



Mweha Enterprises Limited v Kenya Trade Network Agency & another (Civil Case 512 of 2013) [2025] KEHC 12665 (KLR) (Commercial and Tax) (24 July 2025) (Judgment)

Neutral citation: [2025] KEHC 12665 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 512 OF 2013
F GIKONYO, J
JULY 24, 2025

BETWEEN

MWEHA ENTERPRISES LIMITED PLAINTIFF

AND

KENYA TRADE NETWORK AGENCY 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

JUDGMENT

1. The plaintiff instituted this suit through a plaint dated 20th November 2013, subsequently amended on 29th October 2014 and further amended on 16th January 2020. It seeks entry of judgment against the defendants jointly and severally for:-
 - i. Kshs. 8,752,851.92/=.
 - ii. Interest on the judgment sum at court rates from 4th September 2013 until payment in full.
 - iii. Costs of the suit.
2. The plaintiff's case is that it was awarded a Kshs. 19,451,390.40 tender number NBI / D07 /13/2011 - 2012 by the Financial Secretary, Ministry of Finance. It was a contract for partitioning of the 1st defendant's offices on the 1st floor at Embank Plaza. The Nairobi Region Works Officer was appointed the Project Manager for the tender. The plaintiff was expressly directed to communicate with him on all matters relating to the contract. The said tender was performed and fully paid for.
3. In the course of executing the tendered works, there arose the need to tender for interrelated completion works that were not included in the tendered works. The tendering for the interrelated



works was extensively discussed at site inspection meetings numbers 6 and 8 held on 24th January and 13th March 2012.

4. The project manager vide letter dated 5th March 2012 expressly authorised the plaintiff to proceed with the interrelated completion works as other contractual matters were being addressed. That the letter of authority dated 5th March 2012 was unequivocally expressed to be on the advice and authority of the 1st defendant.
5. By letter dated 22nd June 2012 the 1st defendant expressly approved the sanitary ware that the plaintiff had delivered at their premises which was part of the completion works and authorized the installation thereof. The plaintiff, in compliance with the letters of authority dated 5th March 2012 and 22nd June 2012 undertook the completion works. The completion works were jointly measured and valued at Kshs. 8,752,851.92/-. This was confirmed by a report dated 28th June 2016 issued by Board of Registration of Architects and Quantity Surveyors (BORAQS) on request by the 1st defendant. The 1st defendant was satisfied with the quality of work done and is enjoying facilities which are not paid for. For an unknown reason, the 1st defendant did not sign the contract documents for the completion works prepared by the project manager. The 2nd defendant was served with a statutory notice on 27th November 2018.

Responses

6. In opposition, the 1st defendant entered appearance and filed a statement of defence dated 23rd December 2013, later amended on 19th November 2014 and further amended on 17th February 2020.
7. The 1st defendant indicated that it was established in January 2011 as a government agency under Legal Notice No. 6 of 2011. That however, it started carrying out operations in July 2022. That, therefore, the suit was not properly directed to the correct party.
8. The 1st defendant contended there was no contract executed between the plaintiff and the 1st defendant in regards to the purported interrelated works. The 1st defendant had issued instructions to the project manager to prepare a tender document/contract, but the project manager failed, refused and/or neglected to execute the instructions since there was no such thing as inter-related works.
9. The 1st defendant averred that it engaged the Board of Registration of Architects and Quantity Surveyors (BORAQ's) to conduct an independent audit. BORAQ prepared a report dated 28th June 2016 indicating that the plaintiff had failed to adhere to the provisions of the Public Procurement and Disposal Act (PPDA) 2005 (repealed) and had no formal contract.

2nd defendant's response

10. The 2nd defendant filed a preliminary objection (PO) and a statement of defence both dated 30th June 2020. It argued that there was no contract signed between the plaintiff and the defendant. It also argued that the tendering process under the PPDA 2005 was not followed.
11. According to the 2nd defendant, the tendering process informing the present proceedings was subject of investigations by the Ethics and Anti-Corruption Commission (EACC) following which the 1st defendant's Accounting Officer (Chief Executive Officer) and the then County Works Officer were charged in the Anti-Corruption Court in Criminal Case No. 15 of 2015.
12. The 2nd defendant highlighted that the former Head of Legal of the 1st defendant in her official statement to the EACC stated that she was a member of the Tender Committee where the plaintiff tendered their documents and that the plaintiff's tender was rejected.



