



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 315 Of 1996**

MAJESTIC WORKS LIMITED..... PLAINTIFF

VERSUS

KILIMANJARO COMPANY LIMITED..... DEFENDANT

JUDGMENT

On 09.02.96 the plaintiff company filed the present suit praying for judgment against the defendant company for:-

- a) Shs.1,257,761/15;
- b) Costs of this suit;
- c) Interest at court rates; and
- d) Any other alternative relief this honourable court may deem fit to grant.

The plaintiff's claim is stated to be the aforesaid amount of Shs.1,257,761/15 being the agreed and/or reasonable price of goods sold and delivered and work done and materials provided by the plaintiff to the defendant at the defendant's request in Nairobi, during the year 1994, the particulars whereof were said to have been known to the defendant.

On 18.03.96 the defendant filed defence denying being indebted to the plaintiff for the sum claimed or at all. Defendant co. admitted receiving the goods in question but added that the price quoted therefor was neither agreed nor reasonable and the defendant accordingly returned the goods to the plaintiff. In the premise, the defendant prayed that the plaintiff's claim be dismissed.

On 12.06.96 the plaintiff filed reply to defence and reiterated the plaint filed earlier.

At the hearing of this suit, the plaintiff company was represented by learned counsel, Mr. G. Morara. There was no appearance for the defendant company. Plaintiff's counsel informed the court that the defendant company was represented in this matter by A.H. Malik; that plaintiff company invited defendant's company to appear at the registry on 09.02.04 for purposes of both parties taking a hearing date; but that the defendant never sent anybody to the registry, hence the plaintiff's counsel took 12.07.05 and 13.07.05 as the hearing dates and served the defendant company.

There was no appearance for the defendant company when the suit came up for hearing on 13.07.05 while plaintiff company was represented by learned counsel, Mr. G. Morara. As service was reported to have been effected on the defendant company and there is an affidavit of service by process server Nicholas Mbeva sworn on 11.07.05 confirming service, I allowed hearing to proceed in absence of the defendant.

Arun Jagdish Bhatt gave evidence as P.W.1 for the plaintiff co.

P.W. 1's evidence may be summarized as under. He is a director for the plaintiff company for more than 20 years. Plaintiff company is a commercial printer of business stationery. Plaintiff company started business with defendant company in March/April, 1994, to print business stationery, water labels and menus for promotion of defendant company's business. Defendant company placed the orders with plaintiff company in various ways: verbally, by telephone, fax and sometimes in writing. Main job done by plaintiff company for defendant company was printing labels for the defendant's business for selling bottles of water. Plaintiff company also printed business cards and menus for defendant company upon orders made by defendant company. P.W.1 referred to 8 (eight) such orders of different dates, which orders he produced as exhibits. P.W.1 added that the defendant company made only part-payment and that the outstanding amount owing to the plaintiff company on all invoices stood at Kshs.1,274,723/95 as at time P.W.1 was giving evidence. He denied a suggestion in the defendant's defence that the plaintiff company did not deliver the goods in question.

P.W.1 reiterated the plaintiff company's prayers for the principal amount, interest on the principal amount at court rates plus costs of this suit.

At the close of P.W.1's evidence, plaintiff's counsel announced that to be also the close of the plaintiff's case.

I have duly considered the evidence on record, on which the plaintiff company relied.

Only the plaintiff company called evidence in this case through P.W.1, who produced documentary evidence in the form of invoices. The figures shown therein total Kshs.1,346,183/15. In his oral evidence, P.W.1 gave the amount the plaintiff company claims as Kshs.1,274,723/95. The principal amount as per the invoices produced before court is more than the amount cited by the plaintiff orally, while the amount cited in the plaint, i.e. Kshs.1,257,761/15 is lower than either of the other two amounts. The plaintiff company acknowledged through P.W.1 that the said plaintiff company received part-payment from the defendant company. I have to decide whether I should accept any of the three amounts which are at variance. In this regard, I had occasion to see P.W.1. as he testified before me and watched his demeanour. I have no reason to doubt his testimony. I ascribe the discrepency between the figure of Kshs.1,257,761/15 cited in the plaint as being due and the figure of Kshs.1,274,723/95 to an arithmetical error. Parties are bound by their pleadings. I accept the lower sum or figure of Kshs.1,257,761/15 cited in the plaint as the correct balance the defendant company owes to the plaintiff company.

The upshot is that I am satisfied that the plaintiff company has proved its case on a balance of probability and I give judgment for the plaintiff. I make the following final orders:-

1. Prayer (a) for Kshs.1,257,761/15 is granted.
2. I grant prayer (b) and award the plaintiff costs of the suit.
3. I also award the plaintiff interest on the principal sum of Kshs.1,257,761/15 at court rate from the date of this judgment until payment in full.

Orders accordingly.

Delivered at Nairobi this 5th day of April, 2006.

B.P. KUBO

JUDGE

