

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 1749 of 2001

PANATECH LTD.....PLAINTIFF

VERSUS

DUBAI ELECTRONICS LTD.....DEFENDANT

JUDGMENT

By an amended plaint filed on 18th October 2005, the plaintiff sought judgment to be entered in its favour as against the defendant for the sum of KShs.5,089,460/= on account of goods allegedly sold and delivered to the defendant on various dates between 6th October 1998 and 20th April 1999. The plaintiff averred that it was an importer, dealer and supplier of electronics, office and household goods. In the course of its business, it entered into a contract to supply goods to the defendant for the purpose of resale. The plaintiff set out the particulars of the goods supplied to the defendant. It averred that, in acknowledgement of the debt, the defendant executed various promissory notes for a total of KShs.6,544,000/= which to-date the defendant had failed to honour. The plaintiff prayed for judgment to be entered for the said amount plus costs and interest at commercial rate of 22% per annum.

The defendant filed a defence denying that it owed the plaintiff the said sum of KShs.6,774,800/= or any lesser sum. The defendant put the plaintiff to strict proof thereof. The defendant denied that the goods in question were supplied to it. It averred that the documents that the plaintiff relied on in support of its case were fraudulently obtained after the plaintiff had colluded with a former employee of the defendant. The defendant denied that it had executed promissory notes for the sum of KShs.6,544,000/= and put the plaintiff to strict proof thereof. In the premises therefore, the defendant urged the court to dismiss the plaintiff's suit with costs.

The plaintiff fixed the hearing of this case on 28th January 2009 after sending invitation to the defendant's advocate to attend court's registry for the purposes of fixing the said date. The hearing date was taken exparte. The hearing was fixed for 12th October 2009. The defendant's counsel was served with the hearing notice on 3rd February 2009. Receipt of service was duly acknowledged by the said firm of advocates. A duly sworn affidavit of service was filed by the process server who effected service on the defendant's advocate. During the hearing of the case on 12th October 2009, neither the defendant nor its advocate attended court. The plaintiff was ready to proceed with its case. The court was satisfied that the defendant was duly served and directed the hearing of the case to proceed, the absence of the defendant notwithstanding.

At the hearing of the case, the plaintiff called two witnesses: PW1 Adil Ismael Mughal, an employee of the plaintiff at the material time the debt was allegedly incurred, and PW2 Suresh Nanalal Kantaria, the chairman of the plaintiff, and who was at the material time the managing director of the plaintiff. Having heard the said two witnesses who adduced uncontroverted evidence in support of the plaintiff's case, and having considered the documentary evidence produced as exhibits by the plaintiff, the issue for determination by this court is whether the plaintiff established to the required standard of proof that indeed the defendant owes it the said sum of KShs.5,089,460/=. According to the plaintiff's witnesses, the plaintiff and the defendant's principal shareholders had a long standing business relationship. This business relationship resulted in the plaintiff supplying goods to the defendant on credit.

I have perused the invoices and the delivery notes produced as plaintiff's exhibit No.1. It was clear that each invoice was accompanied by a delivery note which established, on a balance of probabilities, that the

said electronic goods were indeed supplied to the defendant. The bulk of the goods were collected by a Mr. Ali in motor vehicle registration No. KAG 682E registered in the name of Abdulhakim Abdulla Mohamed, a director and shareholder of the defendant. A copy of records maintained by the Registrar of motor vehicles was produced as plaintiff exhibit No.2 which established the fact. The plaintiff further produced a copy of a list of directors of the defendant. It included the said Abdulhakim Mohamed as a director and shareholder of the defendant.

I therefore hold that the plaintiff established to the required standard of proof that it delivered the said goods contained in the invoice to the defendant. The defendant duly acknowledged receipt of the same. I further hold that in acknowledgment of the debt owed to the plaintiff, the defendant executed several promissory notes which were produced in evidence, and which the defendant failed to honour. Although the defendant appeared to disown the said promissory notes in its defence, having perused the same, and having evaluated the circumstances under which the said promissory notes were given by the defendant to the plaintiff as per the oral evidence adduced in court, I hold that the defendant is indeed indebted to the plaintiff to the said sum of KShs.5,089,460/=.

I therefore enter judgment in favour of the plaintiff as against the defendant for the sum of KShs.5,089,460/=. The said sum shall be paid together with interest at the court rates of 14% per annum from the date of filing suit until payment in full. The plaintiff shall be paid the costs of the suit.

It is so ordered.

DATED in NAIROBI this 28TH day of OCTOBER 2009.

L. KIMARU

JUDGE