



REPUBLIC OF KENYA



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**Dhanji t/a Kak Enterprises v Mirage Supply and Contractors Ltd (Civil Case E772 of 2021)
[2025] KEHC 8297 (KLR) (Commercial and Tax) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E772 OF 2021
FG MUGAMBI, J
JUNE 13, 2025**

BETWEEN

PATEL KANJI DHANJI T/A KAK ENTERPRISES PLAINTIFF

AND

MIRAGE SUPPLY AND CONTRACTORS LTD DEFENDANT

JUDGMENT

Introduction and Background

1. By a plaint dated 26th August 2021, the plaintiff seeks judgment against the defendant for the sum of Kshs 58,786,215.00/= together with interest at 3% per month running from September 2020 until payment in full, costs of the suit plus interest thereon. The claim arises from the alleged breach of an oral contract for the supply and sale of assorted building materials by the plaintiff to the defendant on diverse dates between 26th June 2020 and 22nd August 2020.
2. The plaintiff contends that, as reflected in the invoices and delivery notes, the agreed terms of payment required the defendant to settle the invoice amounts within fourteen (14) days of receipt. The invoices further stipulated that any late payments would attract interest at the rate of three percent (3%) per month.
3. It is the plaintiff's case that despite receiving the goods, the defendant failed to settle the purchase price, thereby accruing an outstanding debt in the sum of Kshs. 58,786,215/=. It is further averred that the defendant issued several post-dated cheques in July 2020 as part payment of the debt but they were dishonoured due to insufficient funds. He notes that the defendant neither settled the full amount nor ensured funds were available to honour the cheques. The plaintiff further states that the defendant admitted owing the debt on multiple occasions and made promises to pay, which were not fulfilled.



4. At the hearing the plaintiff called one witness, Kanji Dhanji Patel. He adopted his witness statement dated 26th August 2021 as his evidence in chief and produced the plaintiffs exhibits. The defendant also called one witness, James Mwangi Kanyi, who adopted his witness statement dated 18th May 2022 and produced the defendant's exhibits.

Analysis and Determination

5. The parties filed their respective written submissions, which I have duly considered alongside the pleadings and the evidence on record. While I do not propose to restate the submissions or the testimonies of the witnesses in detail, I shall refer to the pertinent aspects thereof in the analysis that follows.
6. In my view, the following are the issues for determination:
 - i. Whether there was a contract between the parties for the supply of goods;
 - ii. Whether the goods were supplied and received by the defendant as alleged;
 - iii. Whether the defendant is indebted to the plaintiff in the sum of Kshs. 25,112,750.00; and
 - iv. Whether the plaintiff is entitled to the orders sought.

i. Whether there was a contract between the parties for the supply of goods:

7. The plaintiff's case is that a contractual relationship existed between the parties, and although it was not reduced into a formal written agreement, the terms of their engagement were evidenced by the invoices, delivery notes, and the parties' established course of dealings.
8. The defendant on the other hand acknowledges having had a business relationship with the plaintiff but denies the existence of any binding contract. It maintains that any supplies made were strictly pursuant to specific Local Purchase Orders (LPOs), which detailed the goods requested and their respective quantities. The defendant further denies the existence of any agreed terms providing for a fourteen (14) day payment period or the imposition of interest at the rate of three percent (3%) per month on late payments. It asserts that no such terms were ever expressly or impliedly agreed upon and disputes the validity of the invoices, claiming that they do not correspond to any authorized requests made by the defendant.
9. The existence of an oral contract between the parties hinges on the plaintiff's ability to establish the essential elements of a valid contract. The Court of Appeal in *Attorney General v Kabuto Contractors Limited*, [2023] KECA 230 (KLR) set out these essential requirements as follows:
 - i. The terms of the contract must be valid and legally enforceable;
 - ii. It must contain the necessary elements found in all contracts (e.g., offer, acceptance, consideration, and mutuality or a 'meeting of the minds');
 - iii. The oral agreement must not violate any laws, regulations or public policy; and
 - iv. The parties must have the requisite legal capacity to contract."



10. It is a settled principle of law that contracts need not necessarily be in writing; they may be oral or may be inferred from the conduct of the parties and the circumstances surrounding their dealings. In this regard, Section 119 of the *Evidence Act* is instructive. It provides that:

“The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in relation to the facts of the particular case.”
11. The Court of Appeal in the *Attorney General v Kabuto Contractors case* went further to emphasize the evidentiary burden that is borne by a party seeking to enforce an oral contract, stating:

