



Kaigi General Contractors Limited v National Irrigation Authority (Civil Case E009 of 2021) [2025] KEHC 8947 (KLR) (20 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8947 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL CASE E009 OF 2021
MA ODERO, J
JUNE 20, 2025**

BETWEEN

KAIGI GENERAL CONTRACTORS LIMITED PLAINTIFF

AND

NATIONAL IRRIGATION AUTHORITY DEFENDANT

JUDGMENT

1. The Plaintiff herein Kaigi General Contractors Ltd instituted this suit by way of the plaint dated 20th September 2021. The plaintiff prayed for judgment against the Defendant for
 - “(a) Kshs. 185,913,953.00
 - (b) Costs of the suit
 - (c) Interest on (a) and (b) at court rates.”
2. The Defendant National Land Irrigation Authority filed a statement of Defence dated 15th October 2021 denying the plaintiffs claim in total. The parties were allowed several opportunities to hold discussions with a view to reaching an out of court settlement but this was not achievable. The matter then proceeded for hearing by way of Vive Voce evidence.

The Evidence

3. PW1 James Muchangi Gachemi told the court that he was a Director of the plaintiff a limited liability company, engaged in general construction works. The witness relied entirely upon his written statement dated 21st September 2021 as well as the bundles of Documents dated 20th September 2021 (PEx1), 8th April 2022 and 22nd February 2022, (PEx 4) and (Pex 5).



4. Pw1 told the court that during the period 2015 to 2016 the plaintiff was contracted by the Defendant to carry out various construction works. He stated that although the plaintiff received payment for some of the works undertaken, there remained a balance of Kshs. 185,913,953.00 still due and owing in respect of completed works. The plaintiffs claim is particularized at paragraph 3 of the plaint as follows:-
- (a) Retention Fee for Tender Number NIB/T/049/2014-2015 for construction of Mwea Irrigation Scheme Walk Ways, Parking Lots and Workshop Bays KES. 3,150,560/-
 - (b) Retention Fee for Tender Number NIB/T/049/2014-2015 for construction of Iraru Ithitwe Irrigation project KES.1,461,976/-;
 - (c) Various unpaid LPOs for supply of murrum at Mwea Irrigation Scheme KES 136,160,000/-;
 - (d) Various unpaid LPOs for construction of passages and gates at Mwea Irrigation scheme KES. 15,914,387/-;
 - (e) Various unpaid LPOs for construction of passages and gates at Mwea irrigation scheme KES 19,848,082/-;
 - (f) Various unpaid LPOs for grading works at Mwea irrigation Scheme KES. 6,616,200/-;
 - (g) Various unpaid LPOs for excavations at Mwea Irrigation Scheme KES. 2,279,748/-.
5. DW1 Innocent Ariebe Ateka was at the material time the Defendants Regional Coordinator for the Nyanza and Western Regions and was the Manager of the Mwea Irrigation Scheme. The witness relied upon his witness statement dated 6th June 2022. DW1 confirmed that the plaintiff company had indeed been contracted to carry out certain works for the Defendant but categorically denied that the Defendant owes the Plaintiff any monies and in particular denies the plaintiffs claim for Kshs. 185,913,953.00 which he dismissed as ‘fraud’ and fictitious’
6. DW1 explained that all procurement by the Defendant was governed by the [Public Procurement and Asset Disposal Act](#) 2015. That once the contracted works were completed the Defendant after inspection of the works would issue a completion certificate. He emphasized that no payment could be processed without the completion certificate.
7. DW2 further explained that in order for the Finance Department to make payment to a contractor, they require from the user Department the LPO, delivery note, completion certificate and invoice. Upon receipt of the said documents the Finance Department would proceed to prepare a payment voucher. Once the CEO approves and authorizes the voucher then payment is made to the vendor. Once payment has been made the payment voucher is stamped with the word ‘PAID’. The witness reiterated that without submission of a completion certificate no payment can be made.
8. Upon completion of oral evidence parties were invited to file their written submissions. The plaintiff filed the written submissions dated 6th January 2025 whilst the Defendants relied upon their written submissions dated 27th January 2025.

Analysis and Determination

9. I have carefully considered the evidence adduced by both parties in this matter, the documentary evidence presented to court as well as the written submissions filed by both parties.
10. The issues which arise for determination in this case are the following



- (i) Whether the plaintiffs claim is statute barred.
- (ii) Whether a valid and enforceable contract existed between the plaintiff and the Defendant.
- (iii) Whether the plaintiff is entitled to the reliefs sought.

