



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

HIGH COURT CIVIL CASE NO. 7 OF 2015

(CORAM: J. A. MAKAU – J.)

DOMINION FARMS LTD PLAINTIFF

VERSUS

DIAMOND SHIELD INTERNATIONAL LTD DEFENDANT

JUDGMENT

1. The plaintiff M/s. **DOMINION FARMS LTD** through a plaint dated 17th October 2012 sued the defendant herein **M/S. DIAMOND SHIELD INTERNATIONAL LTD** claiming Ksh.29,260,000/= with interest at commercial rates of 20% per annum from the date of this suit till payment in full with costs and any other or further order as this Court may deem just and suitable to grant.
2. The defendant entered appearance, filed defence and counterclaim dated 6th December 2012. The defendant denied the plaintiff's claim of Ksh.29,260,000/= and/or any sum whatsoever and put the plaintiff to strict proof thereof. The defendant contended that the plaintiff supplied her with 2000 bags of rice and failed to deliver balance of 4000 bags. The defendant averred she paid Ksh.3,500,000/= and the plaintiff failed to deliver 4000 bags hence counterclaimed general damages for breach of contract, with costs, interest at Court rates and any other relief that this honourable Court may deem fit to grant.
3. The plaintiff filed reply to statement of defence and counterclaim on 23.4.2012 praying for the defendant's defence to be struck out as it is sham, and an abuse of the process of Court and further prayed for judgment to be entered for the plaintiff as prayed. The plaintiff prayed for the counterclaim to be dismissed, claiming Ksh.3,500,000/= paid was part settlement of the total claim of Ksh.32,760,000/= being amount due and owing to the plaintiff as at the time of supplying the goods.
4. Mr. Ojuro learned Advocate appeared for the plaintiff. On 29th October 2015 and applied for the defendant to be served by way of substituted service by advertising in the Daily Nation which application was allowed. Subsequently the defendant was served and affidavit of service filed. The matter came up for hearing on 3rd December, 2014 when Mr. Ojuro learned Advocate appeared for the plaintiff while M/s. Kibet learned Advocate held brief for M/s. Ashioya Advocate representing the defendant. The Counsel entered a consent adjourning the matter to 8.12.2015 and defendant was to pay agreed costs and Court adjournment fees before the hearing date.
5. That on 8th December 2015 when the matter came up for hearing the defendant and her Counsel were absent and had not complied with the consent order. Mr. Ojuro learned Advocate was ready

with the matter but requested Court to give the defence time and her Counsel upto 10 a.m. before the matter proceeds to hearing at 11.00 a.m. The defendant and her counsel had not shown up by 11.00 a.m. hence the case proceeded to hearing.

6. PW1 Abel Philip Otieno testified that he is the Managing Director of Dominion Farms Ltd having been with the farm since 2008. He relied on his witness statement dated and signed on 17th October 2012 which he requested the Court to adopt his evidence in this case. He also relied on the list of documents filed on 17th October, 2012.
7. PW1 testified that first document is prequalification document of supplies. It is document for supply and delivery of rice. The 2nd document is letter dated 3rd August 2012 confirming the plaintiff was prequalified. The 3rd document is delivery note, while the 4th document is local purchase order invoiced for Ksh.35,100,000/= for supply of 6000 bags of rice each bag of 50 kilograms at a price of Kshs.5,850/=, that the 5th document is statement of payment of Ksh.3.5 million by the defendant, that the 6th document is bank statement of payment of Ksh.3,000,000/=, while the 7th document is demand letter issued to the defendant demanding Ksh.32,760,000/= before giving a credit of Kshs.3.5 million. PW1 clarified that the plaintiff supplied 5600 bags instead of 6000 bags of rice, the sum due to the plaintiff was Kshs.29,260,000/= after giving the credit of Kshs.3.5 million of the total for 5600 bags standing at Ksh.32,760,000. PW1 produced documents Nos. 1 to 7 as exhibit P1 – 7. The plaintiff prayed for judgment and costs with interest.
8. PW1 testified further that the defendant was ordered by Court to deposit the principal sum with Court and to date the sum has not been deposited. PW1 testified on exhibit P.3 he dealt with one Angela, Managing Director of defendant's company and the document was duly stamped and signed by the concerned parties. That exhibit P4 has defendant's signature and all documents are genuine.
9. The plaintiff proceeded ex parte and the evidence of PW1 was not challenged by the defendant. The plaintiff has proved the existence of a contract between herself and the defendant for the plaintiff to supply rice to the defendant. That from the evidence of PW1 I am satisfied that the plaintiff supplied to the defendant 5600 bags of rice of 50 kgs at purchase price of Ksh.5850 per bag, all in all valued at Ksh.32,760,000 out of which the defendant paid only Ksh.3.5 million leaving a balance of Ksh.29,260,000/=. That demand for balance was made but the defendant declined to pay. The plaintiff's exhibits P 1-7 demonstrate that the plaintiff supplied rice worthy Ksh.32,760,000/= and the defendant paid only Ksh.3.5 million. The documents have not been challenged and I find the same to be genuine and supportive of the plaintiff's claim.
10. The plaintiff has not admitted any part of the defendant's counterclaim. The same has not been proved and I dismiss the same.
11. The plaintiff has proved her claim on balance of probabilities and I find the plaintiff's claim to be meritorious. I therefore enter judgment for the plaintiff as follows:-
 - a. **Kshs.29,260,000.**
 - b. **Costs of the suit.**
 - c. **Counterclaim dismissed with costs to the plaintiff.**
 - d. **Plaintiff shall get interest on (a) (b) and (c) at Court rates from the date of filing of the suit till payment in full.**

DATED AT SIAYA THIS 14TH DAY OF JANUARY, 2016.

A. MAKAU

JUDGE

DELIVERED IN OPEN COURT THIS 14TH DAY OF JANUARY, 2016.

In the presence of: Mr. Ojuro for Plaintiff.

Court Clerk – Kevin Odhiambo Court Clerk – Mohammed Akideh

A. MAKAU

JUDGE