



REPUBLIC OF KENYA



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**Microbit Systems Limited v Mandera County Government (Civil Suit
E004 of 2021) [2025] KEHC 9829 (KLR) (8 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9829 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CIVIL SUIT E004 OF 2021
JN ONYIEGO, J
JULY 8, 2025**

BETWEEN

MICROBIT SYSTEMS LIMITED PLAINTIFF

AND

MANDERA COUNTY GOVERNMENT DEFENDANT

JUDGMENT

1. The plaintiff herein moved this court via a plaint dated 17.03.2021 seeking for orders that judgment be entered against the defendant for:
 - i. Kes. 42,028,000/-.
 - ii. Interest on (i) above at court rates from the date of filing of the suit until payment in full.
 - iii. Costs of the suit and interest thereon at court rates till payment in full.
2. The gist of the suit is that pursuant to an award for Tender No. MCG/469/2014 – 2015 and by an agreement dated 01.02.2015, the plaintiff entered into a contract with the defendant for the supply and delivery of dry foodstuffs (rice, beans and cooking oil). That the plaintiff delivered the said goods and the defendant accepted delivery in fulfilment of the Local Purchase Order No. 24XXX02 dated 02.04.2015. It was averred that the defendant inspected the goods delivered and endorsed on its delivery notes that the goods were in good condition and further acknowledged delivery by signing and stamping the said delivery notes. In its case, the plaintiff has further averred that despite the defendant acknowledging receipt of the goods and utilizing the same, it has refused, failed and /or neglected to settle the same.
3. The defendant failed to enter appearance despite being served leading to the plaintiff seeking for a judgment in default of appearance. An interlocutory judgment was thus entered on 18.10.2022 and a decree dully issued for an amount of Kes. 42,028,000, together with interest and costs of the suit.



- The defendant consequently filed an application dated 12.05.2023 seeking the court to set aside the interlocutory judgment and it be allowed to file and serve its defence out of time.
4. The court via a ruling delivered on 09.05.2024 reached a determination that the interlocutory judgment was irregular as leave was not sought to enter the same against the defendant. As a consequence of the foregoing, the defendant was directed to file and serve its defence subject to depositing kes 15 million as security a condition which they complied with.
 5. The defendant filed its trial bundle dated 11.07.2024. From the defence filed, it averred that it was not in dispute that the plaintiff and the defendant had entered into a framework agreement dated 01.02.2015 and that on the strength of the said agreement, the defendant had regularly issued the plaintiff Local Purchase Orders for the supply of dry stuffs to the Defendant's Relief Programme.
 6. It was alleged that the defendant fully paid for all the goods in which the Local Purchase Orders were issued and goods supplied. From the defence filed, it was stated that the plaintiff previously made a fictitious complaint to the Public procurement and Regulatory Authority alleging that it had not been paid despite supplying the defendant with goods under Local Purchase Orders Number 2262566, 2262599 and 24XXX01 all amounting to Kes. 52,508,150/-.
 7. It was alleged that the County Executive Committee Member for finance and Economic Planning vide a letter dated 30.05.2018 noted that the goods supplied under Local Purchase Order Number 2262566 of Kes. 40,063,950 was indeed paid to the plaintiff and Local Purchase Orders Number 24XXX01 of Kes. 10,850,000 was found to be a forgery as the same did not emanate from the defendant. That whereas the forgery of the Local Purchase Order Number 24XXX01 of Kes. 10,850,000/- was communicated to the Director General of the Public Procurement and Regulatory Authority, the plaintiff has neither followed up on the issue with the appropriate offices nor submitted any appropriate documentation or information to give credence on the said Local Purchase Order. In short, the defendant urged that it did not issue the plaintiff the purported Local Purchase Order Number 24XXX02 which is the subject of this suit and no supply was made under the same.
 8. The matter proceeded via viva voce evidence with PW1, Ali Hassan Abey, the manager of the plaintiff adopting his statement dated 17.03.2021 and thereafter produced the list of documents among them L.P.O. No. 24XXX02 dated 2.04.2015 together with delivery notes annexed thereon. He further stated that between the year 2014 - 2015, he was the director of the plaintiff when the plaintiff entered into a contract with the defendant for the supply of goods which it supplied but the defendant declined to pay. He stated that he knew Ali Noor Chute as they previously dealt in a different matter cited as Jamarat vs Mandera County.
 9. On cross examination, he stated that he was to supply the goods in question to Mandera County central stores when need arose. That he was to supply 3,000 bags of rice, 1800 vegetable oil and 1520 bags of beans. That in as much as the LPO was signed, he did not know the person who signed it. According to him, it was Chute who gave him the documents and that in the LPO Number 2262566 dated 09.07.2014, the same was signed on the top left. That the plaintiff supplied all the required goods and as such, was issued with delivery notes. It was his evidence that the delivery notes reflect that Abdisalame was the person who received the goods in as much as the same did not show the exact delivery point. He further added that he was directed to deliver the goods to the county stores as that is the place he used to deliver goods.
 10. It was his evidence that one Abdisalame received the goods and further, that he made a complaint to the Procurement Authority for nonpayment of his dues. That in as much as the Director General PP Authority drew a letter to the CEC Finance Mandera County, he did not receive any copy of the said letter. Additionally, that as enumerated in the LPO No. 2262566 that the plaintiff was paid Kes.



