



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)s

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO.609 OF 2010

NATIONAL CEREALS & PRODUCE BOARD.....PLAINTIF

VERSUS

ABERDARES MAIZE MILLING CO.LTD.....1ST DEFENDANT

PATRICK KINYUA MUNYITO.....2ND DEFENDANT

JANE MUTONI KINYUA.....3RD DEFENDANT

J U D G M E N T

The Plaintiffs filed this suit against the Defendants seeking the following prayers:-

1. Recovery of Kshs. 44,115,595 being value of imported maize supplied to the 1st Defendant.
2. Costs of the suit.
3. Damages for breach of contract.
4. Interest on 1 & 2 above.

The 2nd and 3rd Defendants who are husband and wife respectively have been sued by the Plaintiff in their capacity as the Directors and Guarantors of the 1st Defendant Company.

The dispute herein arise from an agreement between the Plaintiff and the 1st Defendant for the Plaintiff to supply 1st Defendant maize against postdated cheques drawn by the 1st Defendant in favour of the Plaintiff.

This matter was adjourned severally for various reasons since 2010. On 20th March 2018 when this matter was scheduled for hearing Counsel for the Defendant informed the Court that he had difficulties reaching the Defendants. The Court directed that the Defendants be served by way of advertisement in local daily and through their last known address. Later by application dated 21st March 2018, the Defence Counsel sought leave to cease acting for the Defendant after failing to get sufficient instructions. The Defendant was in Court on 18th April 2018 when his Advocate's application to cease acting was made and orders granted.

Defendant sought adjournment to be able to get documents from his Advocate to be able to proceed. He informed Court that he would avail 5 witness and that the 2nd Defendant is his wife and that she will not give evidence.

The Defendants failed to attend Court for hearing on 10th July 2018 despite having been present when the hearing date was set.

This proceeded for hearing exparte on 10th July 2018. The Plaintiff availed 2 witnesses.

Pw1 who is the Chief Legal Officer of the Plaintiff adopted his witness statement dated 22nd February 2014. He produced Memorandum of Association, Articles of Association, Certificate of Incorporation and PIN Certificate of the Plaintiff as exhibits.

He testified that there was an agreement between the Plaintiff and the 1st Defendant for supply of maize by the Plaintiff. He produced the agreement in Court as exhibit. He also produced resolution by 1st Defendant's board. He said the agreement was for the 1st Defendant to access maize and pay through postdated cheques.

He testified that the Defendant collected goods but issued cheques which bounced and that the outstanding amount is Kshs. 44,115,595.

He prayed that the Court to order the Defendant to pay the outstanding amount to the Plaintiff.

Pw2 the Finance Manager of the Plaintiff adopted his witness statement dated 20th February 2014 as evidence. He confirmed that the Defendant was a customer of the Plaintiff. He testified that following an agreement between the Plaintiff and the Defendant, the Defendant took 24,700 bags of maize with a total value of Kshs.41, 810,000.he produced sale orders to confirm the sale. He added that the Defendant issued cheques valued at Kshs. 24,867,680.90. He produced copies of cheques issued. He said out of the 6 cheques, 4 were paid. He added that the Defendant was informed of the unpaid cheques and he promised to replace and later paid Kshs. 14,500,000.

Pw2 testified that the Defendant continued taking more commodities being 6500 bags of maize valued at 11,900,000 and 11,176 bags from Kiganjo Depot valued at Kshs. 14,530,000. He said the cheques issued for the additional commodities bounced. He produced the cheques as exhibits. He also produced debit notes issued for the cheques which bounced. He also produced sale orders.

Pw2 testified that the Defendant was also issued with gunny bags which were to be returned but the Defendant dialed to return and was surcharged Kshs. 2,589,120 for failing to return the gunny bag.

Pw2 testified that the amount owing after final reconciliation is Kshs. 43,660,949.10.

The Defendant failed to adduce evidence to controvert the Plaintiff's evidence.

Plaintiff has proved that the 1st Defendant and Plaintiff entered into an agreement for supply of maize. Evidence adduced demonstrate that the maize was supplied. This has been confirmed by sale orders produced. Payments were done by postdated cheques which were not cleared by the bank. The cheques have been shown to the Court. Plaintiff has proved that maize was supplied together with the gunny bags as agreed and there is outstanding debt as a result of unpaid cheques.

The Plaintiff's evidence has not been controverted by the Defendants. I therefore find that the Plaintiff has proved its claim against the Defendants.

FINAL ORDERS

I do enter judgment for the Plaintiff against the Defendants jointly and severally for Kshs. 44,115,595.00 plus costs and interest at Courts rate from the date of filing this till payment in full.

Judgment Dated and Delivered at Nairobi this 31st day of July, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

CATHERINE: **COURT ASSISTANT**

ODERA: **COUNSEL FOR THE PLAINTIFF**

NO APPEARANCE FOR THE DEFENDANT