



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 3186 OF 1993

EAST AFRICAN METAL WORKS LIMITEDPLAINTIFF

VERSUS

SAFARILAND CLUB LIMITED (In Receivership) DEFENDANT

JUDGEMENT

This old case after many appearances before the court was heard ex-parte due to non-appearance of the Defendant and/or its counsel despite due service of Notice of Hearing has been effected.

The plaintiff claims shs.1,949,006/= from the Defendant in respect of price of goods sold and delivered as per the plaint dated 28th June, 1993.

The Defendant denied its liability. The Defendant was placed under receivership on 14th August, 1998 and thus an amended plaint was filed on 5th May, 1999. However, it is on record that the receivers were discharged by court's order dated 21st February, 2006.

The plaintiff called Mohammed Amin as its witness who is also its Managing Director. The Plaintiff Company manufactures prefabricated structures. Around 1991, one Mr. Mohammed Aslam, a director of the Defendant's company, called him and told him that he wanted prefabricated houses for his staff members. He sent an offer vide letter dated 4th October, 1991, addressed to the said Mr. Aslam who was a director of PAB of companies and the Defendant was one of the companies in the said group. Mr. Aslam accepted the offer and requested for a sketch-plan and the same was given. The order was for 80 prefabricated houses and one rectangular structure.

Once approval was given by the said Mr. Aslam, he asked the witness to approach the Manager of the Defendant's company whom he knew as Mr. Samson. The negotiations continued upto November, 1991 during which time, the said Mr. Aslam passed away and his elder son Raza Aslam continued to deal with the contract. He asked the plaintiff to complete installation of the agreed structures. He delivered the first batch of units on 6th December, 1991 and completed the supply and erection thereof by end of December, 1991.

There was no complaint from the Defendant and after four months, the plaintiff demanded the payment but he was shunted to and fro from one place to another.

The witness produced all the documents referred by him in his evidence and also the photographs of the erected units.

An invoice dated 12th February, 1992 was raised and sent (P Ex. 4) to the Defendant. After that a letter of 26th March, 1992 was received from the Defendant asking for LPO and vide letters of 15th July, 1993 and 21st March 1999 the rent for occupation was demanded. He produced several correspondences between the parties, one party seeking payment and another party demanding the rents and removal of structures. They all are produced as exhibits.

I shall, however, refer to one letter dated 1st April, 1993 from the Chief Accountant of the Defendant which refers to the Plaintiff's letter of 26th March, 1993 for the payment of the goods. It states *inter alia* that the writer was in process of consulting the new Chairman to sort out the long standing problem with a promise to get back after the situation got settled. It also indicated that a new investor is interested in the Defendant's company.

In short, the Plaintiff's case is that after an oral offer from the Defendant's director, the Plaintiff gave its terms as regards price etc. They were approved and the goods were delivered and the prefabricated houses were erected on the premises of the Defendant. The Defendant asked for removal of these structures in 1994 and that too after an assurance, by the Chief Accountant of the Defendant was given in the month of April, 1993 that the long standing issue shall be sorted out.

It is my considered view that the Plaintiff just could not have erected 80 prefabricated houses and a structure on a premises of the Defendant for any other purposes than that for the Defendant's use as had been orally agreed between the two officials of the parties, and the plaintiff has fulfilled its side of the contract.

I shall have no hesitation thus to find, which I hereby do, that the Plaintiff has proved its case on a balance of probability and I do enter judgment in favour of the Plaintiff in the sum of Kshs.1,946,006/= with costs and interest.

The sum of Kshs.500,000/= deposited in joint account of two Advocates as per the order of the court be released to the Plaintiff with interest accrued thereon.

Orders accordingly.

Dated, Signed and delivered at Nairobi this 25th day of **February, 2010.**

K. H. RAWAL

JUDGE

25.02.2010