



REPUBLIC OF KENYA



**Lowland Vegetable Growing Co Ltd v Nganga (Civil Suit 4 of 2019)  
[2025] KEHC 2192 (KLR) (13 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 2192 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL SUIT 4 OF 2019  
GL NZIOKA, J  
JANUARY 13, 2025**

**BETWEEN**

**LOWLAND VEGETABLE GROWING CO LTD ..... PLAINTIFF**

**AND**

**JOSEPH MAINA NGANGA ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff sued the defendant vide a plaint dated 30<sup>th</sup> April 2019 seeking for the following order
  - a. Payment of Kshs 20,910,320.00
  - b. Interest on the Kshs 20,910,320.00 with interest at court rates from the date of filing the suit
  - c. Costs of the suit with interest at court rates from date of filing suit
  - d. Any other further relief that the court may deem just to grant
2. The plaintiff's case is that between the year 2014 and mid-February 2019 the plaintiff that is a vegetable producer supplied the defendant with cabbages valued at Kshs 82,431,050.00. That the defendant paid a sum of Kshs 61,650,730 leaving a balance of Kshs 20,910,320 which is the subject of the claim herein. The plaintiff also seeks for interest on the said sum with effect from the date of filing of the suit.
3. The plaintiff supported its case vide the testimony of PW1 Geeth D'Cunha its farm manager. It was his evidence that, the plaintiff grows vegetables for both local and export market. That the defendant has been its customer for over 20 years.
4. That during the period of 20<sup>th</sup> April 2018 to 9<sup>th</sup> February 2019 the plaintiff supplied cabbages to the defendant and subsequently the defendant was issued with invoices to settle on his running account. That he made payments leaving a balance of Kshs 19,642,330 which he has failed and/or declined to honour despite demand for payment. The witness referred the court to documents at pages 15-49



being invoices issued to the defendant together with the delivery notes at pages 9-14 of the plaintiff's list of documents.

5. In cross-examination, he testified that all delivery notes are not signed and so are some of the invoice as the business between the parties was done on trust. He conceded that the demand to the defendant as per the demand letter was for a sum of Kshs 18,985,350 and the demand notice from one Mburu was for a sum of Kshs 13,170,140 and the figure in the plaint is for Kshs 20,910,320.00
6. He further conceded that by a letter dated 5<sup>th</sup> April 2019 the defendant sought for supply of copies or original invoice and delivery notes but insisted the plaintiff has supplied the defendant with all the documents. PW1 D'Cunha confirmed that the plaintiff has no claim to the defendant for the period of 2013 to 2017. He further acknowledged that he had personal business with defendant but was fully paid for it.
7. In re-examination PW1 stated the defendant used to visit the farm, identify a block of cabbage, the parties would agree on the same and once a delivery note is raised, the defendant would go with lorries to collect the cabbages. That handwritten invoices would follow based on the physical count of the cabbage. That the defendant would take the original copies as the plaintiff retained the copies. Further all payments were through cheques on a running account and at no time was payment made in cash.
8. The plaintiff closed its case and the defendant proceeded on the defence case based on the statement of defence dated 31<sup>st</sup> day of May 2019. The defendant denied having been supplied with goods worth Kshs 82,431,050.00 and demanded to be supplied with all the invoices and final statement of account duly signed by the plaintiff. The defendant further requested for particular of all payments made arguing that the plaintiff's claim has been settled by payments made.
9. That in addition to payment of a sum of Kshs 61,520,730 acknowledged, the defendant has also made payment tabulated at paragraph 5 of the defence which amount to Kshs 3,476,000 and which has not been acknowledged. That the above sum was made to Geeta D'Cunha at her request and on behalf of the plaintiff. The defendant further argued that any sum claimed beyond payments made is based on non deliveries and put the plaintiff to strict proof thereof.
10. At the hearing of the case, the defendant filed on the evidence of Joseph Nganga Maina who testified that he used to purchase cabbage from the defendant and would pay for the same on the spot. That he never bought cabbage on credit and neither would cabbage leave the farm before payment was made. He contended that invoices and delivery notes produced in court were not signed by the parties and termed them as fake and pieces of paper. He further stated that, the invoices do not reflect the mode of delivery and registration number of the vehicles.
11. That the demand notice dated 23<sup>rd</sup> February 2019 was for a sum of Kshs 19,985,350 and the one dated 6<sup>th</sup> March 2019 is for a sum of Kshs 13,170,410 and the 3<sup>rd</sup> demand of 4<sup>th</sup> April 2019 is for a sum of Kshs 20,910,320. That his request for documents in support of the claim was not acted on save for provision of plain paper and invoices. He prayed the suit be dismissed with costs.
12. In cross-examination DW1 Nganga Maina confirmed that he has been buying cabbage from the plaintiff since 2013 and had no issues with the plaintiff upto 2017. He confirmed that, he would collect a huge amount of cabbage upto over 30,000 pieces which he used to collect physically from the farm. That, the cabbage used to be counted physically. He also conceded that he would not be given an invoice on the spot, but maintained the invoice produced by the plaintiff are fake, although not a document examiner. He also conceded that since 2013 he has never signed any invoice and that the parties acted on trust.