(i) Is the claim statute-barred

11. The Defendants in their written submissions contended that the plaintiffs claim was barred by statute citing the *Limitation of Actions Act* Cap 22 Laws of Kenya. The record reveals that the Defendants filed a Notice of Preliminary Objection dated 6th June 2022 in which they sought to have the suit struck out on grounds inter alia that the suit was time barred under Section 4(1) of the *Limitation of Actions Act*. It was alleged that the plaintiffs cause of action was premised upon alleged accrued debts which fell outside the six (6) year limitation period provided for under the Act.
12. In a ruling delivered on 27th April 2023, Hon. Lady Justice Florence Muchemi dismissed in its entirety the Preliminary Objection raised by the Defendants. However in that ruling the Hon. Judge did not specifically address the issue of the claim being statute barred but stated that this was a matter which could only be determined after hearing both parties.
13. The plaintiffs claim arises from various LPO's issued by the Defendant to the plaintiff company. The certificates of completion relied upon by the plaintiff were signed over a two year period from the year 2015 to 2016.
14. The question then is when did the cause of action arise? Was it when the contract was entered into and the LPO is issued or does the cause of action arise when payment becomes due.
15. In this case the plaintiff wrote a demand letter to the Defendant which demand was dated 4th May 2015. The demand received no response.
The plaintiff then moved to institute the present suit.
16. The Plaintiff also conceded that he had received part payment of the monies due to him. Additionally the defendants did acknowledge the debt due to the plaintiff through the two letters dated 10th August 2016 written to the Manager Equity Bank (k) Ltd Mwea Branch as well as the letter dated 22nd December 2016 written to Sidian Bank, Mwea Branch. In the two letters the Defendant explained that the debt due to the plaintiff had not been paid due to lack of funds release from the exchequer. The letter dated 22nd December 2022 is headed "Confirmation of Debt". This is a clear admission by the Defendant that they owed money to the plaintiff.
17. DW1 who testified for the Defendant sought to disown the two letters. However he could not explain how or why the letters were written on the Defendants letterhead and were signed by officers whom he admits worked for the Defendant at the material time. In as much as DW1 tried to imply that the two letters were fraudulent, the Defendant made no report to the police or to any other authority regarding forgery of their documents. I find and hold that the two letters did in fact originate from the Defendant, and the same amounted to an acknowledgement by the Defendant of the debt owed to the plaintiff.
18. I have noted that in the exhibits provided to court comprise of several unpaid payment vouchers. The said vouchers have been filled out and the amounts due entered but the same are not stamped 'Paid'. I find that the letters written to the bank as well as issuance of payment vouchers (though unpaid) amount to an acknowledgement of the by the defendant, of a debt owed to the plaintiff.



19. Blacks Law Dictionary 10th Edition defines an acknowledgement of debt as
- “Recognition by a debtor of the existence of a debt. An acknowledgement of debt interrupts the running of prescription.”
20. Therefore this cause of action would begin to run from the date of acknowledgement of the debt in line with section 23 as read with Section 24 of the Limitation of Actions Act. Section 23 and 24 of the said Act read as follows:-
23. Fresh accrual of right of action on acknowledgement or part Payment
1. Where –
 - a. a right of action (including a foreclosure action) to recover land; or
 - b. a right of a mortgagee of movable property to bring a foreclosure action in respect of the property, has accrued, and –
 - i. the person in possession of the land or movable property acknowledges the title of the person to whom the right of action has accrued; or
 - (ii) in the case of a foreclosure or other action by a mortgage, the person in possession of the land or movable property or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest, the right accrues on and not before the date of the acknowledgement or payment.
24. Formalities as to acknowledgements and part payments
- (1) Every acknowledgement of the kind mentioned in section 23 of this Act must be in writing and signed by the person making it.
 - (2) The acknowledgement of the kind mentioned in section 23 of this Act is one made to the person, or to an agent of the person, whose title or claim is being acknowledged, or in respect of whose claim the payment is being made, as the case may be, and it may be made by the agent of the person by whom it is required by that section to be made.
21. The Defendants herein did acknowledge the debt due to the plaintiff and the said acknowledgement was in writing.
22. The completion certificates exhibited and relied upon by the plaintiff run from July 2015 to December 2016. This suit was filed in September 2021. The tender was awarded to the plaintiff in July 2015. The works carried out by the plaintiff all fell under this tender and as such were all part of the same transaction. Accordingly I find and hold that the causes of action did not fall outside of the six (6) year limitation period. Accordingly I find that the plaintiff’s suit is not statute-barred.

(ii) Was there a valid and enforceable contract between the parties

23. A contract is defined in law as an agreement voluntarily entered into between parties under the intention of creating legally binding obligations.



24. The elements of a valid contract under the law include Offer, Acceptance and consideration all of which must be proved to exist. In the case of William Muthee Muthami -VS- Bank of Baroda [2014] eKLR the court stated;-

“In the law of contract the aggrieved party to an agreement must, in addition prove that there was offer acceptance and consideration. It is only when these three elements are available that an innocent party can bring a claim against the party in breach.”

25. The plaintiffs had cited the tender floated by the Defendant being Tender Number NIB/T/049/2014-2015 for construction of Mwea Irrigation Scheme Walk ways, parking lots and workshop Bays. The plaintiff told the court that their company was awarded that tender. Although the tender document was not produced as an exhibit the Defendants readily conceded that indeed the plaintiff did work for them at the Mwea Irrigation Scheme.

26. The plaintiff provided services based on various local purchase orders (LPO's) issued under this contract. The question then is whether each LPO constituted a binding contract as between the parties.

27. A local purchase order is a document used to request goods or services from a supplier within a localized area or geographical region.

28. Blacks Law Dictionary 10th Edition defines a purchase order as

“A document authorising a seller to deliver goods with payment to be made payment.”

