



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

**COMMERCIAL AND TAX DIVISION**

**CIVIL SUIT NO. 431 OF 2016**

**KENNEDY MASINDE.....PLAINTIFF**

**VERSUS**

**ANN WANJA T/A KANINI MERCHANTS..... DEFENDANT**

**JUDGEMENT**

1. The plaintiff, **KENNEDY MASINDE**, has sued the defendant, **ANN WANJA** Trading as **KANINI MERCHANTS**, arising out of an alleged breach of contract.
2. The plaintiff testified that he was a businessman, who was engaged in the buying and selling of maize.
3. Between September 2015 and March 2016 the plaintiff sourced for maize from farmers based in **TRANS NZOIA COUNTY**. The total number of bags of maize which he sourced for and which he supplied to the defendant was 4574.
4. The parties had agreed on the purchase price for the maize, and in total, the 4574 bags would cost the defendant Kshs. 11,084,550/-.
5. However, the defendant only paid to the plaintiff the sum of Kshs. 4,263,800/-.
6. As payments were being made by either Mobile Money Transfer or by Bank Transfer, the plaintiff provided the court with his bank statement of account, together with a printout from Safaricom's M-pesa records, showing the payments received from the defendant.
7. A reconciliation of the 2 sets of records confirms that the defendant remitted to the plaintiff, a total of Kshs. 4,263,800/-.
8. As the agreed purchase price for the 4574 bags of maize was Kshs. 11,084,550/-, the outstanding balance payable by the defendant was Kshs. 6,824,750/-.
9. It was the evidence of the plaintiff that in March 2016, the defendant invited him to come to Nairobi to collect a cheque for the balance. However, upon arrival in Nairobi, the plaintiff was arrested and charged at the Kibera Law Courts, for allegedly breaking into the defendant's business premises and stealing 200 bags of maize.
10. The criminal case was still pending at the time when this civil case came up for hearing before me.

11. According to the plaintiff, it is the defendant who caused him to be arrested, hoping that the trumped-up criminal charges would silence the plaintiff from pursuing the outstanding balance.
12. This court cannot make any comment about the pending criminal case.
13. However, it is significant that from the Witness Statements which the prosecution supplied to the plaintiff, the complainant is the defendant herein. She indicated that she carried on business under the Trade name, **KANINI MERCHANTS**.
14. The defendant even confirmed that the merchandise which she was trading in was maize.
15. One other witness, **PATRICK JUMA MUKE**, confirmed that the plaintiff used to supply maize to the defendant.
16. Of course, both the defendant and Patrick Juma Muke, alleged that the plaintiff used to conspire with some other persons, to steal maize from the defendant's store. It is on the basis of that alleged conspiracy that the plaintiff was charged with a criminal offence, whose trial was still pending.
17. If the prosecution should lead sufficient evidence to satisfy the trial court that the plaintiff was guilty, the law will take its course.
18. In the meantime, I find, on a balance of probabilities that the plaintiff sold and delivered to the defendant a total of 4574 bags of maize.
19. I also find that the defendant paid only Kshs. 4,263,800/-, leaving an outstanding balance of Kshs. 6,824,750/-. I therefore enter judgement in favour of the plaintiff for the sum of Kshs. 6,824,750/-.
20. As a result of the fear instilled in the plaintiff by the defendant, and because the local farmers in Trans Nzoia County could no longer entrust their maize to the plaintiff when he had not paid them for what he had received earlier, I find that the plaintiff was unable to continue carrying on business. He did not have funds which he could use to make cash purchases, and his reputation with the local farmers had been so ruined that they could not supply him with maize on credit.
21. Accordingly, I find that the plaintiff has established a clear nexus between the conduct of the defendant and the loss of business on the plaintiff's part.
22. In the result, I find the defendant liable to compensate the plaintiff for the loss of business profits at the rate of Kshs.88, 350/- per week. The said sum will be paid to the plaintiff for a period of six (6) months, bringing the total loss of profits to Kshs. 2,120,400/-.
23. Having held that the plaintiff be compensated through payment of the profits he would have earned for six (6) months, I find no basis for awarding further compensation on account of General Damages for the hardship which had been allegedly caused to the plaintiff by the defendant.
24. On the issue of interest, I order that the outstanding balance of Kshs. 6,824,750/- will attract interest at Court rates from 1<sup>st</sup> March 2016, until payment in full.
25. Meanwhile, the sum of Kshs. 2,120,400/- will attract interest at court rates from the date of judgement, until payment in full.
26. Finally, the costs of the suit shall be paid by the defendant to the plaintiff.

**DATED, SIGNED and DELIVERED at NAIROBI this 28<sup>th</sup> day of September 2017.**

**FRED A. OCHIENG**

**JUDGE**

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

*Njuguna for the Plaintiff*

*Miss Nyabuto for the Defendant*

*Collins Odhiambo – Court clerk.*