



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 388 OF 2007

VISHVA STONE SUPPLIERS CO. LIMITED.....PLAINTIFF

- VERSUS -

RSR STONE 2006 LIMITED.....DEFENDANT

JUDGEMENT

1. The plaintiff, **VISHVA STONE SUPPLIERS COMPANY LIMITED** sued the defendant, **RSR STONE 2006 LIMITED** for the sum of Kshs. 5,214,114/40, which was said to payable pursuant to the written Agreement which the plaintiff leased and ceded to the defendant.
2. The defendant admitted that the plaintiff had leased and ceded to it, the Agreement pursuant to which the defendant was to;
 - a. **Utilize 4 acres of land for quarrying; and**
 - b. **Utilize the machinery, tools and other equipment belonging to the plaintiff.**
3. However, in its Defence, the defendant denied the assertion that it failed to pay the agreed consideration, as had been alleged by the plaintiff. In the result, the defendant categorically denied owing to the plaintiff the sum of Kshs. 5,214,114/40.
4. Meanwhile, the plaintiff had also claimed that it had secured a bank facility on the understanding that the defendant would remit payments to the plaintiff in a timely manner, in accordance with the Agreement between the parties.
5. The plaintiff intended to utilize the remittances from the defendant to service the bank facility.
6. However, when the defendant defaulted in making the expected remittances, the plaintiff was unable to service the bank facility, resulting in the bank imposing penalties, losses and damages at the rate of 22 % in interest charges.
7. The plaintiff therefore claimed from the defendant the;
 - i. **Sum of Kshs. 5,214,114/40;**
 - ii. **Interest on principal sum of Kshs. 5,214,114/40, at the rate of 22% from October 2006; and**
 - iii. **Costs of the suit.**
8. It was interesting to note that, in the Defence, the defendant denied owing the sums claimed by the plaintiff. However, the defendant also had the following alternative defences;

“7. IN THE ALTERNATIVE AND WITHOUT PREJUDICE whatsoever to paragraph 4 of the plaint, the Defendant avers that if it owes the plaintiff money which is denied, it has not failed or otherwise neglected to pay the same.

8. FURTHER IN THE ALTERNATIVE AND WITHOUT PREJUDICE to the foregoing, the Defendant avers that the plaintiff himself terminated the said Lease Agreement.

9. FURTHER IN THE ALTERNATIVE AND WITHOUT PREJUDICE, that as a result of the said termination of the Lease Agreement, the Defendant avers that any alleged loss, if any, sustained, are as a consequence of the said termination by the Plaintiff, is a result of the Plaintiff's act of termination and accordingly the plaintiff is liable for the same.

PARTICULARS OF THE SAID LOSSES

- a. **Switch board which the plaintiff is well aware was stolen.**
- b. **Tool box and spanner which were returned.**
- c. **A tractor which was returned in good condition”.**

9. The case came up for trial on 20th April 2015. On that date, the defendant and its lawyers were absent from court, although they had been duly served with a Hearing Notice.
10. The plaintiff's only witness was **PREMJI DEVJI VEKARIA** (*hereinafter, "Premji"*).
11. He exhibited the Agreement executed by both the Plaintiff and the Defendant in the year 2006. Pursuant to the said Agreement, the Plaintiff leased to the defendant 4 acres of land which the defendant was to utilize for quarrying works.
12. The plaintiff also leased to the defendant specified Quarrying Machinery, tools and equipment, which were in working condition.
13. In respect to the land, the defendant was to pay Kshs. 212, 000/- per month. However, the said monthly rental sums were payable 3 months, in advance. In effect, prior to taking over the site, the defendant was to pay Kshs. 636,000/-. Thereafter, after every 3 months, the defendant was supposed to pay Kshs. 636,000/-.
14. Meanwhile, in respect to the machinery, equipment and tools, the defendant was to pay Kshs. 406,000/- every month.
15. It was the evidence of Premji that as at 27th November 2006, the defendant owed a total of Kshs. 5,214,114.40. The particulars of that debt were set out in a Demand Notice dated 27th October 2006, which was served upon the defendant.
16. The particulars of the indebtedness was provided as follows;

	<u>Kshs</u>
“i) Rent from March to July at Kshs. 406,000	2,030,000
ii. Main Switch board	661,200
iii. Cost for Kenya Power & Lighting Co. Ltd	862,640
iv. Broken main jack arm caterpillar wheel load	950 1,075,494
v. Rail 4.5 M long 41 No, at Kshs. 25,000/-	1,025,000
vi. Rail 3 M long No.2, at Kshs. 16,665/-	33,000
vii. Rail 2 M long 3 No, at Kshs. 11,110/-	22,220
	<u>Kshs.</u>
viii. Rail 1 M long 2 No, at Kshs. 5,555/-	16,665
ix. One set of box spanner	15,000

x. One set of combine spanner	4,000
xi. 2 ft stone cutting saw No. 8, at Kshs. 12,000/-	96,000
xii. Broken engine oil sump 1. No.	45,000
xiii. Broken engine manu fault 1 No.	30,000
xiv. Lost diesel filter Housing	10,000
xv. Used light bulb	43,565.40
TOTAL	5,970,114.40
Less Paid	756,000.000
BALANCE	5,214,114.4

17. When the defendant was served with the Demand Notice, it wrote to the plaintiff's advocates on 2nd February 2007. The contents of that letter make interesting reading. It said;

“We have received your letter dated 19th January 2007 regarding the above. We inform you that we do not owe the amount which your client is claiming from us though you. Just confirm the actual amount from them and we will arrange to pay. And also note that we have never refused to pay them, just that they are claiming the amount which is not correct. We have already posted the actual balance which we owe to Vishva Stone Suppliers Co. Ltd and have posted to them”.

18. The letter was signed by **S.H. RAJANI**, the Managing Director of **RSR STONE 2006 LIMITED**.

19. I said that the letter is interesting because the defendant admitted, in principle that it owed money to the plaintiff. Their only contention was that the plaintiff had claimed the wrong figure.

20. It would have been expected that the defendant would then have challenged the exact figures which they deemed to be incorrect, by offering reasons why they deemed any such figures to be incorrect. But the defendant failed to point out any particular claims which were incorrect.

21. Secondly, whereas the defendant alleged that it had already posted to the plaintiff the actual balance which they owed, the defendant neither specified the sums it deemed correct nor did the defendant provide proof of any money remitted to the plaintiff.

22. Thirdly, the defendant did not, in that letter, lay any blame at the plaintiff's door for the termination of the lease.

23. It would have been expected that if the defendant deemed the plaintiff to be responsible for the losses arising from the termination of the Agreement, the defendant would have said so at that stage.

24. In any event, when the case came up for trial, the defendant failed to provide any evidence to back up its contentious.

25. Meanwhile, although the plaintiff claimed general damages in respect to the bank charges it had to pay to its bankers, there was no evidence to support that claim.

26. In the result, I find that the plaintiff has proved that the defendant owes it the sum of Kshs. 5,214,114/40.

27. I therefore enter Judgement in favour of the plaintiff for that amount.

28. I also award interest on that sum at court rates from the date of filing suit, until payment in full.

29. Finally, I award to the plaintiff, the costs of the suit. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 19th day of November 2015.

FRED A. OCHIENG

JUDGE

Judgement read in open court in the presence of

.....for the Plaintiff

.....for the Defendant

Collins Odhiambo – Court clerk.