



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

**Civil Case 1124 of 1999**

**DARSHAN SINGH JAGDISH SINGH BANSAL T/A ORIENTAL STEEL  
FABRICATORS & BUILDER.....PLAINTIFF**

**VERSUS**

**BOMAS OF KENYA LIMITED .....DEFENDANT**

**JUDGEMENT**

The Plaintiff a building contractor claims a sum of Kshs.537,695/= being the balance due to him for work done for the Defendant at the Bomas of Kenya.

This sum is the balance due to the Plaintiff after receipt by him of a sum of Kshs.2,100,000/=.

It is not disputed that extra work was done by the Plaintiff for which he should be paid only the balance of the amount.

The Plaintiff had employed a quantity surveyor, Mr. Ndambuki who prepared a bill of quantities showing that the whole value of the work done by the Plaintiff was Kshs.3,446,098.00. This sum was included in a final bill sent to the Defendant.

The Defendant appointed a firm of quantity surveyor called Fredmar Quantity Surveyors to measure the works and produce a final account. This final account amounted to Kshs.3,035,718/= a sum less than that produced by Mr. Ndambuki.

The amount given by Fredmar Quantity Surveyor was contained in a summary of Final Account (Exhibit 10) which was signed by the Plaintiff for itself and Fredmar Quantity Surveyors for the Defendant both on the 19.5.1988.

Although the sum had been agreed, the Defendant employed the services of the Ministry of Works whose Quantity Surveyor produced another figure of Kshs.2,520,718.00 as set out in his letter of the 26.1.99 addressed to the Defendant.

In support of this figure Mr. Fredrick Mwenda and Mr. Munano gave evidence.

The differences between the two arose due to their different views of what work had been done and what work had been omitted.

However, there is no doubt that the firm of Fredmar Quantity Surveyors had been appointed by the Defendant to act for it in the matter and as such it was the agent of the Defendant.

In my view and I so find the summary of Final account was a binding agreement between the Plaintiff and Defendant, having been signed by Fredmar Quantity Surveyor as the lawful agent of the Defendant and was an agreement as to the correct sum due to the Plaintiff. I reject submissions of learned counsel for the Defendant that he did not act in a bona fide manner.

In the letter of the 13.2.1998 addressed to the Plaintiff by the Defendant is a sentence as follows:-

***“Regarding the additional work which have not been approved by the employer, we would like you to***

***give an appointment to inspect the works with our Quantity Surveyor so that an appropriate agreement can be reached.”***

At the end of the letter is a note, not on the original, addressed to Mr. Thunga of Fredmar Quantity Surveyor which states:-

***“Attached herewith is a copy for the contractor’s claim dated 5<sup>th</sup> February 1998 giving a draft final account of Kshs.3,446,098 against the approved contract sum of Kshs.2,166,608. Could you please urgently visit the site, measure the additional works claimed and give us your reconciled contract sum.”***

My interpretation of these two sentences is that an appropriate agreement was to be reached at the visit of the parties and that Fredmar Quantity Surveyors were to give to the Defendant his reconciled accounts. This account was of course to be reconciled with the Plaintiff as there was a difference between Mr. Ndambuki and Mr. Ikiunga. The consequent summary of Final account was the result. The subsequent figures given by the Quantity Surveyor from the Ministry of Public Works were done after a final figure had been agreed between the parties and were an attempt by the Defendant to alter an agreement which was binding upon it and as such was not capable of varying the agreement already reached.

In the result I find that the balance due to the Plaintiffs is Kshs.537,695.00 and I award judgement for this amount. So far interest is concerned there was no agreement as to any rate of interest and I therefore award interest at court rates from the date of the filing of the Plaint until payment in full. The Plaintiff will have the costs of the suit.

Dated and delivered at Nairobi this 10<sup>th</sup> day of February, 2006.

**P. J. RANSLEY**

**JUDGE**