were outside the completion date. It was not therefore proper for them to turn around and say they could not sign the contract because of delay. In view of the defendant’s conduct, they were estopped from reneging from the transaction; they were therefore in breach of the contract.

**(b) Whether the plaintiffs are entitled to damages for breach of contract**

59. There is no doubt that the plaintiffs failed to comply with set timelines in respect to the transaction. The defendants argued that there was delay in availing audited accounts. The plaintiffs therefore contributed to doubt in the minds of the defendants as to soundness/integrity of the company. The plaintiff’s argument is that they lost other prospective purchasers but, in my view, they have not come to Court with clean hands as they contributed to delay in execution of the agreement. Evidence show that the defendants injected funds to the farm which boosted its production; further the assistance in finding new markets in Holland went to benefit the plaintiffs’ farm in resolving their financial challenges. Evidence adduced show that at the time the transaction herein commenced, the flower farm (2<sup>nd</sup> plaintiff) had huge debts and from evidence of PW1, the flower farm was not being run well. PW2 admitted that the defendants injected a sum of 378, euros to the 2<sup>nd</sup> plaintiff to pay debts. The payments enabled the farm to continue running. Even though PW2 testified that he later sold the flower farm at lower consideration a sum of 500,000, without the money injected by the defendants, the plaintiffs were bound to make losses as it is admitted that the farm was not able to remain a going concern. In my view the plaintiffs contributed from the defendants’ contribution in running of the farm during the negotiation period. The plaintiff is therefore not entitled to damages.

**(c) Whether the defendants are entitled to prayers sought**

60. It is not disputed that the defendants injected funds to plaintiffs’ flower farm. Software intended to ensure integrity of plaintiffs’ data was also installed by the defendants; PW2 confirmed that the defendants paid 2<sup>nd</sup> plaintiffs debts totaling to a sum of 378,629.38 Euros. There is no doubt that the payments to suppliers assisted the plaintiffs to continue running. The plaintiffs have not demonstrated that the said payments benefited the defendants. In my view the defendants are entitled to all monies paid to ensure running of the plaintiffs’ farm.

**61. FINAL ORDERS**

- a. Plaintiffs’ claim damages for breach of contract against the defendants is hereby dismissed.
- b. The defendants’ counterclaim is allowed. Judgment is entered for the defendants for a sum of 378,629.38 Euros.
- c. Interest on (b) above from the date of this judgment till payment in full.
- d. Each party to bear own costs.

**Judgment dated, signed and delivered via zoom at Nakuru This 26<sup>th</sup> day of November, 2020**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

**Jenifer - Court Assistant**

**Mr. Opondo counsel for the Plaintiffs**

**Ms. Kiumbu H/B for Mr. Biko counsel for the Defendants**