- 40,063,550, the said LPO is not subject to this litigation. That the LPO in respect of which this suit was filed is 24XXX02. It was his testimony that in his complaint to the PPA Director General, he did not include the same due to an oversight.
11. He reiterated that for LPO No. 2262599 and LPO 2262599, he was paid Kes. 40,063,950 and Kes. 1,594,200 respectively. He stated that he is simply demanding payment for L.P.O. Number 24XXX02 and not LPO No. 24XXX01 as claimed by the defendant which is alleged as a forgery. On re-exam, he stated that he delivered the goods subject of this suit and that he was only paid in respect to two LPO's. That he did not include the LPO No. 24XXX02 to PPA out of an oversight and that the reason why he did not have the original LPO was occasioned by the fact that the same was in the custody of the defendant.
 12. PW2, Abdisalam Biriq a former employee to the defendant adopted his statement. He stated that in the year 2013-2017, he was working with Mandera County Government as a ward administrator at Alungi ward. That as a ward administrator, he was attached at Mandera County store. He confirmed that the delivery notes were issued by the plaintiff for supply of goods. It was his evidence that at the bottom of the document, the Chief Officer stamped the same as he also acknowledged signing the receipt and further confirmed that the LPO in question is No. 24XXX02. Additionally, that he was the person who received the goods while the chief of staff stamped the documents. On cross examination, he stated that in as much as he was a ward administrator, he was in charge of stores.
 13. PW3, John Njuguna Banga , an employee of the Government Printer confirmed receiving a letter dated 29.11.2014 seeking confirmation on whether the LPO booklet series containing serial numbers 24XXX01 and 24XXX02 were printed by the Government Printer; whether the L.P.O. booklet series containing the serial number 24XXX01 and 24XXX02 were dispatched, collected and received by Mandera County Government; who collected and /or received the L.P.O. booklet series containing the serial number 24XXX01 and 24XXX02 on behalf of the Mandera County Government.
 14. That he responded on 23.12.2024 by ascertaining the following: that the L.P.O. booklet containing the Serial Number 24XXX01 and 24XXX02 was indeed printed by the government Printer; the L.P.O. booklet containing the Serial Number 24XXX01 and 24XXX02 was dispatched and collected by the Mandera County government on 11.12.2014 in a batch of 10 books serial numbers (2450501 – 245100). It was his testimony that it was one B.J. Duale an employee of the defendant who acknowledged receipt of the booklets on 11.12.2014. On cross examination, he stated that he was a senior printer and that he had the authority to make the report.
 15. DW1, Abdikadir Tache, the Chief County Officer adopted his statement and a further witness statement dated 11.07.24 and 12.11.2024 respectively. It was his evidence that he acquired the position of Chief County Officer on 08.03.2023. He also produced his documents as Dex 1 - 4. On cross examination, he stated that he mentioned 3 LPOs and that the defendant is not contesting that LPO 2262566 was paid while LPO No. 24XXX01 was a forgery. According to him, the same was reported to the Director PPA and further, that the defendant did not have such an LPO issued to the plaintiff.
 16. He further stated that LPOs are issued in 4 copies and that the same are always numbered sequentially. He stated that the defendant did not have LPOs from S/Nos 24XXX01 up to 2450950 as the same did not exist. On the other hand, he stated that pending bills can be paid if not disputed unlike in the case herein. On re-exam, he stated that the LPO in question is not part of the accounting documents and that ordinarily, they order LPOs from the government printer.
 17. DW2, Ali Noor Aden Chute adopted his statement dated 12.11.2024 and further denied signing LPO No. 24XXX02. He confirmed knowing Ali Hassan Abey as one of the contractors in Mandera.



