



REPUBLIC OF KENYA



**Vibhuti Hardware Limited v Mirage Supply and Contractors Ltd (Civil Case E771 of 2021)
[2025] KEHC 8313 (KLR) (Commercial and Tax) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E771 OF 2021
FG MUGAMBI, J
JUNE 13, 2025**

BETWEEN

VIBHUTI HARDWARE LIMITED PLAINTIFF

AND

MIRAGE SUPPLY AND CONTRACTORS LTD DEFENDANT

JUDGMENT

1. By a plaint dated 28th August 2021, the plaintiff seeks judgment against the defendant for the sum of Kshs. 25,112,750/=, interest at the rate of 3% per annum from 18th August 2020, and costs of the suit plus interest thereon. The claim arises from an alleged breach of contract in respect of the supply and sale of assorted building materials by the plaintiff to the defendant on diverse dates between 8th May 2020 and 28th July 2020.
2. According to the plaintiff, the defendant was required to pay the purchase price upon receipt of invoices or on demand. 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. 25,112,750/=. It is further averred that the defendant issued several post-dated cheques between April and July 2020 as part payment of the debt. However, the said cheques were dishonoured upon presentation due to insufficient funds in the defendant's bank accounts.
3. At the hearing the plaintiff called one witness, Nikesh Shah, a director of the plaintiff company. 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

4. 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.
5. 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:

6. The plaintiff asserts that an oral contract existed between the parties as evidenced by their conduct, including the placement of orders via telephone, the delivery of goods, the issuance of invoices, and the defendant's acknowledgment of receipt through stamping and signing the delivery documents.
7. It is the plaintiff's case, as reiterated by PW1, that all orders for the supply of building materials were placed through telephone conversations with the defendant's director. PW1 further testified that each delivery was accompanied by an invoice, which also functioned as a delivery note because the defendant would affix its "Goods Received" stamp, signifying its acknowledgment and acceptance of the goods delivered.
8. The defendant, on its part, denies the existence of any formal or specific contract governing the transactions on the dates in question. It contends that all orders were placed through duly issued Local Purchase Orders (LPOs), which clearly outlined the goods and quantities requested. The defendant further disputes the plaintiff's assertion that the invoices also served as delivery notes. It alleges that the plaintiff deliberately failed to issue actual delivery notes in an effort to overstate the quantities delivered and thereby overbill it.
9. It is trite 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.”
10. This statutory provision empowers the Court to draw inferences from the ordinary course of business and human interactions, particularly where consistent conduct and acknowledged performance support the existence of a contractual relationship, even in the absence of a formal written agreement.
11. The Court of Appeal in *Attorney General V Kabuuto Contractors Limited*, [2023] KECA 230 (KLR) set out the essential requirements for the enforceability of oral contracts 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;
 - iv. The parties must have the requisite legal capacity to contract.”
12. The Court 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.”
13. This decision reaffirms the fact 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.
14. There is no doubt that the parties had engaged in a consistent and longstanding business relationship spanning several years. The plaintiff’s evidence, which was not substantially rebutted by the defendant, demonstrates a course of dealings whereby orders for building materials were routinely placed orally, often through telephone conversations with the defendant’s director. These orders were fulfilled by the plaintiff through delivery of the goods. The invoices produced by the plaintiff are indicative of an established course of dealings between the parties and lend credence to the existence of a commercial relationship.
15. The conduct of the parties, including the placement of orders, delivery and receipt of goods, issuance and acknowledgment of invoices, and the absence of any protest from the defendant at the material time, supports the inference that a contractual relationship had crystallized through mutual assent and consistent performance. In any case, the defendant has not produced the LPOs that it contends were used for the purchases. I am therefore persuaded that although the agreement may not have been reduced to writing, it is capable of being inferred from the conduct of the parties in line with the provisions of Section 119 of the *Evidence Act* and the established principles governing oral contracts.

ii. Whether the goods were supplied and received by the defendant:

16. PW1 remained consistent in his testimony that the defendant acknowledged receipt of goods by signing and stamping the respective invoices, which, in his view, constituted sufficient proof of delivery. During cross-examination, DW1 admitted that he was familiar with the invoices produced by the plaintiff but disclaimed the signature appearing on them, stating that it was not his.
17. 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.”



