



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**COMMERCIAL & TAX DIVISION**  
**CIVIL CASE NO.1050 OF 2002**

**METLEX INTERNATIONAL LIMITED.....PLAINTIFF**

**VERSUS**

**SOKHI INTERNATIONAL (K) LIMITED.....1<sup>ST</sup> DEFENDANT**

**INDER SOKHI.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

By a Plaint dated 3<sup>rd</sup> September 2002, filed on the same date, the Plaintiff herein sued the two Defendants claiming as against them, jointly and severally, the following reliefs:-

- (a) Kshs. 5,775,312.95 together with interest at 3% per month from 20<sup>th</sup> February, 2002, until payment in full.**
- (b) Costs of this suit.**
- (c) Interest on (b) above at court rates.**
- (d) Any other relief this Honourable court deems fit and just to grant**

On 24<sup>th</sup> February 2003, a consent judgment was entered against both Defendants in the sum of Kshs 3,310,000/= as admitted in paragraph 4 of the defence filed on 8<sup>th</sup> October 2002. The court ordered that the disputed portion of the Plaintiffs claim, that is, Kshs 2,665,312.95 together with the issue of interest be determined at a full trial on the calling of evidence.

Although a joint defence was filed for both Defendants, the 2<sup>nd</sup> Defendant denied liability stating that the Plaintiff had no cause of action against him. The Plaintiffs suit is for payment of the purchase price for various goods sold and delivered to the 1<sup>st</sup> Defendant at the request of the 2<sup>nd</sup> Defendant who is said, in paragraph 4 of the Plaint to have personally visited the Plaintiffs premises and made an oral proposal to guarantee the payment for the goods by the 1<sup>st</sup> Defendant. It is stated in the Plaint that the 1<sup>st</sup> Defendant had requested for quotations via fax on or about 4<sup>th</sup> January 2002, and on or about 16<sup>th</sup> January 2002 the Defendants placed a written order for the supply of the said goods as had been quoted for in the fax. The goods were delivered at the Chemanul Tea Factory on the 1<sup>st</sup> Defendant's behalf and

duly received.

A cheque in the sum of Kshs. 5,077,540/= was then issued to the Plaintiff by the Defendants in payment for the goods, whose value as per the invoice issued, had been stated to be KShs 5,775,312.95/=. Upon presentation of the cheque for payment the same was dishonoured with remarks that it had been stopped. The Plaintiff claims interest on the outstandings at the rate of 3% alleging that the same was agreed between the parties as evidenced by the quotation accepted by the Defendants.

The 2<sup>nd</sup> Defendant denies having guaranteed the repayment of the 1<sup>st</sup> Defendant's indebtedness but in paragraph 7 of the Defence joins the 1<sup>st</sup> Defendant in explaining that the cheque mentioned hereinabove was stopped **"Because of the Plaintiff's failure to supply the goods worth 5,077,540.00/="**.

There is an admission in paragraph 4 of the Defence (although stated to be by the 1<sup>st</sup> Defendant) that goods worth Kshs 5,775,312.95/= were ordered from the Plaintiff. The Defendants deny that they agreed to pay interest at the rate of 3%. Other than the denial that he orally promised to guarantee the payment for the goods, I see nothing in the joint defence filed to make the court find that the Plaintiff discloses no cause of action against the 2<sup>nd</sup> Defendant who has neither denied the contract for the supply of the goods nor the issuance of the dishonoured cheque in payment for the supply. Liability therefore cannot be denied, leaving the court to determine only whether the Plaintiff did supply to the Defendants goods valued at the amount claimed or not, and whether the interest of 3% had been agreed upon.

Despite being served with a hearing notice, none of the Defendants attended court when the matter was heard before me on 26<sup>th</sup> October, 2010. The Plaintiff called only one witness who produced several documents to prove its case. He testified that he was the managing director of the Plaintiff and that he knew the 1<sup>st</sup> Defendant Company having offices in Nairobi and run by the 2<sup>nd</sup> Defendant. That on 4<sup>th</sup> January 2002, his company received a Fax No. 710199 from the Defendant Company requesting the installation and commissioning of steam equipment and fittings as stated in a list attached to the same fax. A quotation was prepared for the same and forwarded to the Defendant. The total quotation, including V. A. T. was for Kshs, 5,775,312.95/=. The same was handwritten on the Fax, the original of which was sent to the Defendant Company and a copy retained for the Plaintiff's records. Terms and conditions of the supply contract were also drawn up which indicated, *inter alia*, that accounts were payable monthly from the date of delivery or on demand and that any overdue accounts would attract a monthly interest of 3%.