29. In the case of County Government of Narok -Vs- British Pharmaceuticals Limited [2022] eKLR, Hon. Justice Gikonyo upheld the definition of a local purchase order as provided by Blacks Law Dictionary 9th Edition and stated as follows:-

“As this case rests on procurement of goods through LPO, the trial court was correct in starting to establish whether a contract was created by the LPO. See Black's Law Dictionary a local Purchase order is:-

A document that has been generated by the buyer in order to purchase products or property. This document allows a transaction to occur and when accepted by the seller it becomes a legally binding contract of sale.” [Own emphasis]

30. Similarly in Tumaz and Tumaz Enterprises Limited -VS- Magnate Ventures [2023] eKLR, Hon. Justice David Majanja (Deceased) in upholding the said definition stated as follows

“I propose to begin with the contention by the Respondent that the LPO (local Purchase order) issued by the Appellant was not binding on it. Black's Law Dictionary 9th Edition defines a “Local Purchase Order” as;-

“A document that has been generated by the buyer in order to purchase products or property. This document allows a transaction to occur and when accepted by the seller becomes a legal binding contract of sale.”

The Respondent does not deny that it was pursuant to the LPO (Local Purchase Order) that the parties executed the Agreement and then the Respondent went ahead to set up the Billboards and issue the invoice as per the LPO (Local Purchase Order). In my view and I agree with the Appellant, this provision



of services signaled the Respondent's acceptance of the LPO (Local Purchase Order) and created a legally binding agreement between them.

I therefore find that in providing the advertising services as per the LPO (Local Purchase Order) issued by the Appellant, the Respondent accepted its terms and created a legally binding contract between itself and the Appellant. The arbitration clause therein therefore applies to it." [Own emphasis]

31. The plaintiff has produced in court several LPO's running from 2015 to 2016. The Defendants have not denied that the said LPO's were issued by itself to the plaintiff. It was on the basis of these LPO's that the plaintiff proceeded to render the services as indicated in each LPO. Once again the Defendant does not deny that works were done by the plaintiff as alleged. They however claim that the works were not completed to their satisfaction.
32. Based on the above I find that there was an 'Offer' by the Defendant consisting of an LPO issued to the plaintiff. The Plaintiff 'accepted' said offer by proceeding to carry out the works as indicated in each LPO. The 'Consideration' was the payment to be made to the plaintiff upon satisfactory completion of the stated works. As such I find that a valid and enforceable contract was created between the parties.

(iii) Is the Plaintiffs claim as against the Defendants merited

33. The plaintiff claims that having satisfactorily completed the works in question, the Defendants failed and/or refused to tender the payment due for such works. The plaintiff claims that it is owed a sum of KShs. 185,913,953 for works carried out for the Defendant.
34. The Defendants in denying the plaintiff's claim states that the works/services to be provided by the plaintiff were either not done at all or were not completed satisfactorily. That therefore there is no money due and owing to the plaintiff.
35. DW1 told the court that once a vendor had provided services then the works would be inspected by the scheme manager who if satisfied would then issue a completion certificate. An invoice would then be raised to enable the Finance Department to raise a payment voucher which payment would be authorized by the CEO. Dw1 emphasized that

"If there is No Completion Certificate then no payment can be processed. This is the law."
36. Therefore proof of satisfactory completion of works is evidenced by the issuance of completion certificate. [see Cottingham Properties Limited -VS- Tausi Assurance Company Limited & Another [2019] eKLR]
37. Once the Defendant issued to the plaintiff a completion certificate in respect of any works then the Defendant is under a legal obligation to make payment for the completed works.
38. The plaintiff did admit that he has been paid part of the monies due to him, that he is only claiming what is in arrears. The Defendant did not tender any evidence to show what amounts had already been paid to the plaintiff.
39. The court has had to go through the very tedious exercise of perusing the voluminous documents provided by the plaintiff to compare the LPO's issued as against the completion certificates issued by the Defendant. In so doing it became evident that some of the LPO's did not have matching completion certificates and in respect of those the plaintiffs claim would have to fail.



40. In *Weston Contractors Limited -VS- Kenya Ferry Services* [2014] eKLR the court stated that
- “Having procured the plaintiff’s services fairness required that the Defendant would pay for these services when the certificates were issued by the Defendants own appointed Architect and confirmed again by the Defendant’s own appointed quantity surveyor. It was unjust to delay such payment and to refuse to pay interest for the delayed payments.”
41. In determining the merit or otherwise of the plaintiffs claim the court embarked on a scrutiny of the LPO’s produced as exhibits and compared them with the corresponding completion certificates duly signed by employees of the Defendant. It is only the claims in respect of an LPO where a corresponding completion certificate (bearing an identical serial number) exists that can be allowed.
42. I have further noted that in several instances payment vouchers had been issued (and copies of said payment vouchers were produced). However several of these payment vouchers exhibited in court were not stamped with the word ‘PAID’ which DW1 informed the court was the procedure once payment had been made. This can be contrasted with the payment vouchers which appear at pages 10, 11 and 16 of Volume V of the Exhibits which clearly has the words paid in bold stamped on the voucher which stamp also bears the logo of the Defendant as proof that the payment was made.
43. It is therefore safe to conclude that issuance of a payment voucher without payment stamp PAID affixed thereon amounts to proof that no payment was made against that voucher – the amount indicated in such a voucher therefore remains due and owing. Moreover the Defendant did not avail to the court any evidence of payments made to the plaintiff and/or a list of the LPO’s against which payment had already been made.
44. From an analysis of the documents (exhibits) produced in court, the court was able to reduce the relevant information into a table. This table shows out the LPO’s which have corresponding completion certificates which claims are valid. The table also indicates the LPO’s which do not have any corresponding completion certificates which claims the court therefore deems to be invalid.

