

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

CIVIL CASE NO.1028 OF 1999

MANCHESTER OUTFITTERS LTD.....PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL.....DEFENDANT

J U D G M E N T

In this suit the Plaintiff seeks judgment against the Defendant for the sum of Kshs.1,869,375/00 plus costs and interest @ 35% from 30th August 2000, the same being the balance due upon goods ordered by the Defendant and which the Plaintiff duly made for the Defendant. The Plaintiff's case as made out in the amended plaint dated 30th April 2001 is that the Defendant by two local purchase orders dated 06.08.97 ordered from the Plaintiff some 2,796 pieces of uniform at the agreed price of Kshs.2,569,375/00; that it was agreed that the Defendant would pay the purchase price at the time of taking delivery; that in or about 1998 the Plaintiff informed the Defendant that the goods ordered were ready for collection; that in June and August 2000 the Defendant's audit team visited the Plaintiff's factory and verified that the goods ordered were indeed ready for collection and that the workmanship met the terms of the contract; that on 07.08.2000 the Defendant paid Kshs.700,000/00 towards the purchase price and promised to pay the balance of Kshs.1,869,375/00 on or by 30.08.2000 and then take delivery of the goods; that the Defendant did not pay the balance as promised or at all; and that demand and intimation to sue was ignored.

In a further amended defence dated 18th June, 2001 the Defendant pleaded that the suit is time-barred under the Public Authorities Limitation Act; that the Plaintiff never delivered the goods ordered and is therefore not entitled to any payment; that it was the Plaintiff's responsibility to deliver the goods to the Defendant in good order, but instead the Plaintiff presented only invoices without delivering the goods; that the sum of Kshs.700,000/= was paid as an advance at the Plaintiff's request but that there was no promise to pay Kshs.1,869,375/00 on or before 30th August, 2000 as the goods had not and have never been delivered; that the Plaintiff was in breach of the contract, which contract has since lapsed by virtue of condition (1) of the official order dated 6th August 1997; and that the Plaintiff was not entitled to any of the reliefs sought. In a reply to the further amended defence dated 25th June, 2001 the Plaintiff pleaded that the Defendant is estopped from alleging lapse of the contract after making the partial payment of Kshs.700,000/00. It further pleaded that the Public Authorities Limitation Act is not applicable.

On 14th June, 2002 the Plaintiff filed its list of documents. There is none filed by the Defendant. On 25th June 2002 an agreed statement of issues was filed. That statement fairly captures all the issues disclosed by the pleadings. When the suit came up for hearing on 30th September, 2004 there was no appearance for the Defendant. Its advocates had been duly served with hearing notice way back on 10th March 2004. The Plaintiff therefore proceed ex parte . It called one witness, JOSEPH MARTIN NGATIA (PW 1), its Sales Executive. In the course of his testimony he produced the following documents, *inter alia* –

- (i) Official order dated 06.08.97 (Exhibit P1) for various uniforms and accessories for Kshs.1,479,300/00.**
- (ii) Another similar official order of even date (Exhibit P2) for Kshs.1,090,075/00.**
- (iii) Invoice dated 02.09.97 for Kshs.1,479,300/00 (Exhibit P3).**

(iv) Another invoice dated 03.09.97 for Kshs.1,090,075/00 (Exhibit P4).

(v) Letter dated 19.11.98 addressed by Plaintiff to the Defendant (Exhibit P5).

(vi) A similar letter dated 31.05.99 (Exhibit P6).

(vii) Yet another similar letter dated 23.07.99 (Exhibit P7).

Upon the uncontroverted testimony of PW1 I am satisfied on balance that the Defendant ordered from the Plaintiff various uniforms and accessories by two official orders dated 6th August, 1997 of the total value of Kshs.2,569,375/00; that the Plaintiff, a clothing company, duly made the goods ordered and informed the Defendant that the goods were ready for collection upon payment of the agreed price; that the Defendant paid the sum of Kshs.700,000/00 towards the agreed price, leaving the balance of Kshs.1,869,375/00 which the Plaintiff now claims; and that the Defendant has refused or neglected to pay this balance and then collect its goods. I am thus satisfied that the Plaintiff has proved its case to the required standard.

I will in the circumstances give judgment to the Plaintiff against the Defendant for the sum of Kshs.1,869,375/00 plus interest at court rates from 30th August 2000 until payment in full. I see no reason to award interest at the claimed rate of 35%. Interest above court rates will normally be awarded where the contract between the parties provides for such interest. It is not the case here. The Plaintiff will also have costs of the suit plus interest thereon at court rates from the date of filing suit. Orders accordingly.

Needless to say, the Defendant shall be at liberty to collect its goods from the Plaintiff upon payment of the decretal sum.

DATED SIGNED AND PRONOUNCED IN OPEN COURT

THIS 19th DAY OF OCTOBER 2004

H. P. G. WAWERU

JUDGE