

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL CASE NO. 116 OF 2010

STANSLAUS M. ALUKUMU PLAINTIFF

V E R S U S

WORLDLINK MOTORS LIMITED DEFENDANT

J U D G M E N T

The plaintiff filed suit against the defendant seeking judgment to be entered in his favour for the sum of KShs.1,030,000/=. The plaintiff further prayed for costs of the suit and interest thereon. The basis of the plaintiff's claim is an agreement that was allegedly entered on 3rd September 2009 between the plaintiff and the defendant by which the defendant agreed to supply to the plaintiff a tractor make Massey Ferguson 390 together with a plough for the purchase consideration of KShs.1,000,000/=. According to the plaintiff, he paid the said sum to the defendant, but to-date, the defendant had not fulfilled its part of the bargain by delivering the said tractor. The plaintiff averred that he paid a further sum of KShs.30,000/= to the defendant to facilitate the transport of the said tractor and plough to Kakamega. The plaintiff contends that the defendant breached the agreement and therefore he ought to refund the sum that he had paid to the defendant.

When the defendant was served with summons to enter appearance together with a copy of the plaint, it duly entered appearance. It entered appearance through counsel i.e. M/s Ario & Co. Advocates. It also filed defence to the plaintiff's claim. It denied having ever entered into an agreement with the plaintiff for the supply of a motor tractor. It denied that it was paid the sum claimed by the plaintiff. It put the plaintiff to strict proof thereof. It denied that the plaintiff was entitled to judgment for the sum claimed in the plaint. It urged the court to dismiss the plaintiff's suit with costs.

The defendant's advocates were duly served with the hearing notice when this case was scheduled to be heard on 13th June 2011. An affidavit of service is filed in court indicating that the said advocates were duly served. Neither the defendant nor his counsel appeared in court during the date that the case was fixed for hearing. On the scheduled date, Mr. Mukavale, learned counsel for the plaintiff urged the court to proceed with the case notwithstanding that the defendant's counsel was absent from court. This court was satisfied that the defendant was duly served. It directed the plaintiff to proceed with the hearing of his case in the absence of the defendant.

The plaintiff adduced evidence as PW1. He reiterated the contents of his plaint. He produced four (4) documents as exhibits. Two of the exhibits were copies of two cheques of the sums of KShs.700,000/= and KShs.300,000/= which were paid to the defendant. The copies of the two cheques were obtained from National Bank of Kenya Limited (the plaintiff's bankers) which confirmed the fact that indeed the two cheques were paid upon presentation by the defendant. The plaintiff further produced a copy of his bank statement which established that indeed the said sums were paid to the defendant. The plaintiff testified that he paid a further sum of KShs.30,000/= to a director of the defendant, one Zakaria Mwangi, through M-Pesa on mobile phone no.0720671717. The plaintiff testified that he paid this sum to the defendant on the understanding that he would be supplied with a Massey Ferguson tractor together with a plough. That was not to be. This is because the defendant failed to keep its part of the bargain. The plaintiff therefore urged the court to compel the defendant to refund the purchase price whose consideration wholly failed.

This court has carefully considered the facts of this case. The evidence that was adduced by the plaintiff in support of his case was uncontroverted. This court holds that the plaintiff proved, to the required standard of proof on a balance of probabilities, that he indeed paid to the defendant the sum of KShs.1,030,000/= for the supply of a tractor and a plough which the defendant failed to deliver. This court has perused the defence filed by the defendant. The said defence constitutes of mere denials and does not shed light on any of the averments made by the plaintiff in his plaint. The defendant did not attend court to adduce evidence in support of its defence despite being served with a hearing notice.

In the premises therefore, judgment is entered for the plaintiff as against the defendant for the sum of KShs.1,030,000/= being in respect of the sum the plaintiff paid to the defendant for the supply of a tractor and a plough which were not delivered. The plaintiff shall be paid interest at court rates of 14% per annum from 5th August 2010 when this suit was filed. The plaintiff shall have the costs of this suit.

DATED AT KAKAMEGA THIS 21ST DAY OF JUNE 2011

**L. KIMARU
J U D G E**