Volume II –PEXH.3 in respect of Mwea Irrigation Scheme



VOL.II Page	L.P.O. No.	Value in KES	Completion Certificate Page	Completion Certificate Signed on
4	00565	KES.480,000/-	6	18/7/2015
9	00566	KES.480,000/-	13	18/7/2015
16	00572	KES.480,000/-	20	20/7/2015
23	00573	KES.480,000/-	27	20/7/2015
30	00579	KES.480,000/-	30	20/7/2015
37	00580	KES.480,000/-	41	21/7/2015
44	00581	KES.480,000/-	48	21/7/2015
51	00582	KES.480,000/-	55	21/7/2015
58	00586	KES.480,000/-	62	21/7/2015
65	00639	KES.480,000/-	69	14/8/2015
72	00641	KES.480,000/-	76	14/8/2015
79	00642	KES.480,000/-	83	14/8/2015
86	00648	KES.480,000/-	90	14/8/2015
93	00657	KES.480,000/-	97	20/8/2015
100	00658	KES.480,000/-	103	20/8/2015
106	00659	KES.480,000/-	110	20/8/2015
112	00660	KES.492,420/-	112	21/8/2015
118	00661	KES.480,000/-	122	21/8/2015
125	00662	KES.480,000/-	129	21/8/2015
131	00663	KES.480,000/-	N/A	N/A
133	00904	KES.480,000/-	137	27/10/2015
	00664	KES.480,000/-		21/8/2015
139	01005	KES.480,000/-	143	9/11/2015



145	00988	KES.480,000/-	149	7/11/2015
151	00968	KES.480,000/-	155	5/11/2015
157	00965	KES.480,000/-	161	5/11/2015
163	00962	KES.480,000/-	167	4/11/2015
169	00961	KES.480,000/-	173	4/11/2015
175	00919	KES.480,000/-	179	30/10/2015
181	00918	KES.480,000/-	185	30/10/2015
187	01357	KES.480,000/-	No Completion Certificate	N/A
189	01356	KES.480,000/-	No Completion Certificate	N/A
191	01355	KES.480,000/-	No Completion Certificate	N/A
193	01354	KES.480,000/-	No Completion Certificate	N/A
195	01353	KES.480,000/-	No Completion Certificate	N/A
197	01352	KES.480,000/-	No Completion Certificate	N/A
199	01351	KES.480,000/-	No Completion Certificate	N/A
201	01350	KES.480,000/-	No Completion Certificate	N/A
203	01349	KES.480,000/-	No Completion Certificate	N/A
205	01348	KES.480,000/-	No Completion Certificate	N/A
207	01317	KES.480,000/-	No Completion Certificate	N/A
209	01316	KES.480,000/-	No Completion Certificate	N/A



211	01315	KES.480,000/-	No Completion Certificate	N/A
213	01314	KES.480,000/-	No Completion Certificate	N/A
215	01313	KES.480,000/-	No Completion Certificate	N/A
217	01312	KES.480,000/-	No Completion Certificate	N/A
219	01311	KES.480,000/-	No Completion Certificate	N/A
221	01310	KES.480,000/-	No Completion Certificate	N/A
223	01308	KES.480,000/-	No Completion Certificate	N/A
225	01307	KES.480,000/-	No Completion Certificate	N/A
227	01268	KES.480,000/-	No Completion Certificate	N/A
229	01267	KES.480,000/-	No Completion Certificate	N/A
231	01266	KES.480,000/-	No Completion Certificate	N/A
233	01265	KES.480,000/-	No Completion Certificate	N/A
235	01264	KES.480,000/-	No Completion Certificate	N/A
237	01262	KES.480,000/-	No Completion Certificate	N/A
239	01261	KES.480,000/-	No Completion Certificate	N/A
241	01260	KES.480,000/-	No Completion Certificate	N/A



243	01259	KES.480,000/-	No Completion Certificate	N/A
245	01237	KES.480,000/-	No Completion Certificate	N/A
247	01236	KES.480,000/-	No Completion Certificate	N/A
249	01235	KES.480,000/-	No Completion Certificate	N/A
251	01234	KES.480,000/-	No Completion Certificate	N/A
253	01233	KES.480,000/-	No Completion Certificate	N/A
255	01232	KES.480,000/-	No Completion Certificate	N/A
257	01231	KES.480,000/-	No Completion Certificate	N/A
259	01230	KES.480,000/-	No Completion Certificate	N/A
261	01229	KES.480,000/-	No Completion Certificate	N/A
263	01228	KES.480,000/-	No Completion Certificate	N/A
265	01203	KES.480,000/-	No Completion Certificate	N/A
267	01202	KES.480,000/-	No Completion Certificate	N/A
269	01201	KES.480,000/-	No Completion Certificate	N/A
271	01200	KES.480,000/-	No Completion Certificate	N/A
273	01199	KES.480,000/-	No Completion Certificate	N/A