13. The 2nd defendant indicated that it was never served with any Notice of Intention to Sue as required under section 13A of the *Government Proceedings Act*. It contended that the joinder of the 2nd defendant to the suit via the further amended plaint dated 16th January 2020 offends Section 4 of the *Limitation of Actions Act* for being time-barred having been filed more than seven (7) years after the cause of action arose in 2013.

Evidence

14. The suit commenced before Hon. Mwita J. on 31st October 2022. Richard Matu Macharia (Mr. Macharia) testified for the plaintiff as PW1 and Bernard Milewa (Mr. Milewa) testified for and on behalf of the 1st defendant as DW1.
15. Mr. Macharia adopted his witness statement dated 28th July 2016, similar to the plaint, as his evidence in chief. He also produced the plaintiff's primary bundle of documents, dated 28th July 2016, marked as plaintiff's exhibits 1-10. He further produced the plaintiff's further list of documents dated 27th July 2020, marked as plaintiff's exhibits 1-13.
16. During cross-examination, Mr. Macharia confirmed that he knew the process of getting work from the Government as he had earlier served in the Ministry of Housing, chamber of projects. He confirmed that the 1st defendant did not sign a contract for the interrelated works. He also indicated that there was no variation of the earlier contract.
17. Mr. Macharia acknowledged that from the discussions, a new tender document was to be prepared. He also confirmed that the project manager and other officials were charged by the EACC over the new tender, which was a restricted tender.
18. Mr. Milewa was the 1st defendant's Head of Legal and Corporation Secretary. He adopted his witness statement dated 21st October 2022 as his evidence. He also produced the 1st defendant's bundle of documents dated 20th September 2016, marked as 1st defendant's exhibits 1-3. He further produced a second bundle of documents dated 4th November 2020, marked as 1st defendant's exhibit 4.
19. Mr. Milewa confirmed that the project manager was the region works officer, and that he was instructed to deal with all matters relating to the contract. He confirmed that site meetings were held where it was noted that estimated cost went beyond the allocated budget.
20. Mr. Milewa confirmed that the Nairobi Region works officer, Arch. G. I. Mburu, issued a letter dated 5th March 2012. The letter indicated that the 1st defendant authorised the project manager to issue instructions to proceed with the completion works.
21. Mr. Milewa admitted that the 1st defendant's former CEO, Alex Kabuga, issued the letter dated 22nd June 2012, authorising the plaintiff to proceed with the installation of sanitary ware in the rest rooms.

Plaintiff's submissions

22. The plaintiff filed written submissions dated 15th May 2023 and 12th October 2023. The plaintiff submitted that it has proved its case to the required standard and is entitled to judgment as prayed.
23. The plaintiff submitted that through the quantum meruit principle, the law imputes the existence of a contract based upon one party's having performed services under circumstances in which the parties must have understood and intended compensation to be paid. At the site inspection meeting No. 6 held on 24th January 2012, the 1st defendant captured that the client urged the [Project Manager] PM to



initiate instructions to the contractor as their CTC (Centre Tender Committee) had already approved the variation.

24. In compliance with the 1st defendant's instructions aforesaid, the project manager issued instructions dated 5th March 2012 (See P.EXH. 3 on page 70). The 1st defendant acquiesced in the provision of services by the plaintiff's contractor as they never countermanded instructions given by the project manager despite being in copy thereof, but on 22nd June 2012, expressly authorized the plaintiff to proceed with the completion works.
25. The plaintiff conferred value on the 1st defendant in the sum of 8,752,851.92/- now claimed before stopping further works. The defendant has continued to enjoy the work performed by the plaintiff without payment and has unjustly been enriched thereby.
26. The plaintiff submitted that the rule against approbation and reprobation further militates against the defendants' non-payment of the plaintiff's claim.
27. The 1st defendant filed written submissions dated 5th July 2023. It urged the court to dismiss the suit with costs as the plaintiff has not proved its case to the required standard.
28. There were no contractual obligations for any additional works undertaken by the plaintiff, as alleged, or at all. The alleged authorization by the Nairobi County Works Office Executive did not come from it and/or the ministry of Public Works and hence the said officer acted beyond their powers. In any event the alleged interrelated and/or completion works were not distinguishable from the original tender number NBI/D07/13/2011-2012, and that no variation of the original tender or tendering process was ever carried out, hence any implied contractual obligations thereto are irregular, unlawful and unbinding.
29. The plaintiff was only concluding the works under contract no. No. NBI/D07/13/2011-2012 to its logical conclusion and as reasonably expected by the 1st defendant.
30. The plaintiff relied on:-
 1. Chitty on Contracts 24th Edition
 2. Stephen Kinini Wang'ondu v The Ark Limited [2016] eKLR

