



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 258 of 2000

NOORALI M.E. BHAIJEE

**NAJMUDDIN N.M.E. BHAIJEE t/a NAJMI SPARE PARTS
PLAINTIFF**

- Versus -

**KENYA CALCIUM PRODUCTS LIMITED
DEFENDANT**

J U D G M E N T

The two plaintiffs carry on business as Najmi Spare Parts.

On 25/5/2000 they filed this suit claiming Shs. 719,718/15 plus costs and interest. This sum was after amendment of plaint reduced to read 642,841/90. Evidence was lead on the terms of the contract and subsequent withdrawal by the plaintiff of the services contracted for reasons of non payment within the time frame of the contract. Evidence was given denying counterclaim and set off and valid reason for the summary termination of the contract. Mr. Bhaijee further informed the court that the defendant did not report to the police that there were any missing parts for which the plaintiff would be responsible as an employer. The defendant failed to give any evidence in support of his counter claim and set off.

I have perused the record. When the trial commenced the defendant's advocate stated that his client defendant must have closed business. However the hearing proceeded and counsel participated in the trial by cross examining the plaintiff and witnesses. However the defendant did not offer any evidence when the plaintiff case closed.

Upon considering the evidence tendered by the plaintiff and the exhibits relied upon and upon reading the plaintiff's written submissions, there is evidence that the written contract set out the mode of payment to the plaintiff for transport services rendered. There was breach of terms of payment in the month of June, July and August and September when the plaintiff withdrew his services. The sum of Shs. 642,841/90 for the three months was not paid and it is still unpaid.

I find that the plaintiff complied with the terms of contract as to the termination of the contract. Regarding the counter claim alleged no evidence was offered and I find the same unproven.

According to the issues filed on 2/3/2005 I find the plaintiff did not breach any terms of the contract. To the contrary the defendant failed to pay to the plaintiff as required under the contract. There is no evidence that the plaintiff took any of the defendant's injector pump or compressor and therefore I find

the plaintiff not guilty on this issue.

The defendant is liable to pay the amount proved by the plaintiff in the sum of Shs. 642,841/90 which was included in an amendment made in court with leave at the trial of suit. The plaintiff is not liable to pay to defendant the sum of Shs. 518,000/= or Shs. 429,462/= or any other sum. Counter calim is dismissed.

In the circumstances judgment is entered for plaintiff against the defendant in the sum of Shs. 642,841/90 with interest at court rates together with costs. Orders accordingly.

Dated this 19th day of May 2006.

J. KHAMINWA

JUDGE

19/5/2006

Khaminwa J

Murimi – court clerk

Ms. Jin for plaintiff

Ms. Jadene for Defendant

Taib & Taib

Judgment read in open court in their presence.

J. KHAMINWA

JUDGE

Jadene

I apply for 45 days stay within which to pay.

Ms. Jin - I agree.

C o u r t

Stay is granted for 45 days from today to pay in default execution to issue.

J. KHAMINWA

JUDGE

19/5/2006