275	01197	KES.480,000/-	No Completion Certificate	N/A
277	01196	KES.480,000/-	No Completion Certificate	N/A
279	01195	KES.480,000/-	No Completion Certificate	N/A
281	01194	KES.480,000/-	No Completion Certificate	N/A
283	01193	KES.480,000/-	No Completion Certificate	N/A
285	01157	KES.480,000/-	No Completion Certificate	N/A
287	01156	KES.480,000/-	No Completion Certificate	N/A
289	01155	KES.480,000/-	No Completion Certificate	N/A
291	01154	KES.480,000/-	No Completion Certificate	N/A
293	01153	KES.480,000/-	No Completion Certificate	N/A
295	01152	KES.480,000/-	No Completion Certificate	N/A
297	01151	KES.480,000/-	No Completion Certificate	N/A
299	01150	KES.480,000/-	No Completion Certificate	N/A
301	01149	KES.480,000/-	No Completion Certificate	N/A
303	01148	KES.480,000/-	No Completion Certificate	N/A
305	00931	KES.492,246	307	Undated
310	01053	KES.480,000/-	No Completion Certificate	N/A



312	01049	KES.480,000/-	No Completion Certificate	N/A
314	01123	KES.480,000/-	No Completion Certificate	N/A
316	01122	KES.480,000/-	No Completion Certificate	N/A
318	01120	KES.480,000/-	No Completion Certificate	N/A
320	01119	KES.480,000/-	No Completion Certificate	N/A
322	01091	KES.480,000/-	No Completion Certificate	N/A
324	01090	KES.480,000/-	No Completion Certificate	N/A
326	01093	KES.480,000/-	No Completion Certificate	N/A
328	01092	KES.480,000/-	No Completion Certificate	N/A
330	01089	KES.480,000/-	No Completion Certificate	N/A
332	01088	KES.480,000/-	No Completion Certificate	N/A
334	01087	KES.480,000/-	No Completion Certificate	N/A
336	01086	KES.480,000/-	No Completion Certificate	N/A
338	01085	KES.480,000/-	No Completion Certificate	N/A
340	01084	KES.480,000/-	No Completion Certificate	N/A
342	01059	KES.480,000/-	No Completion Certificate	N/A



344	01058	KES.480,000/-	No Completion Certificate	N/A
346	01057	KES.480,000/-	No Completion Certificate	N/A
348	01056	KES.480,000/-	No Completion Certificate	N/A
350	01055	KES.480,000/-	No Completion Certificate	N/A
352	00971	KES.492,246/-	355	18/11/2015
358	00525	KES.492,246/-	360	14/7/16
363	00785	KES.492,246/-	No Completion Certificate	N/A
365	01341	KES.480,000/-	No Completion Certificate	N/A
367	01340	KES.480,000/-	No Completion Certificate	N/A
369	01339	KES.480,000/-	No Completion Certificate	N/A
371	01338	KES.480,000/-	No Completion Certificate	N/A
373	01337	KES.480,000/-	No Completion Certificate	N/A
375	01336	KES.480,000/-	No Completion Certificate	N/A
377	01335	KES.480,000/-	No Completion Certificate	N/A
379	01334	KES.480,000/-	No Completion Certificate	N/A
381	01333	KES.480,000/-	No Completion Certificate	N/A
383	01332	KES.480,000/-	No Completion Certificate	N/A



385	01290	KES.480,000/-	No Completion Certificate	N/A
387	01289	KES.480,000/-	No Completion Certificate	N/A
389	01288	KES.480,000/-	No Completion Certificate	N/A
391	01287	KES.480,000/-	No Completion Certificate	N/A
393	01286	KES.480,000/-	No Completion Certificate	N/A
395	01284	KES.480,000/-	No Completion Certificate	N/A
397	01283	KES.480,000/-	No Completion Certificate	N/A
399	01282	KES.480,000/-	No Completion Certificate	N/A
401	01281	KES.480,000/-	No Completion Certificate	N/A
403	01280	KES.480,000/-	No Completion Certificate	N/A
405	01255	KES.480,000/-	No Completion Certificate	N/A
407	01254	KES.480,000/-	No Completion Certificate	N/A
409	01253	KES.480,000/-	No Completion Certificate	N/A
411	01252	KES.480,000/-	No Completion Certificate	N/A
413	01251	KES.480,000/-	No Completion Certificate	N/A
415	01250	KES.480,000/-	No Completion Certificate	N/A



417	01249	KES.480,000/-	No Completion Certificate	N/A
419	01248	KES.480,000/-	No Completion Certificate	N/A
421	01247	KES.480,000/-	No Completion Certificate	N/A
423	01246	KES.480,000/-	No Completion Certificate	N/A
425	01222	KES.480,000/-	No Completion Certificate	N/A
427	01220	KES.480,000/-	No Completion Certificate	N/A
429	01219	KES.480,000/-	No Completion Certificate	N/A
431	01218	KES.480,000/-	No Completion Certificate	N/A
433	01217	KES.480,000/-	No Completion Certificate	N/A
435	01216	KES.480,000/-	No Completion Certificate	N/A
437	01215	KES.480,000/-	No Completion Certificate	N/A
439	01214	KES.480,000/-	No Completion Certificate	N/A
441	01213	KES.480,000/-	No Completion Certificate	N/A
443	01212	KES.480,000/-	No Completion Certificate	N/A
445	01177	KES.480,000/-	No Completion Certificate	N/A
447	01176	KES.480,000/-	No Completion Certificate	N/A



