



IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL SUIT CAUSE NO. 550 OF 2014

BETWEEN

AGRO CHEMICAL & FOOD COMPANY LIMITED PLAINTIFF

AND

HOME EXPRESS LIMITED 1ST DEFENDANT

HERALD TRADING CO. LIMITED 2ND DEFENDANT

UNIVAC TRADERS (E.A) LIMITED 3RD DEFENDANT

AFRICAN DISTILLERS LIMITED 4TH DEFENDANT

ZESTA INDUSTRIES LIMITED 5TH DEFENDANT

JUDGMENT

1. The plaintiff is engaged in the business of manufacture and sale of neutral alcohol which is used in the manufacture and blending of alcoholic beverages and rectified spirits for industrial and domestic use. The claim against the defendants as set out in the plaint is for goods sold and delivered amounting to **Kshs. 5,981,690.00**.

2. The plaintiff's case set out in the plaint was supported by the evidence of its only witness, Joseph Oduor Andere (PW 1) who testified and produced documentary evidence. The thrust of his testimony was that the plaintiff supplied to the defendants spirits from February 2003. Their business went on well until December 2009 when they had transacted business worth over Kshs. 100 million. After some time, the defendants started issuing cheques which were dishonoured on presentation leaving the amount claimed unsettled as at June 2005.

3. In summary, the goods supplied to the defendants were evidenced as follows;

a. The goods supplied to the 1st defendant.

Date Invoice/Cheque No. Amount

24.11.2003 13350 (Invoice) Kshs. 678,000.00

24.11.2003 13351 (Invoice) Kshs. 168,000.00

1.8.2003 12664 (Invoice) Kshs. 2,958.00

17.12.2003 00097 (Invoice) Kshs. 588,000.00

31.5.2005 0009 (Credit Note) Kshs. 108,800.00

30.6.2004 00055 (Cheque) Kshs. 630,000.00

Sub-total Kshs.2,176,790.00

b. The goods supplied to the 2nd defendant.

Date Invoice/Cheque No. Amount

23.7.2004 15466 (Invoice) Kshs. 690,000.00

13.8.2004 15620 (Invoice) Kshs. 414,000.00

4.4.2004 14590 (Invoice) Kshs. 102,800.00

Sub-total Kshs.1,206,800.00

c. The goods supplied to the 3rd defendant.

Date Invoice/Cheque No. Amount

23.7.2004 100027 (Cheque) Kshs. 263,900.00

29.7.2004 15530 (Invoice) Kshs. 460,000.00

Sub-total Kshs. 723,900.00

4. In addition, the plaintiff claimed an addition **Kshs. 930,000/-** from the 1st defendant which had been ordered by the 2nd defendant and which it converted when the consignment was seized by Customers officers and ordered to be returned to the plaintiff on condition that taxes be paid and the consignment be converted to home use. Although, the plaintiff paid the taxes, the 1st defendant did not deliver the product to the plaintiff. In a letter dated 14th March 2006, the 1st defendant admitted that it owed the money and undertook to pay the same.

5. PW 1 testified that despite several demands and correspondence the defendants failed to pay the amount due. The plaintiff added that although the defendants are distinct companies, they are associated and that deliveries, payments and correspondence was often addressed to one or any of the defendants. Despite being distinct companies, the correspondence on behalf of their behalf was answered by the directors of the 1st defendant.

6. The defendants filed a joint defence dated 11th June 2007 in which they denied by association with the plaintiff or that they owed the plaintiff any money.

7. The defendants did not call any witnesses to support their defence. Neither their officers nor the advocates appeared at the hearing. On the day of the hearing their counsel on record applied to withdraw from acting for them but I rejected the application for adjournment.

8. I have considered all the evidence and I find that the defendants were associated companies and there is correspondence showing as much. The debt is well supported by documents and there is indeed admission of indebtedness. The defendants also issued cheques that were dishonoured. When the plaintiff issued demand letters detailing the claims but the defendants' response did not answer the claim or make payment as demanded.

9. Since the claim is uncontroverted and proved on the balance of probabilities, it is allowed.

10. I enter judgment against the defendants jointly and severally for the sum of Kshs. 5,981,690.00 together with interest at court rates from one date of filing suit until payment in full.

11. As regards costs, I note the matter ought to leave been filed in the subordinate court. I award costs of Kshs. 220,000 exclusive of court fees and disbursements to be certified by the Taxing Officer.

DATED and DELIVERED at NAIROBI this 19th day of DECEMBER, 2019.

D. S. MAJANJA

JUDGE

Court Assistant: Mr. M. Onyango

Mr. Wanjohi instructed by Theuri Wanjohi and Company Advocates for the plaintiff.