



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY COURTS**

**CIVIL CASE NO. 106 OF 2010**

**CHEMIGAS LIMITED.....PLAINTIFF**

**- VERSUS -**

**DAVID NJUGUNA t/aTURITU SERVICE  
STATION CLASSIC PROVIDERS**

**CENTRE STIMALINK ENTERPRISES..... DEFENDANT/RESPONDENT**

**J U D G E M E N T**

The suit within was commenced through a Complaint filed in court on 24<sup>th</sup> February 2010. The suit claims Kshs.4,715,965/= with interest at court rates from 12<sup>th</sup> January 2009 till repayment in full, costs of the suit and interest. The claim is based on a contract of goods supplied and delivered on credit to the Defendant at his own request and instance between the years 2008 and 2009. The Complaint was subsequently amended on 13<sup>th</sup> September 2010 and increased the claim to Kshs.4,872,395/=.

The Defendant filed a Defence on 24<sup>th</sup> March 2010 in which he admits commercial dealings with the Plaintiff but denies the claim, stating that the figure is erroneous and or is grossly exaggerated. The Defendant did not participate in the proceedings which led to the leave to amend the Complaint despite having been served with the Chamber Summons dated 16<sup>th</sup> September 2010. The Plaintiff filed its reply to the Defence on 19<sup>th</sup> April 2010 and merely restated the claim in the Complaint.

By a Notice of Motion dated 7<sup>th</sup> July 2011 the Plaintiff sought a summary judgement to be entered on the amount claimed. Despite the application being served on the Defendant the Defendant chose not to respond to the same. The application for summary judgement was not successful, however, as the court found that there were a few triable issues including the reconciliation of the postdated cheques which were given as security. The court also noted that the Defendant failed deliberately to reply to the application, but nonetheless the court by the said Ruling provided another chance for the Defendant to defend the suit in full trial.

The Plaintiff took an *ex-parte* hearing date for 15<sup>th</sup> February 2012. The notice of the same was serviced upon the Defendant's advocates M/s Muchiri Gachara & Co. Advocates on 17<sup>th</sup> January 2012 but their office was closed. On 23<sup>rd</sup> January 2012 the hearing notice was served under Certificate of Posting on the said advocate. An affidavit of service dated 10<sup>th</sup> February 2012 was filed in court on the same date. The hearing date was on 31<sup>st</sup> January 2012 confirmed by the Deputy Registrar for hearing. On 15<sup>th</sup> February, 2012 when the matter came up for hearing, and having satisfied myself that the service was proper, I allowed the Plaintiff to proceed.

The Plaintiffs sole witness P.W. 1 – SILESH RAJANI testified that he was a director of the Plaintiff Company and was conversant with the claim. He testified that there existed a commercial relationship between the parties wherein the Plaintiff supplied LPG gas to the Defendant on credit. The supply was made both in the name of the Defendant and in the business name. Sometimes deliveries would be made by the Plaintiff but at other times the Defendant would collect them at the Plaintiff's premises. The Plaintiff made deliveries totalling to Kshs.14,703,385 as per the Plaintiff's Exhibit No. 1 which was produced. Sometime in 2009 the payments cheques issued by the Defendant started bouncing after the Defendant had taken deliveries. At this stage the Plaintiff stopped the deliveries. Some of the pending invoices were paid making a total sum paid Kshs.9,480,990/= leaving a balance of Kshs.5,222,395/=. The Defendant further paid a sum of Kshs.350,000/= upon receiving a demand notice from the Plaintiff dated 9<sup>th</sup> October 2009 produced as Exhibit No. 2. The outstanding balance then came to Kshs.4,872,395/=. The Plaintiff produced as Exhibit No. 3 the receipt for the payment of the said Kshs.350,000/=. Since then the Plaintiff has not received any further payments from the Defendant. The Defendant has not contested the Plaintiff's claim, and the Plaintiff testified that it was entitled to the claim as prayed in the Plaint. As security the Defendant had issued the Plaintiff with post-dated cheques totalling about Kshs.8,000,000/=. The Plaintiff banked them, but they were all dishonoured. The Plaintiff produced the said cheques as Exhibit No. 4.

I have considered the Plaintiff's claim, its agent's testimony and the submissions of counsel. I am satisfied by the evidence adduced that the Plaintiff has discharged its duty and has proved its case on a balance of probability against the Defendant. It has not been helpful to the Defendant that he refused or declined to participate in the suit by giving evidence to support the Defence he filed. This characteristic was also visible when the Defendant declined to reply to the Notice of Motion dated 7<sup>th</sup> July 2011.

In the upshot, I herewith dismiss the Defendant's Defence and enter judgement for the Plaintiff as follows:-

- a) Kshs.4,872,395/=,
- b) Interest at court rates from the date of filing of the suit i.e. from 24<sup>th</sup> February 2010 till payment in full,
- c) Costs of the suit and interest.

This is the Judgement of the court.

**DATED, READ AND DELIVERED AT NAIROBI**

**THIS 27<sup>TH</sup> DAY OF APRIL 2012.**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

*Miss Wambua for the Plaintiff*

*N/A for the Defendant*

*Teresia – Court clerk*