13. He also agreed that, the plaintiff had provided a statement of accounts upto the year 2016 and payments upto April 2018. He denied having dealt with PW1 on private arrangement. However he acknowledged making payment to PW1 as stated at paragraph 5 of the defence but confirmed that, he has not produced the cheques referred to therein.
14. However, in re-examination he maintained that invoices were not signed nor the delivery notes. He also reiterated he has not had private business with PW1.
15. At the close of the entire case, both parties filed their respective submission. The plaintiff submitted vide submission dated 15<sup>th</sup> May 2023 that the defendant's witness did not adopt his statement in support of his defence nor produced the documents filed on as exhibits and urged the court to ignore the defendant documents. The plaintiff further submitted that the defence filed was not supported by any evidence in it is a mere denial and insufficient defence to controvert the plaintiff claim. Reference was made to several cases including the case(s) of Janet Kaphiphe Ouma and Another –vs- Marie Stopes Intentional (Kenya) Kisumu HCCC No. 68 of 2007 and Drapery Empire –v- The Attorney General Nairobi HCCC No. 2666 of 1996. It was argued that section 107 and 108 of the Evidence Act is clear that he who asserts or pleads must support the same with evidence.
16. The plaintiff further submitted that although there was no formal contract between the parties, it is easy to establish the terms of their engagement vide meeting of the minds and common understanding. That all the cheques issued by the defendant on a running account confirm price of Kshs 15 per cabbage. That the documents at page 9-12 of plaintiff's bundle of documents show the defendant's accumulative running account and the unpaid delivery notes and invoice at page 13-14. That at times the account would be in credit or debit, that the different amount demanded were based on negotiations between the parties before filing of the suit.
17. The plaintiff submitted that the allegations that the invoices and delivery notes are fake have not been pleaded nor substantiated and were only made at the hearing of the defence case, as such they are an afterthought and of no probative value. That the unsigned invoices and delivery notes do not invalidate the underlying transaction of supply of cabbage.
18. That finally the credibility of the defendant's witness is in issue as he stated that he was paying in cash and yet there is evidence of payment vide cheques.
19. However, the defendant in his submissions filed on 5<sup>th</sup> May 2023 reiterated that the unsigned delivery notes and invoices are of no evidential value and with respect just pieces of papers. That the burden of proof lay on the plaintiff which it has not. That further the plaintiff being a limited liability company has failed to produce or file audited reports for the relevant period, yet the claim is huge by all standards. The defendant finally submitted that, going by the different figures of the sum claimed the plaintiff is not sure of what the defendant owes it (if any) money.
20. At the conclusion of the entire case, I have considered the evidence on record and I find that the key question to determine is whether the plaintiff has proved its case on the balance of probability as required. Based on the evidence adduced herein it is not in dispute that the parties herein had a business relationship of sale and purchase of cabbage for a long time. The defendant has produced in the list of documents filed in court a document entitled "contract for sale of cabbage" signed by the parties on 30<sup>th</sup> September 2013 although its content relates to growing of seedling" but supports the long time relationship between the parties.
21. Be that as it were, the pleadings filed by the plaintiff relates the period of 2014 to February 2019. The plaintiff is by law required to prove its claim. The court has been referred to the defendant's statement



of account at pages 9-12 of plaintiff's document filed in court. I have looked at the same and note that it runs from 4<sup>th</sup> January 2016 to 9<sup>th</sup> February 2019. It shows inter alia, the following information:

