



**REPUBLIC OF KENYA**

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

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL CASE NO. 293 OF 2015**

**MILITONS LIMITED.....PLAINTIFF**

**- VERSUS -**

**MUMIAS SUGAR COMPANY LIMITED.....DEFENDANT**

**JUDGMENT**

1. **MILICONS LIMITED**, the Plaintiff, carries on the business as a licensed contractor at Nairobi and elsewhere. The defendant **MUMIAS SUGAR COMPANY LIMITED** is a public trading company which carries on the business of manufacture and distribution of sugar and related commodities within the Republic of Kenya.

2. This case came up for hearing on **5<sup>th</sup> July 2018**. The defendant, although served on **16<sup>th</sup> March 2018** with a notice of that hearing it did not attend court. The plaintiff's evidence was therefore uncontroverted.

**PLAINTIFF'S EVIDENCE**

3. In 2011 the defendant floated a tender for construction of an office block and Farmer's Center at the defendant's premises in Mumias. The plaintiff, a licensed contractor, made a bid for the project. The plaintiff's bid for the project was based on its valuation of the specifications for the works as outlined in the tender documents and on the quantities outlined in the Bill of Quantities prepared by defendant's Quantity Surveyor.

4. The defendant engaged the plaintiff and awarded the plaintiff tender to do the construction at a fixed price of **Ksh 298,983,922.65**.

5. The plaintiff took possession of the project site on **13<sup>th</sup> June 2011**. While the plaintiff carried out the construction it was realized that the Bill of Quantities prepared by the defendant's Quantity Surveyor were inadequate.

6. The plaintiff was therefore requested by the project architects and structural engineer to carryout variation and additional works. The plaintiff complied with those requests.

7. The construction was finished in **September 2012** and the defendant's Quantity Surveyor, in **March 2014**, prepared the final account of the project to **Ksh 395,211,025** with the variation accounting for **Ksh 96,008,830**.

8. As at **15<sup>th</sup> March 2015** the defendant owed the plaintiff **Ksh 96,355,033** on account of that project. The amount is broken down as follows:

**a. Ksh 48,110,612/= being the sum payable under Interim Payment Certificate 05;**

**b. Ksh.18,636,669/= as interest for the unpaid Interim Payment Certificate 05;**

**c. Ksh.19,102,964/= being the sum payable under the Final certificate;**

**d. Ksh. 7,399,939/= as interest for the unpaid Final Certificate;**

**e. Ksh. 354,318/= as interest for delayed payment of Interim Payment Certificate 03; and**

***f. Ksh. 2,750,531/= as interest for delayed payment of Interim Payment Certificate 04.***

9. The plaintiff has not been able to hand over possession of the completed buildings because the project architect, on the defendant's instructions, failed to execute final accounts. As a consequence the plaintiff has retained the buildings to date since **September 2012**. This has entailed the plaintiff incurring expenses related to maintaining the buildings. Those costs are the wages of foreman, cleaner and two security guards. As at **March 2015** the plaintiff had incurred the additional cost of maintenance at **ksh. 3,054,000**.

10. Having considered the plaintiff's witness evidence and the documents, I find and hold that the claim by the plaintiff is merited. I therefore enter judgment for the plaintiff as follows:

***a. Ksh 96,355,033 with interest at 19.8% from 15<sup>th</sup> March 2015 until payment in full.***

***b. Ksh 3,054,000 as at 30<sup>th</sup> March 2015 and an additional sum of Ksh 127,250 per month from 1<sup>st</sup> April 2015 until the plaintiff hands over the buildings to the defendant. That amount shall attract interest at court rate from the date of filing suit until payment in full.***

***c. The plaintiff is awarded costs of the suit.***

**DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 2018.**

**MARY N. KASANGO**

**JUDGE**

***Judgment read in open court in the presence of***

Court Assistant.....Sophie

.....for the Plaintiff

.....for the Defendant

**MARY N. KASANGO**

**JUDGE**