- According to him, he has been in the procurement department from 2013 till the time of the proceedings herein. That he also knew Abdisalam as he was in charge of the cereal stores at one time.
18. He categorically stated that, he was not alive to the existence of LPO No. 24XXX02 as he had no proof of the existence of the booklet. He further stated that one Zakaru Hussein and Abdikher Abdi Hussein could sign in his absence but he was not aware why Abdisalan could acknowledge what he did not receive. On re-exam, he stated that in as much as Abdi Ali Hussein and Zakaru could also issue an LPO, in this case, he did not sign the LPO No. 24XXX02.
 19. At the close of the hearing, the parties were directed to file their respective submissions. The plaintiff filed its submissions dated 04.12.2024 urging that, pursuant to an agreement dated 01.02.2015, it entered into an agreement with the defendant for the supply and delivery of dry foodstuffs. That in fulfilment of the said agreement, the defendant issued the plaintiff a Local Purchase Order No. 24XXX02 dated 02.04.2015. It was urged that despite the delivery of the said foodstuffs being made and the defendant acknowledging the same, the defendant has since declined to honour its part of the bargain.
 20. The plaintiff urged that failure to pay the agreed sum in the contract as signed by the parties, amounted to breach of contract. That the denial of the existence of the Local Purchase Order No. 24XXX02 is an afterthought as PW1 explained satisfactorily why he did not have the original LPO as the same had been received by the defendant at the time when payment was to commence.
 21. It was submitted that DW1 stated that the LPO No. 24XXX02 was not in their records despite stating that the LPO booklet series would run upto 2450950. That other than a general denial and the defendant despite acknowledging its existence, did not present to the court the LPO receipt register to confirm that the LPO booklet containing the series LPO No. 24XXX02 and LPO No. 24XXX01 was never received by the defendant from the Government Printer. In the same breadth, that the defendant failed to provide the particulars of the alleged forgery and as such, the same was not substantiated.
 22. In its supplementary submissions dated 27.03.2025, the plaintiff submitted that PW3, Julius N. Banga confirmed authoring the letter dated 23.12.2024 which was received on 07.01.2025 on behalf of the Government Printer. That he confirmed as follows: that the LPO booklet containing serial number 24XXX01 and 24XXX02 was indeed printed by the Government Printer; the LPO booklet containing the Serial Number 24XXX01 and 24XXX02 was dispatched and collected by Mandera County on 11.12.2014 in a batch of serial numbers (2450501 – 245100); and that B.J. Duale acknowledged receipt of the booklets on 11.12.2014.
 23. It was further urged that the plaintiff issued the defendant with a Notice to Produce dated 26.02.2021 but the same was declined by the defendant. That during the oral testimony of PW1, he explained why he did not have the original LPO for the same had been taken by the defendant at the time of the commencement of payment. That the decline to pay the plaintiff was simply an afterthought.
 24. Counsel contended that the allegation by DW1 that the LPO number 24XXX02 was not in the defendant's record was rebutted by the evidence of PW3. To that end, reliance was placed on the case of Kenya Akiba Micro Financing Limited vs Ezekiel Chebii & 14 others [2012] eKLR where the court held that in civil proceedings, when a party has custody or is in control of evidence that that party fails or refuses to render or produce, the court is entitled to make an adverse inference that if such evidence was produced, it would be adverse to such a party. In the end, counsel contended that the defendant was in breach of contract entered with the plaintiff in the sum of Kes. 42,028,000 and as such, it was only fair that the suit herein be allowed as prayed.