449	01175	KES.480,000/-	No Completion Certificate	N/A
451	01174	KES.480,000/-	No Completion Certificate	N/A
453	01173	KES.480,000/-	No Completion Certificate	N/A
455	01172	KES.480,000/-	No Completion Certificate	N/A
457	01171	KES.480,000/-	No Completion Certificate	N/A
459	01169	KES.480,000/-	No Completion Certificate	N/A
461	01168	KES.480,000/-	No Completion Certificate	N/A
463	01167	KES.480,000/-	No Completion Certificate	N/A
465	01024	KES.480,000/-	No Completion Certificate	N/A
467	01023	KES.480,000/-	No Completion Certificate	N/A
469	01022	KES.480,000/-	No Completion Certificate	N/A
471	01021	KES.480,000/-	No Completion Certificate	N/A
473	01022	KES.480,000/-	No Completion Certificate	N/A
475	01134	KES.480,000/-	No Completion Certificate	N/A
477	01131	KES.480,000/-	No Completion Certificate	N/A
479	01130	KES.480,000/-	No Completion Certificate	N/A



481	01129	KES.480,000/-	No Completion Certificate	N/A
483	01068	KES.480,000/-	No Completion Certificate	N/A
485	01066	KES.480,000/-	No Completion Certificate	N/A
487	01064	KES.480,000/-	No Completion Certificate	N/A
489	001143	KES.480,000/-	No Completion Certificate	N/A
491	01141	KES.480,000/-	No Completion Certificate	N/A
493	01140	KES.480,000/-	No Completion Certificate	N/A
495	01139	KES.480,000/-	No Completion Certificate	N/A
497	01135	KES.480,000/-	No Completion Certificate	N/A
499	01105	KES.480,000/-	No Completion Certificate	N/A
501	01104	KES.480,000/-	No Completion Certificate	N/A
503	01103	KES.480,000/-	No Completion Certificate	N/A
505	01100	KES.480,000/-	No Completion Certificate	N/A
507	01099	KES.480,000/-	No Completion Certificate	N/A
509	01098	KES.480,000/-	No Completion Certificate	N/A



Vol.III Page	L.P.O. No.	Value in KES	Completion Certificate Page	Completion Certificate Signed on
1	01582	KES.480,000/-	5	9/3/16
7	01580	KES.480,000/-	11	9/3/16
13	01577	KES.480,000/-	17	9/3/16
19	01575	KES.480,000/-	23	9/3/16
25	01573	KES.480,000/-	29	8/3/16
31	01571	KES.480,000/-	35	8/3/16
43	01569	KES.480,000/-	47	8/3/16
49	01567	KES.480,000/-	55	8/3/16
51	00063	****	Absent	
57	01565	****	61	7/3/16
63	01561	****	67	7/3/16
69	01557	****	Absent	
71	01555	****	Absent	
73	01545	****	Absent	
75	01541	****	Absent	
77	01551	****	Absent	
79	01077	KES.492,420	82	4/12/2015
83	01070	KES.492,420****	86	2/12/2015
88	00898	KES492,246	91	3/10/2015
93	00894	KES492,246	96	28/10/2015
98	00871	KES.492,246	101	18/11/2015
104	00564	KES 480,000/-	108	18/7/2015
111	00558	****	Absent	



116	00571	KES 480,000/-	119	20/7/2015
122	00556	KES 480,000/-	126	20/7/2015
129	00548	KES 480,000/-	133	20/7/2015
136	00547	KES 480,000/-	140	10/7/2015
143	00557	KES 480,000/-	147	10/7/2015
149	00546	KES 480,000/-	153	10/7/2015
155	00542	KES 480,000/-	159	10/7/2015
161	00541	KES 480,000/-	165	9/7/2015
167	00540	KES 480,000/-	171	9/7/2015
173	00532	****	Absent	
177	00531	KES 480,000/-	181	6/7/2015
183	00519	KES 480,000/-	187	4/7/2015
189	00518	KES 480,000/-	193	4/7/2015
195	00517	KES 480,000/-	198	4/7/2015
200	00610	KES 480,000/-	204	24/7/2015
207	00605	KES 480,000/-	211	24/7/2015
214	00604	KES 480,000/-	218	24/7/2015
221	00603	KES 480,000/-	225	24/7/2015
228	00602	KES 480,000/-	Absent/party used Completion Certificate for LPO00604	23/7/2015
235	00599	KES 480,000/-	239	23/7/2015
242	00598	KES 480,000/-	246	23/7/2015
249	00597	KES 480,000/-	253	28/7/2015
256	00596	KES 480,000/-	260	22/7/2015



263	00591	KES 480,000/-	267	22/7/2015
270	00590	KES 480,000/-	274	22/7/2015
277	00589	KES 480,000/-	281	22/7/2015
283	00989	KES 480,000/-	287	9/11/2015
289	00987	KES 480,000/-	293	7/11/2015
295	00984	KES 480,000/-	299	6/11/2015
301	00982	KES 480,000/-	305	6/11/2015
307	00917	KES 480,000/-	311	29/10/2015
313	00914	KES 480,000/-	317	29/10/2015
319	00903	KES 480,000/-	323	27/10/2015
325	00902	KES 480,000/-	329	27/10/2015
331	01006	KES 480,000/-	335	10/11/2015
337	01004	KES 480,000/-	341	9/11/2015
343	01003	KES 480,000/-	347	9/11/2015
349	00967	KES 480,000/-	353	5/11/2015
355	00963	KES 480,000/-	359	4/11/2015
361	00959	KES 480,000/-	365	4/11/2015
367	01001	KES 480,000/-	371	9/11/2015
373	00995	KES 480,000/-	377	9/11/2015
379	00981	KES 480,000/-	383	6/11/2015
385	00980	KES 480,000/-	389	6/11/2015
391	00893	KES 480,000/-	395	26/10/2015
397	00964	KES 480,000/-	401	5/11/2015
403	00986	KES 480,000/-	407	7/11/2015
409	00985	KES 480,000/-	413	6/11/2015