PW1 testified further that on 16<sup>th</sup> January 2002, his company received an L.P.O. for the purchase of the quoted items which matched the quotation previously supplied as per the returned fax. The order was prepared and the goods collected on 18<sup>th</sup> January 2002 by a Mr. Teddy Munyera who signed for them on behalf of the Defendant and also collected the invoice prepared and issued on the same date. On 20<sup>th</sup> February, 2002 the Defendants gave the Plaintiff the cheque referred to in the Plaintiff's Complaint, drawn on the Defendant's Bank Account with Giro Bank in the sum of Kshs 5,077,540/=. The same was dishonoured and an advice to that effect issued on 20<sup>th</sup> February 2002 with the reason for non-payment being cited as **"Payment stopped"**. The Plaintiff then instructed its advocates to issue a demand notice for the payment of the debt, leading to the filing of this suit, and the judgment on admission previously referred to in this judgment. PW1 testified that pursuant to a decree issued pursuant to the judgment, Kshs, 3,110,000/= has been repaid by instalments leaving a balance of Kshs 200,000/= which the Plaintiff prays be awarded alongside the disputed sum, interest and costs.

To prove the Plaintiff's claim PW1 produced the following documents as exhibits

1. **A file copy of the fax dated 4<sup>th</sup> January 2002, ("EXH1")**
2. **An extract of the Terms and Conditions of Sale**  
**("EXH 2")**

3. A business Card showing Inder H. S. Sokhi as the Managing Director of Sokhi International (K) Ltd the 1<sup>st</sup> Defendant herein (“EXH 3”)
4. A local purchase order dated 16/1/02 ordering the goods itemized in the Fax copy dated 4/1/2002  
 (“EXH 4”)
5. Delivery Note dated 18/1/02 and accompanying Invoice of the same date quoting the L. P. O. of 16/1/02 and indicating that the goods itemized “As per your order” in the sum of Kshs. 5,775,312.95/= (“EXH 5”)
6. The original dishonoured cheque No. 028834 dated 20<sup>th</sup> February 2002, for Kshs. 5,077,540/= drawn by Sokhi International in favour of Metlex International Limited (“EXH 6”)
7. Original cheque stoppage advice dated 20/2/02  
 (“EXH 7”)
8. Demand letters dated 13/6/02 from M/S Rachuonyo & Rachuonyo to Sokhi International Limited (“EXH7”) and to Inder Sokhi (“EXH 7B & C”)
9. A copy of the decree issued on 10<sup>th</sup> July 2003, in the sum of Kshs. 3,310,000/= (“EXH 8”)
10. A debtor’s statement dated 2<sup>nd</sup> October 2010, prepared by the Plaintiff showing the sum of Kshs. 2,665,312.95/= as being due after discounting the sum recovered pursuant to the decree (“EXH 10”)

PW1 also produced, as exhibits, documents to prove that the 2<sup>nd</sup> Defendant was indeed the Inder H. S. Sokhi who had ordered the subject goods and visited the Plaintiff’s offices, introducing himself as the Managing Director of the Defendant and guaranteeing payment. The said documents included a document examiner’s report to the effect that the signature in the dishonoured cheque was by the same hand as had signed the Identity Card produced in respect of Hapal Singh Sokhi. In view of what I have stated earlier in this judgment concerning liability, as arising from the Defence filed, I have no doubt in my mind as to the 2<sup>nd</sup> Defendant’s relationship with the 1<sup>st</sup> Defendant and his joint and several liability herein.

There being no evidence adduced by the Defendants to controvert the Plaintiff’s evidence, both oral and documentary, I am satisfied that the Plaintiff has proved its case on the balance of probabilities. The suit therefore succeeds.

Accordingly I hereby enter judgment for the Plaintiff against the Defendants, jointly and severally in the sum of Kshs. 2,665,312.95/=. As regards the interest of 3% per month, I am not inclined to grant the same since the document referred to as the “**TERMS & CONDITIONS OF SALE**” does not form part of any of the documentation evidencing the sale transaction.

However, I hereby grant interest on the judgment sum at court rates from the date of filing suit until payment in full. The Plaintiff shall have costs of the suit with interest thereon at court rates until payment in full.

**DATED, SIGNED and DELIVERED at NAIROBI this 17<sup>TH</sup> day of FEBRUARY, 2011**

**M. G. MUGO**  
**JUDGE**

In the presence of:

Ms Mugo holding brief for Mr. Karanu

For the Plaintiff

No Appearance

For the Respondents