“The party seeking to enforce an oral agreement has the difficult task of proving the terms of the agreement as well as the existence of the verbal agreement. A written agreement is itself a proof that there was an agreement, but an oral agreement is merely a verbal communication of proposal and acceptance which is difficult to prove in future if any dispute arises. The burden of proof totally lies on the person who is claiming the right to prove the existence of an oral agreement. The plaintiff in this matter had that burden of proving the existence of the oral contract and the terms of the oral agreement.”
12. This decision reaffirms that while oral agreements are legally permissible, they must be established by cogent and consistent evidence demonstrating the presence of all the essential elements of a valid contract.
13. PW1 testified that orders for building materials were placed orally through telephone calls made by the defendant’s director, James Mwangi Kanyi. Upon receiving such instructions, PW1 would arrange for the delivery of the requested goods, which were accompanied by an invoice. He further confirmed that the invoices produced in court were generated by the plaintiff and were duly signed by the defendant upon receipt of the goods.
14. In response, DW1 disputed the authenticity of the signatures appearing on the invoices, asserting that they were not his. Nonetheless, he acknowledged that the invoices appearing at pages 15 to 36 of the plaintiff’s bundle bore the same stamp and signature.
15. Section 107 of the *Evidence Act* establishes the foundational principle of the burden of proof in civil proceedings. It provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
16. This principle is supplemented by Section 109, which provides:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
17. These provisions place the evidentiary burden on the party asserting a fact. In this case, while the plaintiff bore the initial burden of proving that the goods were delivered, it was not sufficient for the defendant to merely dispute the authenticity of the signatures on the invoices without more. The defendant made no effort to procure or tender forensic evidence to demonstrate that the signatures had been forged or affixed without authority.



18. In the absence of such evidence, on the face of it, it does appear to me that indeed the invoices dated between 26th June 2020 and 22nd September 2020 are reflective of a consistent course of business dealings that existed between the parties, as demonstrated by the process of ordering, delivery, and issuance of invoices upon confirmation of receipt. This course of conduct, coupled with the parties' mutual performance, gives rise to an inference of a binding contractual relationship.
19. My answer to the first issue is therefore in the affirmative, that there was an oral contract between the parties for the supply of goods.

ii. Whether the goods were delivered and received by the defendant as alleged:

20. Having already found that the defendant failed to adduce any evidence to rebut the plaintiff's testimony regarding the acknowledgment of receipt of goods, I am satisfied that the defendant indeed received the goods as claimed by the plaintiff. The invoices produced in evidence bear what appears to be the defendant's official stamp and a signature. The plaintiff's evidence, that these served as acknowledgment of delivery, is both credible and consistent.
21. While the defendant contended that the plaintiff's claim was unsupported by valid Local Purchase Orders (LPOs), it did not produce any LPOs of its own to refute the plaintiff's assertions. Nor did it tender any internal documentation, such as inventory records or delivery logs, to suggest that the deliveries in question were inaccurate, exaggerated, or fabricated. In the absence of such rebuttal evidence, I am persuaded that the deliveries were duly made.

iii. Whether the defendant is indebted to the plaintiff in the sum of Kshs. 58,786,215/=:

22. The plaintiff maintains that the sum claimed represents the outstanding balance for goods delivered to the defendant but not paid for. In support of this position, the plaintiff relies on a cumulative ledger, delivery documentation, and a series of dishonoured cheques issued by the defendant as part payment of the alleged debt.
23. The defendant, in rebuttal, contends that the said cheques were issued merely as security and were not to be presented for payment unless delivery of the goods was confirmed. The defendant further asserts that all legitimate supplies have been paid for as per the issued LPOs, even though these have not been produced to substantiate this claim. The records that the defendant alleges to have reviewed to confirm that it owes no outstanding amount to the plaintiff have not been produced before the Court either.
24. Having already found that the plaintiff has satisfactorily proved delivery of the goods, it follows that the plaintiff was entitled to present the cheques for payment. The defendant's position becomes untenable when considered in light of the fact that, if indeed no goods had been delivered, there would have been no rationale for issuing the cheques in the first place. The logical inference is that the cheques were issued in recognition of a legitimate financial obligation.
25. Of particular significance is the letter dated 23rd November 2020 from the defendant to the plaintiff. The letter reads in part:

“We do acknowledge that during the months of May to September 2020 you supplied building materials to our company which amounted to KSHS. 99,540,990/=, whereby we do owe you KSHS. 56 Million in arrears, which I hope to clear by the end of September 2020. Your continued patience and support is highly appreciated.”

26. This letter constitutes an unequivocal acknowledgment of the debt owed to the plaintiff. In terms of evidentiary value, the letter amounts to an admission within the meaning of Section 17 of the Evidence



Act, which defines an admission as a statement suggesting any inference as to a fact in issue or a relevant fact, made by or on behalf of a party to the proceedings. As underscored by the Court of Appeal in Choitram v Nazari, [1984] KLR 327, an admission need not be made in formal pleadings; it is sufficient if it is clear, unambiguous, and made voluntarily.

27. Accordingly, I find that the letter dated 23rd November 2020 constitutes a binding and voluntary admission of the defendant's indebtedness to the plaintiff. It forms a compelling evidentiary basis for the plaintiff's claim.
28. With regard to the interest component, while the invoices do provide for a 3% monthly interest on late payments, which amounts to an annualized rate of 36%. there is no clear evidence that this rate was expressly agreed upon or brought to the attention of the defendant at the time of contracting. The Courts have repeatedly held that interest terms, especially those of a punitive nature, must be proved to have been agreed upon or must be fair and reasonable in the circumstances. In the absence of proof of consensus on the contractual interest rate, I consider it prudent to apply the court's discretion under Section 26(1) of the Civil Procedure Act, and award interest at court rates from the date of filing suit until payment in full.

Disposition

29. Accordingly, judgment is entered in favour of the plaintiff and against the defendant for the sum of Kshs. 58,786,215/= together with interest at court rates from the date of filing the suit until payment in full. The defendant shall also bear the costs of this suit.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13TH DAY OF JUNE 2025.

F. MUGAMBI

JUDGE