415	01010	KES 480,000/-	419	10/11/2015
421	00892	KES 480,000/-	425	26/10/2015
427	01009	KES 480,000/-	431	5/11/2015
433	01008	KES 480,000/-	437	10/11/2015
439	01007	KES 480,000/-	443	10/11/2015
445	00966	KES 480,000/-	449	5/11/2015
451	00960	KES 480,000/-	454	4/11/2015
456	01019	KES 480,000/-	460	11/11/2015
462	01018	KES 480,000/-	466	11/11/2015
468	01017	KES 480,000/-	472	11/11/2015
474	01016	KES 480,000/-	478	11/11/2015
480	01014	KES 480,000/-	484	11/11/2015
486	00990	KES 480,000/-	490	7/11/2015
492	00907	KES 480,000/-	496	28/10/2015
498	00906	KES 480,000/-	502	28/10/2015
504	00905	KES 480,000/-	508	28/10/2015

Volume IV – PEXH. 5



VOL.IV Page	L.P.O. No.	Value in Kes.	Completion Certificate Page	Completion Certificate Signed on
1	01547	KES.480,000/-	5	5/3/2016
7	01526		Absent	
11	01549		Absent	
14	01538		Absent	
18	00558	KES.480,000/-	20	11/7/2015
21	01542		Absent	
25	01529		Absent	
27	01532		Absent	
30	01542		Absent	
40	01544		absent	
41	00183	KES.493,000/-	44	24/11/2014
46	00934	KES.492,246/-	49	12/11/2015
51	00660	KES.492,246/-	54	21/08/2015
55	00665	KES.492,246/-	58	21/08/2015
60	00204	KES.492,420/-	63	24/12/2015
69	00571	KES.480,000/-	72	20/11/2015
74	00238	KES.492,246/-	78	19/1/2015
79	00222	KES.492,420/-	82	23/11/14
32	00916	KES.492,246/-	86	5/11/2015
88	00278	KES.408,519.52/-	91	23/02/2015
93	00364	KES.492,420/-	96	13/04/2015
98	00956	KES.492,246/-	100	18/11/2015
102	00756		Absent	



106	00347	KES.492,246/-	109	31/3/2015
111	01034		Absent	
113	01032		Absent	
116	00220	KES.492,246/-	119	17/1/2015
121	00649	KES.480,000/-	124	15/8/2015
125	01035		Absent	
128	00533	KES.480,000/-	132	6/7/2015
133	00663		Absent	
135	00793	KES.492,246/-	Present	2/10/2015
139	01025		Absent	
141	00269	KES.408,519.52/-	144	23/2/2015
145	00802	KES.492,246/-	148	2/10/2015
150	00650	KES.480,000/-	154	15/08/2015
156	00164		Absent	
158	00528	KES.492,246/-	161	4/7/2016
163	00198	KES.493,000/-	165	4/12/2014
167	00768	KES.492,246/-	170	24/9/2015
172	00770	KES.492,246/-	174	30/9/2015
176	00777		Absent	
179	00217	KES.492,246/-	181	22/2/2014
183	00888	KES.492,246/-	186	11/12/2015
188	00645	KES.492,246/-	191	18/8/2015
193	00249	KES.493,000/-	195	4/2/2015
197	00637	KES.492,246/-	199	15/8/2015
201	00883	KES.492,246/-	204	7/12/2015



206	00887	KES.492,246/-	208	9/12/2015
210	00858	KES.492,246/-	212	28/11/2015
214	00865	KES.492,246/-	215	30/11/15
218	00472	KES.492,246/-	221	11/6/2015
223	00926	KES.492,246/-	226	7/11/2015
228	01042	KES.492,420/-	228	1/12/2015
232	00999	KES.492,246/-	234	19/11/15
236	122880		Absent	
239	122879		Absent	
244	001591		Absent	
246	122878		Absent	
248	00077		Absent	
253	00014		Absent	

45. The claims raised in Volume V all relate to LPOs arising from work allegedly carried out at the Bura Irrigation Scheme. However none of the LPO's had corresponding completion certificates proving that the stated works were inspected and certified as complete by the defendant. In the circumstances I find that these claims have not been proved.
46. Based therefore on the foregoing and on my analysis of the data contained in the above table this court makes the following findings:-
- (a) Claim for Retention Fees
47. Under Paragraph 3(I) and 3(II) of the plaint, the plaintiff claimed for unpaid retention of Kshs 3,150,560 fees, in respect of tender No. NIB/T/049/2014 – 2015 for construction of the Mwea Irrigation Scheme Walk Ways, Parking Lot and Workshop Bays. The plaintiff also claimed for retention fees of Kshs. 1,464,976 in respect of Tender Number NIB/T/049/2014-2015 for construction of Iraru Ithitwe Irrigation project. The parties both agreed that where payment had been made by the Defendant a payment voucher stamped PAID would be the proof of that payment. If the payment voucher was not so stamped, this would be an indication that no payment had been made against that voucher.
48. With regard to the claim for Kshs. 3,150,560 for the Mwea Walkway the payment voucher dated 23rd February 2017 stamped 'PAID' appears at Page 19 of Volume V of the plaintiffs bundle. The



voucher indicated that a payment of Kshs. 10,364,555.00 was made by the plaintiff. The voucher clearly indicates that this payment was in respect of