- a. Delivery note number
  - b. Quantity of pieces of cabbage sold
  - c. Invoice number
  - d. Amount payable
  - e. Cheque number
  - f. Invoice paid and excess amount paid
22. However, notably from 18<sup>th</sup> April 2018 to 9<sup>th</sup> February 2019 the statement does not show details of any cheque number, amount paid and invoice paid. The presumption is that, no money was received in the account during this period. At pages 13-14 of the plaintiff's list the unpaid delivery notes and invoice from Joseph amounting to Kshs 19,642,330. From page 15 to 49, the plaintiff has provided the delivery note and invoice in support of its claim. Again significantly none of these documents are signed.
23. The defendant argues that, failure to sign the subject documents renders them worthless and of no evidential value. A perusal of the delivery note reveals a provision of the recipient of the goods are received "in good order and condition" it was for the defendant to sign not the plaintiff. The invoices do not indicate any provision for signature by either party.
24. A note from the statement of defence that the defendant puts the plaintiff to strict proof thereof. The plaintiff by a letter dated 4<sup>th</sup> April 2019 wherein the plaintiff forwarded tabulate of accounts amounting to Kshs 20,913,320. The letter also indicates that the defendant had the original document in terms of invoices and deliveries. Enclosed in that letter too was the breakdown of payment by the defendant, delivery and invoices including the numbers, quantity and value.
25. In response to the said letter the defendant noted the final tabulation were computer generated and denied having copies and/or originals of any delivery notes and/or invoices in his position and opted for summons
26. The key question remains, did the plaintiff supply the defendant with any cabbage not paid for? In further support of its claim the plaintiff filed a further list of documents, dated 13<sup>th</sup> August 2019. I note from the subject document a statement by PW1 Geeta dated 20<sup>th</sup> June 2019 in which she lists invoices in relation to her supply of cabbage to the defendant on private arrangements and states that the bill in relation to the same was cleared. In the same additional list of documents are a tabulation of account from 1<sup>st</sup> April 2016 to 2<sup>nd</sup> September 2019 of supplies, delivery, quantity of supply, invoices and value of Kshs 81, 163, 060 in support of paragraph 3 of the plaint.
27. The plaintiff has also tabled documents showing the payment made, the cheque number, amount paid by the defendant totalling Kshs. 61, 520, 730 leaving a balance of Kshs 19, 642, 330 as due and payable. Additional documents provided give information on the tabulation of delivery note, invoices payments, unpaid delivery notes invoices, quantities supplied and amount owing. Also provided are the invoice and delivery notes, copies of cheques paid and deposit slip.
28. It suffices to note that against these documents the defendant has in its bundle of documents produce a sale contract dated 30<sup>th</sup> September 2013, demand letters dated 23<sup>rd</sup> February 2019, 1<sup>st</sup> March 2019 and 6<sup>th</sup> March 2019, a reply to demand letter dated 7<sup>th</sup> March 2019, demand for payment dated 4<sup>th</sup> April



2019 and a response thereto dated 5<sup>th</sup> April 2019. The last documents by the defendant are cheques paid to PW1 Geeta directly not the plaintiff.

29. Pursuant to the aforesaid it is clear that, other than christening the invoices and delivery notes as of mere pieces of papers the defendant has not controverted the supply and payment of cabbages even for the period before the subject period herein. He has not denied issuing the cheques produced in payments of goods supplied. There is no evidence that in the previous supply of cabbage and payment thereof for the period between 2013 to 2018 that the delivery notes or invoices transacted were signed.
30. It therefor follows that the parties all along transacted on trust as stated by the plaintiff. Even then why would the plaintiff who has had a long relationship with the defendant on large quantities of goods from nowhere claim such a large sum of money from the defendant. To the contrary the plaintiff admits that, at times the defendant's account was in credit.
31. Furthermore the fact that the plaintiff made a demand for varying amounts does not exonerate the defendant from liability. The court can only award the sum proved. Finally the plaintiff submitted that the defendant's documents were not produced, that renders the documents inadmissible. However, in the interest of justices and pursuant to Article 159 of *the Constitution* that implores the court to promote substantive justice, I have made reference thereto as they are already filed in court and form part of pleadings.
32. All in all I find that the plaintiff has on the balance of probabilities supported by documents produced proved its claim in the sum of Kshs 19,642,330 which I hereby award plus interest from the date of filing this suit to payment in full. The costs of the suit are awarded to the plaintiff.
33. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 13<sup>TH</sup> DAY OF JANUARY 2025**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of

Mr. Karanja for the plaintiff

Mr. Ngunjiri for the defendant

Mr. Komen: court assistant

