



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 507 OF 2000

ERNST & YOUNGPLAINTIFF

(Suing as a firm)

VERSUS

SUBUKIA TEA COMPANY LIMITEDDEFENDANT

JUDGMENT

The Plaintiff filed this suit against the Defendant seeking Judgment as follows:

- “(a) Kshs. 624,363,
- (b) Kshs. 16,169.15 being bank charges for the cheque returned
- (c) Interest on (a) and (b) at Prime Commercial Bank rates from the date of accrual until payment in full
- (d) (Costs)
- (e) V.A.T.
- (f) (Other relief)

The Defendant filed a Defence, Counter claim and Set-off but did not attend the hearing of the case although the hearing date was taken by consent in court in the presence of its Managing Director. The Defendant was previously represented by a firm of Advocates but those Advocates withdrew from acting for it.

At the hearing, Mrs. Avni Gilani, a partner with the Plaintiff firm stated that the Plaintiff, which is a firm of auditors, tax agents and management accountants, provided services to the Defendant which the Defendant has not paid for. She produced to the Court a number of Fee Notes which the Plaintiff sent to the Defendant (see PEX 1 a-m). In April 2000, the Defendant’s Managing Director went to the Plaintiff’s offices and issued the Plaintiff with a United States Dollar Cheque for US \$ 15,111.66. This was to cover the fees claimed from the Defendant and the Defendant’s sister companies for which the Plaintiff had also provided other services. The Plaintiff banked the said cheque but the same bounced. The same was produced in this Court as PEX 2. This caused the Plaintiff’s Bankers to charge them Kshs. 16,169.15 as bank charges.

From the correspondence exchanged between the parties (see PEX 3, PEX 5a, PEX 7, PEX 8, PEX 9, PEX 10, PEX 11, PEX 12 and PEX 13 it is apparent that the Defendant does not dispute the Plaintiff's claim. The Plaintiff's testimony was not controverted in any way. The same must succeed. The Defendant did not lead any evidence to support its counterclaim and set off. The same must fail.

I, therefore, enter Judgment for the Plaintiff as prayed in the Plaint and dismiss the Defendant's counterclaim and set off with costs to the Plaintiff. The Plaintiff shall also have interest at Court rates.

Dated and Delivered at Nakuru this 25th day of June, 2003.

ALNASHIR VISRAM

JUDGE