



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 1298 OF 1990**

**RAMJI RATNA & COMPANY LTD. .... PLAINTIFF**

**VERSUS**

**COTTON BOARD OF KENYA ..... DEFENDANT**

**JUDGMENT**

The plaintiff is a contractor. On 7.7.1981, it entered into a contract with the defendant for the erection and completion of a seed cotton store and associated services for the defendant at Meru Ginnery at the cost of Shs.1,953,217.00. The principal consultants for the project were Professional Consultants who are Consulting Engineers and the Quantity Surveyor was George O. Ngiere. These two were employees and agents of the defendant Cotton Lint and Seed Marketing Board.

The plaintiff completed the construction of the works and handed over the site to the defendant. In the course of construction, the plaintiff was paid for all the Certificates that were issued by Professional Consultants in connection with the works except for the final Certificate in the sum of Shs.906,414/80. According to the evidence tendered in this matter that Certificate was prepared by the quantity surveyor and certified and recommended to the defendant by Professional Consultants.

The sum of Shs.906,440/80 is detailed in a letter dated 9.8.1988 from Professional Consultants addressed to the defendant with a copy to the quantity surveyor and the plaintiff. It constitutes the final Certificate No. 8 which gives rise to this claim. The plaintiff complains that despite the issuance of the Certificate, the defendant has failed to pay the amount stated in the Certificate. Under the terms governing Building Contracts, the Certificate dated 9.8.1988 ought to have been paid within 14 days after it was rendered. It was not paid within that time and still remains unpaid. Because of the defendant's failure and/or refusal to make the payment, the plaintiff has brought this suit to recover the amount aforesaid together with interest thereon at commercial rates prevailing from time to time.

The defendant's defence consists of bare denials and in fact ought to have been struck off; in the event however it was not and the matter proceeded to trial. The evidence tendered on behalf of the defendant was consequently irrelevant and attempted to introduce matters not supported by any averments. It failed to recognise that the claim was based on a Certificate issued by the defendant's own agent. As to the claim that the balance outstanding had been paid, the burden was upon the defendant (see Section 107(1) of the Evidence Act) to prove that payment had been made. In the event, no such proof was forthcoming.

For the above reasons, I am satisfied that the plaintiff has proved its case on a balance of probabilities. Accordingly judgment is entered in favour of the plaintiff against the defendant as prayed in the amended plaint. The defendant will bear the plaintiff's costs of the suit plus interest thereon.

Dated at Nairobi this 17th day of April, 2001.

**T. MBALUTO**

**JUDGE**