



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI HIGH COURT
COMMERCIAL & ADMIRALTY DIVISIONS
CIVIL CASE NO 580 OF 2009

SAMEER AFRICA LTD.....PLAINTIFF

VERSUS

KEHAR ENTERPRISES LIMITED..... DEFENDANT

JUDGEMENT

1. By a Plaint dated 31.7.2009 the Plaintiff seeks the following reliefs;

- a. Kshs. 4,060,565/22/=
- b. Costs of the suit
- c. Interest on (a) and (b)
- d. Any other relief.

2. The background of the case is that the Plaintiff entered into a contract whereof the Plaintiff agreed to sell and Defendant to buy tires and tubes to be collected by the Defendant and or/delivered by the Plaintiff pursuant to the aforesaid contract between March and April 2008. Pursuant to the said contract, the Plaintiff sold tires and tubes to the Defendant worth Kshs.4, 060,565.22.

3. The Plaintiff invoiced the Defendant for payment of the same, but the Defendant disregarded the 30 day credit period agreed and neglected to pay the said amount despite demand from the Plaintiff. Therefore the Plaintiff seeks recovery of the same together with interest accrued.

4. Upon service with the summons, the Defendant field appearance and defence dated 10.10.2009. The Defendant denied the claim and avers that in particular denies ever buying tires between March and April 2008 worth Ksh.4,060,565 from the Plaintiff and/or at all. Alternatively and without prejudice the Defendant avers that it duly paid for tires and tubes it purchased from the Plaintiff.

5. The Plaintiff filed list and bundle of documents dated 9.3.2011 and also witness statement signed by AphiudKariuki the Plaintiff Credit Manager. On 23.9.2014 another statement of Solomon Mwema Plaintiffs Receivable Accountant was filed.

6. The matter came for hearing on 4.3.2016 and the Defendant never attended court despite service with

the hearing notice.

7. The Plaintiff sought to amend the claim to read Kshs.3, 262,208/9 which the court allowed. The Plaintiff witness Solomon Mwema the Credit Controller of the Plaintiff testified to support the claim. He adopted his statement filed on 23.9.2014 and produced the bundle of the documents which was composed of the invoices supporting the supplied goods.

8. The cheques issued in payment of the debt which were dishonoured are in form of copies in the plaintiff's bundle. Pages 16-21 are the credit notes. P.W.1 stated that the claim was for Ksh.4 million but came down as there was credit on Defendant side. Kshs.10, 000 was for penalties.

9. In the submissions made orally by the Plaintiffs advocate, he did submit that the Plaintiff via the material on record has proved its case on balance of probabilities.

10. The produced invoices evidence the indebtedness and so are the dishonoured cheques issued by the Defendant. The counsel thus prays for the judgment for the amount pleaded as corrected via oral application for the amendment of the plaint.

11. After going through the pleadings and the evidence on record, I find the only issue is;

Whether the claim has been proved on balance of probabilities?

12. The statement of Solomon Mwema states that between 20.3.2008 and 17.4.2008 the Defendant ordered tires and tubes worth Ksh.4,157,608/92. The particulars are set out therein. The same goods were supplied to the Defendant as evidenced by the delivery notes in the bundle. The arrangement was that the payment was to be effected 30 days after delivery.

13. In an attempt to pay the debt, the Defendant issued cheques which copies are in the bundle of the documents which were dishonoured. The Defendant, who has denied the claim and/or alternatively pleaded payment, has failed to rebut the evidence rendered in form of viva voce testimony and documentary evidence.

14. The court has no option but to hold that the Plaintiff's claim has been proved on balance of probabilities and thus enters judgment for the Plaintiff as follows;

1. Kshs. 3,262,209/=
2. Interest from the date the suit was filed to date of payment at court rate.
3. Costs of the suit.

Dated, signed and delivered in court at Nairobi this 22nd day of April, 2016.

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C. KARIUKI

JUDGE