18. 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.”
19. 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.
20. Of significance is DW1’s confirmation of a letter from the defendant acknowledging an outstanding debt of Kshs. 42 million. Although DW1 insisted that the letter did not amount to an admission of receipt of goods, it is implausible that the defendant would acknowledge such a substantial liability without any correlation to actual deliveries. DW1 confirmed signing the letter but maintained that the signature therein differed from that on the invoices, a claim that was not substantiated through independent verification.
21. On the other hand, a perusal of the invoices at pages 15 to 36 of the plaintiff’s bundle of documents reveals that each bears a stamp and signature ostensibly attributable to the defendant. In the absence of any cogent evidence displacing the plaintiff’s assertions, the defendant’s denials remain unsubstantiated.
22. Accordingly, I am satisfied, on a balance of probabilities, that the plaintiff did supply and deliver the goods in question, and that the defendant received the same.

iii. Whether the defendant is indebted to the plaintiff in the sum of Kshs. 25,112,750/=.

23. In addition to the foregoing analysis, upon a further review of the evidentiary material on record, I find that the defendant unequivocally admitted liability for the outstanding debt in a letter dated 7th September 2020. This correspondence constitutes a clear and voluntary acknowledgment of the debt owed to the plaintiff, further lending credence to the plaintiff’s claim.
24. In the said letter, which was duly signed and addressed to the plaintiff, the defendant stated:
- “We do confirm that we received building materials worth Kshs. 42,929,775 as [on] diversified dates in the month of July and August where arrears of the same accrues to Kshs. 25,112,750/= which we do hope to pay by the end of September 2020 starting from 20th September 2020.”
25. In terms of evidentiary value, the said letter constitutes an admission within the meaning of Section 17 of the *Evidence Act*, which provides that an admission is a statement suggesting any inference as to any fact in issue or relevant fact, made by or on behalf of a party to the proceedings. As held in *Choitram V Nazari*, [1984] KLR 327, an admission can be relied upon even if it is not made in a formal pleading, provided it is clear and unambiguous.
26. Accordingly, I find that the letter dated 7th September 2020 constitutes a binding admission of the defendant’s indebtedness to the plaintiff, and forms a compelling basis for the plaintiff’s claim.
27. Further, the plaintiff tendered evidence showing that the defendant issued several cheques in its favour as part-payment of the outstanding amount. However, the said cheques were subsequently



dishonoured upon presentation. The issuance of these cheques, in my view, provides additional corroborative evidence of the defendant's acknowledgment of the debt. It is inconceivable that a party would draw and issue cheques in favour of another if, indeed, no goods had been supplied or no debt was owing.

28. The logical and compelling conclusion to be drawn is that the cheques were issued in acknowledgment of liability for goods received and in furtherance of efforts to settle the outstanding balance. Under the circumstances, the dishonoured cheques are not only evidence of a financial transactions but can also serve as proof of indebtedness, especially where there is no plausible explanation offered for their issuance. If, as alleged, the payments had been effected, the defendant would have found no difficulty in furnishing cogent evidence to that effect.
29. Taken together with the unequivocal admission contained in the letter dated 7th September 2020, and the supporting documentation including invoices signed and stamped by the defendant, the plaintiff has, on a balance of probabilities, discharged the burden of proof placed upon it under Sections 107 and 108 of the *Evidence Act*.

Disposition

30. Accordingly, I enter judgment against the defendant, in favour of the plaintiff for Kshs. 25,112,750/= together with interest at court rates from the date of filing this suit until payment in full. The costs of the suit are also awarded to the plaintiff.

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

F. MUGAMBI

JUDGE