1st defendant's submissions

31. The 1st defendant submitted that the plaintiff has not proved its case to the required standard. It urged the court to dismiss the plaintiff's suit with costs.
32. According to the 1st defendant, the plaintiff surreptitiously left out the letter dated 22nd March 2012 that authorised the preparation of tender documents and only relied on the letter dated 5th March 2012, where the project manager purportedly issued instructions to the plaintiff to proceed with the "completion works" with immediate effect. The said letter further indicated that there was a confirmation as to the availability of funds to carry out the work and also referred to minutes of site inspection No. 8 of the Contract No. NBI-DO7/13/2011-2012.
33. The 1st defendant argued that this alone cannot be implied as a binding contract between the plaintiff and the 1st defendant. It also argued that there is no evidence of unequivocal agreement between the parties for the interrelated works and no variation of the initial contract was ever made. That the only logical conclusion is that the plaintiff undertook the said works as part of completion of the tendered work, more particularly to say that it was making good the snag of the original work.



34. The 1st defendant submitted that the interrelated works did not follow Part IV of the Public Procurement and Disposal Act, (PPDA) 2005 (now repealed) as re-enacted under Part VII of the [Public Procurement and Asset Disposal Act](#) No. 33 of 2015. The 1st defendant is a public entity as per section 2 of the PPDA.

35. The 1st defendant urged the court to take judicial notice of the criminal proceedings in CMCR No.29 of 2015 and Criminal Appeal 14 of 2016 that ensued.

The doctrine the doctrine of estoppel, as pleaded by the plaintiff, cannot be applied to openly circumvent the provisions of statutes and regulations.

36. The 1st defendant relied on:-

1. Narok County Government v Prime Tech Engineering Ltd [2017] eKLR
2. Erick Okeyo v County Government of Kisumu and 2 others [2014] eKLR
3. National Highway Authority v Total Security Surveillance Limited [2013] eKLR
4. Lucas M. Maitha Chairman Betting Control and Licensing Republic Board & 2 others Ex-Parte Interactive Gaming and Lotteries Limited [2015] eKLR
5. The Modern Law Review; Estoppels Against Statutes Vol. 29, No. 1 Page 4 and 5

2nd defendant's submissions

37. The 2nd defendant filed written submissions dated 14th November 2023. Its submissions mostly echoed the 1st defendant's save to add that the suit is time-barred by dint of section 4 of the [Limitation of Actions Act](#). The cause of action in this case arose in 2012, meaning that the limitation period lapsed in 2018. The claim against the 2nd defendant was commenced in 2019, which is outside the limitation period.

38. The 2nd defendant urged the court to dismiss the plaintiff's suit with costs as the transaction was tainted by illegalities and public policy considerations tilt in favour of dismissing the claim.

39. The 2nd defendant relied on:-

1. Benedetti v Sawaris [2013] UKSC 50, [2014] AC 938
2. Patel v Mirza [2016] UKSC 42

Analysis and Determination

40. The issues for determination are:-

1. Was the cause of action against the 2nd defendant already time-barred when it was joined?
2. Whether the plaintiff has proved its claim to the required standard.

Whether action against the 2nd defendant is time-barred when it was joined?

41. The 2nd defendant argued that the suit against it is time-barred.

The record shows that the 2nd defendant was joined in the suit upon grant of leave on 15th January 2020 to further amend the plaint.

42. Section 4 of the [Limitation of Actions Act](#), provides that an action founded on contract may not be brought after the end of six years from the date the cause of action accrued.



43. The cause of action arose in 2012. Therefore, by the time of amendment of the plaint on 15th January 2020, the statutory window to bring a claim against the 2nd defendant had lapsed.
44. In *Fredrick M. Waweru & Another v Peter Ngure Kimingi* (Civil Appeal No. 171 of 2003) [2007] eKLR, the court held that “a claim that is itself barred by the statute of limitation cannot be introduced by an amendment.”