“Certificate No. 2 of construction of Parking Lots, walkways and workshop bays at Mwea Irrigation Scheme Contract No. NIB/T/049/2014-2015 as per the attached memo and certificate. Retention 3,150,560” [Own emphasis]

49. The above voucher shows that the plaintiff was paid an amount of Kshs. 10,364,555 against a total invoice amount of Kshs. 14,386,900.00. The retention was clearly indicated on the same voucher. There is no evidence to show that this retention was ever paid to the plaintiff. I therefore find that the plaintiff's claim for Kshs. 3,150,560 retention has been proved and is valid.
50. With respect to the claim in Paragraph 3(ii) of the plaint, the plaintiff stated that it was owed an amount of Kshs. 1,464,976 being a 50% retention for works done at the Iraru Irrigation Project. I have perused the voucher dated 1st September 2015 stamped as paid which appears at page 16 of Volume V of the plaintiff's documents. The voucher indicates that an amount of Kshs 1,351,314.53 was paid to the plaintiff. The narration on the voucher reads “Being release of 50% retention fee for construction of Iraru Irrigation Project in respect of contract No. NIB/T/103/2012-2013.”
51. However in the plaint, the plaintiff states that the payment they are claiming is in respect of contract No. NIB/T/049/2014-2015.
52. It is quite obvious that the contract number quoted by the plaintiff does not correspond with the one cited in this voucher. It is trite law that a party is bound by their pleadings. The tender cited by the plaintiff has no evidence of part payment to warrant release of a final payment. Accordingly I dismiss this claim.
53. At Paragraph 3(iv) of the plaint is a claim for various unpaid LPO's in respect of excavation works undertaken at the Bura Irrigation Scheme. Under this heading the plaintiff claims an amount of Kshs. 15,914,387. I have perused the documents supplied in support of this claim appearing at Pages 20-46 of Volume V of the plaintiff's bundle. None of the LPO's have corresponding completion certificates. In the Cottingham Properties Ltd Case [Supra] it was held that a completion certificate is evidence of work done. As such there is no evidence that the works were indeed undertaken and completed and certified by the Defendant. I therefore dismiss this claim.
54. At Paragraph 3(VII) of the plaint, the plaintiff claims a sum of Kshs. 2,279,748 for unpaid invoices in respect of works carried out at the Mwea Irrigation Scheme. The Plaintiff did not however refer the court to specific LPO's invoices and/or completion certificates. The plaintiff merely referred to two letters dated 18th June 2016 and 22nd December 2016 which letters did not give a breakdown of the amount claimed and as such cannot amount to evidence of the specific amount due to the plaintiff. Here again I find that No Completion Certificates have been produced to prove that the works were indeed undertaken to the satisfaction of the Defendant. Accordingly this claim also fails.
55. This court's perusal of the documents produced before the court and an examination of the various LPOs as against the completion certificates and payment vouchers which are not stamped as paid lead me to conclude that the following claims have been satisfactorily proved.
 - (a) Kshs. 3,150,560 – being payment of retention fees withheld by the Defendant.
 - (b) Item 3(iii) in so far the plaintiff has proven the following LPO's with attendant completion certificates to the satisfaction that the work was done and the payment vouchers remained unstamped for monies due the plaintiff.



- (i) 29 LPOs for KES 480,000/- each from Vol II/PEXh. 3 = 13,920,000/-
 - (ii) 1 LPO for KES 492,420/- from Vol II/PEXh. 3 = 492,420/-
 - (iii) 3 LPOs for KES 492,246 each from Volume III/PEXh. 4 = 1,476,738/-
 - (iv) 2 LPOS for KES 492,240 each from Volume III/PEXh. 4 = 984,480/-
 - (v) 73 LPOs for KES 480,000 each from Volume III/PEXh. 4 = 35,040,000/-
 - (vi) 2 LPOs for KES 480,000/- each from Volume IV/PEXh. 5 = 960,000/-
- Sub total: KES 52,873,638/-

c. Item 3 (v) in so far the Plaintiff has proven the following LPO's with attendant completion certificates to the satisfaction that the work was done and the payment vouchers remained unstamped for monies due the plaintiff:

- i. 3 LPOs for KES 493,000/- from Volume IV/PEXh. 5 = 1,479,000/-
 - ii. 6 LPOs for KES 480,000/- from Volume IV/PEXh. 5 = 2,880,000/-
 - iii. 24 LPOs for KES 492,246/- from Volume IV/PEXh.5 = 11,813,904/-
 - iv. 4 LPOs for KES 492,420/- from Volume IV/PEXh.5 = 1,969,680/-
 - v. 2 LPOs for KES 408,519/- from Volume IV/PEXh.5 = 817,038/-
- Sub total: KES. 18,959,622/-

Grand total: KES. 3,150,560 + KES 52,873,638 + KES. 18,959,622 = 74,983,820/-

56. Finally this suit succeeds. I enter judgment in favour of the plaintiff against the Defendant for the sum of Kshs. 74,983,820/- plus interest at court rates from the date of filing of the suit until payment in full. Costs of the suit are awarded to the plaintiff.

DATED IN NYERI THIS 20TH DAY OF JUNE, 2025

.....

MAUREEN A. ODERO

JUDGE

