



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 303 OF 2011

HANS JUERGEN LANGER.....1ST PLAINTIFF

ACCREDO AG.....2ND PLAINTIFF

VERSUS

JOE MUSYIMI MUTAMBU.....1ST DEFENDANT

MERCBIMA INTERNATIONAL (K) LIMITED.....2ND DEFENDANT

JUDGMENT

1. The 1st Plaintiff herein describes himself as a male adult of sound mind and a director of the 2nd Plaintiff Company while the 2nd plaintiff is a limited liability company incorporated in Liechtenstein and duly registered in Kenya. The plaintiffs sued the defendant herein seeking the following orders:

- a) Euros 300,000/=**
- b) Interest on (a) above at Court rates.**
- c) Costs of this suit.**
- d) Any other or further relief that the Court deems fit to grant.**

2. The Plaintiffs' case was that on diverse dates during the month of September, 2010 and at the request of the Defendants, they extended financial facilities to the Defendants for Euros 300,000 to enable the Defendants purchase construction equipment. The Plaintiffs state that it was an expression term of their agreement that construction equipment would be registered in the Plaintiffs' name and title documents given to the Plaintiffs as security for the monies advanced to the Defendants.

3. The Plaintiffs' case is that in breach of the said agreement, the Defendants not only failed to provide the security documents aforesaid but also failed to repay the monies advanced to them thereby precipitating the filing of this case. In their joint statement of defence filed in Court on 11th August 2011, the Defendants deny having received any money from the Plaintiffs and contend that any money received by them was in respect to the payment for consultancy services that they provided to the Plaintiffs.

4. At the hearing of the case the 1st Plaintiff testified and adopted his witness statement filed on 14th July, 2011 as his evidence before the Court. He also produced the documents contained in the Plaintiffs' list of documents dated 4th July, 2011 as exhibits during the hearing.

5. Neither the Defendants, nor their advocates on record attended Court for the hearing on 18th June, 2019 despite having been duly served with the hearing notice.

6. I have considered the pleadings filed herein and the Plaintiffs' case as narrated by the 1st Plaintiff who also produced a total of 7 documents as exhibits during the hearing. A perusal at Plaintiffs Exhibit No. 6 shows that indeed, they agreed to lend the Defendants the sum of 300,000 Euros to enable the Defendants purchase construction equipment. I further note that the repayment period was stated to be within one (1) year and that the equipment purchased was to be registered in the name of the plaintiffs.

7. I have also perused the swift transfer bank slips/advice that were produced as Plaintiffs' Exhibits 1-4 in support of the Plaintiffs claim that

they wired the total sum of 300,000 Euros to the Defendants accounts. At the hearing of the case however, the 1st Plaintiff testified that the exact amount due to the Plaintiffs is 285,000 Euros. I am satisfied that the Plaintiffs proved their case against the Defendants on a balance of probabilities.

8. It is my finding that even though the Defendants claimed that the payments made to them by the Plaintiff were in respect to a consultancy agreement arrived at between the Plaintiffs and the 1st Defendant, the defendants did not attend Court on the hearing date to prove this claim.

9. Consequently and having found that the Plaintiff's case was proved on a balance of probabilities, I allow their claim in the following terms:

a) Payment of the sum of 285,000 Euros.

b) Interest on (a) above at Court rates from the date of filing this suit.

c) Costs of the case.

Dated, Signed and delivered in open court at Nairobi on this 25th day of July, 2019.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Mwangi for Ndegwa for the plaintiff.

No appearance for defendant

Court Assistant - Ali