Notice to Sue

45. The 2nd defendant’s claim that the plaintiff failed to serve it with a notice of intention to sue as required under section 13 (A) of the *Government Proceedings Act*, falls by the wayside.

Whether the plaintiff has proved its claim to the required standard.

46. Sections 107 to 110 of the *Evidence Act* provide as follows:-

“Section 107. (1) 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.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. 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.

110. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.”

47. The plaintiff indicated that there was a need to tender for interrelated completion works that were not included in the tendered works. This confirms that the interrelated works were not part of the tender number NBI / D07 / 13/2011 - 2012 for Kshs. 19,451,390.40.
48. Although the plaintiff mentioned that there were discussions about the interrelated works at site inspection meetings numbers 6 and 8 held on 24th January and 13th March 2012, it admitted that there was no contract signed.
49. Therefore, the plaintiff anchored its case on the doctrine of quantum meruit, which applied where a party is entitled to compensation for services provided where no contract exists.
50. The plaintiff relied on *Stephen Kinini Wang’ondou v The Ark Limited* (Civil Appeal No. 2 of 2014) [2016] eKLR, where the court applied the doctrine of quantum meruit. The court found that the circumstances were such that equity and good conscience require the respondent to make restitution to the appellant.
51. In the same case, the court observed that, “To recover under quantum meruit one must show that the recipient:- (1) acquiesced in the provision of services; (2) was aware that the provider expected to be compensated; and (3) was unjustly enriched thereby.



52. The 1st defendant asserted that the doctrine of quantum meruit is inapplicable due to the absence of a contract and/ or tender. It also contended that the doctrine, being an English common law doctrine, is subordinate to the PPDA.
53. The applicable law at the material time was the Public Procurement and Disposal Act, 2005 (PPDA, 2005) (repealed by the [Public Procurement and Asset Disposal Act](#) (2015)).
54. Section 27(4) of the PPAD 2005 required all contractors, suppliers and consultants to comply with all the provisions of the Act and the regulations.
55. The Act provided, under section 29, that a procuring entity could use restricted tendering or direct procurement as an alternative procurement procedure only if, before using that procedure, the procuring entity (a) obtains the written approval of its tender committee; and (b) records in writing the reasons for using the alternative procurement procedure.
56. In this case, there is no evidence of a contract. The plaintiff relied on various letters, meetings and minutes to support its claim. However, the plaintiff did not provide any evidence that a new tender was prepared and awarded according to the PPDA.
57. In *Royal Media Services v Independent Electoral & Boundaries Commission & 3 others* (Civil Suit No. 352 of 2014) [2019] eKLR, the court observed that:-

“It is the duty of the Contractor as it is of the procuring entity to observe the provisions of Statute and the Regulations thereunder. Section 27 imposes an unequivocal responsibility on any contractor, supplier or consultant intending to supply goods or services to a public entity to comply with all the provisions of the Act and the Regulations. This duty, in my view, extends to the Contractor making due enquiries as to whether the procuring entity has complied with its side of the law and declining to enter into a contract which is procured in apparent disregard of the law. For that reason a contractor or supplier cannot find refuge in the argument that compliance was an internal matter of the public entity when s[he] has not done enough to enquire about compliance or s[he] is herself or himself guilty of infringement.

58. Procurement of works or services by a public entity is governed by the PPDA. Public entity includes (a) the national government or any organ or department of the national government; (f) a state corporation within the meaning of the [State Corporations Act](#) (Cap. 446); S.2 of the PPDA.
59. In my mind, the doctrine of quantum meruit may not be used to circumvent or supplant or sanitise violation of the provisions of the PPDA by the contracting parties. Thus, the doctrine is not applicable in the circumstances of this case.
60. There was no tender or contract for the inter-related works or permitted variation of the original contract to support the claim. Accordingly, I find that the plaintiff has not proved its claim to the required standard. Each party shall bear their costs because the suit is against a public entity.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH TEAMS ONLINE APPLICATION THIS 24TH DAY OF JULY, 2025.

F. GIKONYO M
JUDGE



In the presence of: -

Mungla for plaintiff

Kimiti for 1st defendant

No appearance for AG

CA Kinyua

