



Hekima Kijani Kenya Limited v China State Construction Engineering Corporation (Kenya) Limited (Civil Case E002 of 2024) [2025] KEHC 5600 (KLR) (5 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL CASE E002 OF 2024**

RK LIMO, J

MAY 5, 2025

BETWEEN

HEKIMA KIJANI KENYA LIMITED PLAINTIFF

AND

CHINA STATE CONSTRUCTION ENGINEERING CORPORATION (KENYA) LIMITED DEFENDANT

JUDGMENT

1. The plaintiff herein, Hekima Kijani Kenya Limited vide a plaint herein dated 5th February 2024 filed a claim against the defendant China State Construction Engineering Corporation (K) Limited the defendant herein, for breach of contract and prayed for the following reliefs namely;
 - a. A declaration that the defendant breached the contract it entered with the plaintiff.
 - b. An order directing the defendant to pay the plaintiff a sum of Kshs.70,026,559.
 - c. An order directing the defendant to pay the plaintiff interests of the principal sum at the rate of 5% per annum from 9th July 2019 until payment is made in full.
 - d. Interest on (b) and (c) above at commercial rates from the date of filing this suit until payment is made in full.
 - e. Costs of the suit.
2. The plaintiff through Victoriiah Mukiiri, a representative of the plaintiff's company testified that the defendant had been engaged by Kenya National Highway Authority (KENHA) for the construction of Kapchorwa Multinational Uganda-Kenya, Kapchorwa-Suam-Kitale and Bypass Eldoret Town Bypass project and upgrading of Endebess Suam-Kitale, Endebess-Suam Road project.



3. It is the plaintiff's case that on or around 5th September 2018, the defendant entered into an agreement with Konvest Source Ltd wherein the defendant hired the following machinery namely;
 - i. Tipper-Shacman (SX32554DR384R)
 - ii. Sanny Motor Grader (SAG200-5)
 - iii. Excavator (SY-220C)
4. The plaintiff claims that pursuant to the contract between the plaintiff and the said Konvest Source Limited, the defendant owed the latter Kshs.28,308,074.03/- and that Konvest Source Ltd issued instructions to the defendant to remit the said sum directly to the plaintiff. The plaintiff states that the defendant received and acknowledged those said instructions.
5. The plaintiff claims that further to the above arrangements KONVEST SOURCE LIMITED transferred its rights over the machinery to the plaintiff who in turn executed a new agreement with the defendant vide agreement dated 1st September 2019 and on the basis of that agreement, the defendant retained the possession and use of the machinery in the said road project.
6. The plaintiff claims that it together with the defendant jointly prepared payment certificates that were verified and approved by both parties making them due for payment upon issuance of requisite invoice and ETR. The plaintiff states that despite raising invoices and ETR for payment, the defendant blatantly failed, neglected and/or ignored to settle the invoices as they fell due.
7. It is the plaintiff's case that on 15/2/2022, it together with the defendant jointly raised final payment certificate in the sum of Kshs.48,218, 485.02/- which was due and owing and that once the final payment certificate was raised the defendant had the immediate obligation to settle the sum or in the very least commit to settle the sum within a specified period.
8. The plaintiff claims the defendant owes it Kshs.48,218,485.05 as per final payment issued on 22/2/2022 and Kshs.28,308,074.03 which it was to receive on behalf of KONVEST which in total was Kshs.76,526,559/-.
9. The plaintiff states that out of the above total amount owing, the defendant only paid Kshs.6,500,000/- on diverse dates between 19/5/2020 and 31/3/2023.
10. The plaintiff claims that despite extensive indulgence extended to the defendant and demands made the defendant has been reluctant to pay occasioning it loss.
11. It further claims that the outstanding is attracting agreed interest at 5% per annum from the date it was due till payment in full.
12. The plaintiff tendered the following documents to support its case against the defendant;
 - i. Letter of authority – Pexhibit 1
 - ii. Agreement for Hire of Equipment dated 5/9/2018- PExhibit 2
 - iii. Interim payment certificate dated 7/7/2019 – PExhibit 3
 - iv. Interim payment certificate dated 7/9/2019 – Pexhibit 4
 - v. Agreement for Hire of Equipment – Pexhibit 5
 - vi. Instruction for payment dated 2/9/2019 – Pexhibit 6
 - vii. Final payment certificate dated 15/2/2022 – Pexhibit 7



- viii. Demand letter dated 20/9/2023 – Pexhibit 8
13. The plaintiff prayed for judgment for the total sum owed which it claimed was Kshs.70,026,559/- plus interests at 5% as per the agreement.
14. The defendant despite service did not defend this suit or enter any appearance. The plaintiff's claim is therefore uncontested and in view of the documents tendered in support of its claim this court finds that the plaintiff has proved its case to the required standard. Consequently this court enters judgment against the defendant in terms or prayer (1) (2) and (3) in the plaint. The plaintiff will get interests of (2) above at court rates from the date of filing suit until the payment is made in full. The defendant will also pay costs of this suit to the plaintiff.

DELIVERED, DATED AND SIGNED AT KITALE THIS 5TH DAY OF MAY , 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Judgment delivered in open court

In the presence of;

Sundwa holding brief for Okulo for plaintiff

No appearance for defendants

Court assistants- Duke/Chemosop

