

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI

Civil Suit 1408 of 1999

PABECO ENTERPRISES LTD.....PLAINTIFF

VERSUS

RABADIA BUILDER.....DEFENDANT

J U D G M E N T

The plaintiffs are suppliers of cement, steel and other building products.

The plaintiff started trading in 1990 and began to supply the defendant with products in 1997.

The uncontroverted evidence of the plaintiff was presented by Mr. Kantibhai Mr. Patel a director of the plaintiff (P.W 1). The defendant did not call any evidence. P w 1 in evidence said that they were dealing with Mr. Gopal and he added that Mr. Gopal and the defendant were one and the same. The plaintiff supplied the defendant with goods when the defendant would either ring to make orders, or when it would send its lorries to the plaintiff premises with an order on complimentary slip, whilst at other times the defendant sent its lorries and stated that the order would follow. At all times the defendant's lorries collected the goods being supplied by the plaintiff. P W 1 produced plaintiff's exhibit No. 1 and stated that Page 1 was the defendants order for nails; page 2 was the delivery note for nails; pages 3 and 4 was an order for nails; page 5 was the delivery note for nails; page 6 was an invoice; pages 7, 8 and 9 were defendant's order for cement and page 10 was the plaintiff's delivery note for cement. P W 1 said that, that was the mode of trading between the plaintiff and the defendant where the defendant placed its order for goods and in turn the plaintiff issued delivery notes and invoices. That pages 1 to 114 represented the total amount of goods delivered to the defendant which was worth kshs 4, 482, 966. 05. Payment was due from the defendant on the first week of every month and if there was default in payment on its due date an interest of 3% p.m. was chargeable on the amount not paid. The reason P W 1 gave for plaintiff to charge that rate of interest, he stated was because the plaintiff was obligated to pay for the cement to the cement factory on monthly basis. The interest P W 1 pointed out was clearly stated in the plaintiff's delivery notes. P W 1 stated that the defendant used to pay for the goods supplied by cheque but after the last delivery of November 1997 the defendant failed to pay. After demands were sent to the defendant the defendant issued the plaintiff with cheques but which cheque were dishonoured by the bank. Those cheques represented part payment. The defendant also presented to the plaintiff promissory notes issued by a company called Mopart Ltd. These also on presentation were dishonoured. The plaintiff thereafter had no dealings with the defendant. P W 1 said that he is a director and shareholder of a company called Varun Ltd. Varun Ltd advanced to the defendant kshs 6 million, when the defendant was experiencing difficult. The defendant repaid kshs 3 million but failed to pay the balance. This transaction, however, P W 1 said had nothing to do with the present claim in court. Similarly the payment made by defendant in respect of some machinery sold to the defendant had also nothing to do with the present claim before court. P W 1 concluded by saying that the plaintiff seeks judgment for kshs 8, 994, 144/- with interest at the rate of 3% per month with effect from 11st September 1999 until payment in full.

Indeed the plaintiff on a balance of probability has proved its claim against the defendant. The total value of the goods supplied is kshs 4, 482, 966. 05, which after application of interest at the rate of 3% per month amounted to kshs 8, 994, 154 as at 1st September 1999. The plaintiffs oral evidence was sufficiently supported by documents exhibited hereof. Accordingly the plaintiff is entitled to judgment as prayed as follows:

(1) Judgment for the plaintiff as against the defendant for kshs 8, 994, 154/- with interest at the rate of 3% per month as at 1st September 1999 until payment in full.

(2) The costs of the suit are awarded to the plaintiff.

Dated and delivered at NAIROBI this 15th day of July 2005.

MARY KASANGO
JUDGE