25. The defendant filed submissions dated 13.12.2024 wherein it was submitted that the agreement in question was entered under the *Public Procurement and Asset Disposal Act* and therefore, it was expected that the plaintiff satisfy that the LPO number 24XXX02 was indeed issued regularly and the said goods were delivered to the defendant against the LPO. It was urged that PW1 testified that DW2, Alinoor Adan Chute issued him with the impugned LPO without further elaboration. That DW2 in denying the same testified that in the year 2015, he was the Defendant's Assistant director/Head of Procurement.
26. That in that capacity, he only used to endorse all the defendant's LPO and that in his absence, he authorized Abdikheir Aden Hussein, a procurement officer at the County to endorse all the defendant's LPO's. That from the evidence of PW1, it was alluded that the person who endorsed his LPO was DW2. It was urged that noting that DW2 had declined ever endorsing by signing the LPO, the allegation by the plaintiff thus could not be deemed satisfactory.
27. In the same breadth, it was urged that the plaintiff lodged a complaint with the Public Procurement Regulatory Authority vide a letter dated 14.05.2018 claiming that, one of the LPOs in contest was LPO number 24XXX01. That strangely, the signature that endorsed LPO 24XXX01 is also different from the one appearing in LPO No. 24XXX02, which is the subject of the suit herein. That previously, the plaintiff has been involved in fraudulent activities wherein this court's attention was drawn to LPO Number 24XXX01 of Kes. 10,850,000/- that was allegedly communicated to the plaintiff. It was urged that the plaintiff did not follow up the same despite following other LPO's wherein payment was made. It was argued that the LPO Number 24XXX01 was one of the subject of the plaintiff's complaint to the Public Procurement Regulatory Authority which it abandoned upon the defendant making a response to its allegation.
28. It was urged that the peculiar thing about LPOs Numbers 24XXX01 and 24XXX02 is that, they start at 245 while all other defendant's genuine LPOs produced in this proceedings started with numbers 226. That LPO's contain serialized booklets of each 50 LPO's. That genuine LPO numbers 2262599, 2262974 and 2262566 which were issued on different dates within 2014 – 2015 financial year were produced. Thus the plaintiff could not explain how and in which manner did he obtain the two LPO's with serial numbers way above what was used by the defendant during the financial year 2014 and 2015.
29. Additionally, counsel urged that as per the notification of Award dated 29.01.2015, all the goods were to be supplied to Mandera County Central stores. That PW1 in his evidence stated that he was charged with delivery of the goods but could not tell where exactly the goods were delivered. That PW2, a former employee of the defendant stated that he received large quantities of rice, cooking oil and beans from the plaintiff but failed to specifically confirm that the alleged received goods were subject of this suit. It was urged that it was very crucial for the plaintiff to prove that indeed the goods being referred to were subject to LPO Number 24XXX02, subject of this suit. Reliance was placed on the case of African Merchant Assurance Co. Ltd vs Migori County Government [2020] eKLR where the dispute was in relation to tender for provision of insurance services to Migori County government's vehicles for the financial year 2015 – 2016. That the court dismissed the plaintiff's claim relating to the insurance services rendered to the defendant outside the tender for the reason that such an engagement was contrary to the procurement law.
30. In its supplementary submissions dated 07.04.2025, the defendant urged that the testimony by PW3 could not be relied on as the same was not credible. That it remained unknown who PW3 was as he did not produce any document to demonstrate that he testified on behalf of the Government Printer. It



was urged that it was not demonstrated that the alleged LPO's booklet series containing serial numbers 24XXX01 and 24XXX02 were issued to the plaintiff and that supply was made against the said LPO's.

31. This court was urged that the standard procurement practice dictates that the original LPO remains with the tender recipient hence not the procuring entity. It was contended that it was incumbent upon the plaintiff to adduce the original LPO for his claim to stand. In the end, this court was urged to dismiss the plaintiff's case as no proof of supply of goods was demonstrated during the subsistence of the tender in question.

Analysis and determination.

32. This court has considered the pleadings before it, the evidence adduced by the parties and their respective submissions. In my view, the following issues fall for determination:

- i. Whether there was a contract between the parties.
- ii. Whether the alleged contract was breached.
- iii. What remedy is available to the plaintiff if any?

33. The law of contract recognizes agreements entered into by persons for their own interest(s) as is the case here. Of importance to note is the fact that agreements could be oral or written. In the same breadth, there are remedies provided by the law and those granted by the courts which are designed to give effect to what was voluntarily undertaken and agreed by the parties. Damages in contract are therefore intended to place the claimant in the same position as he would have been in if the contract had been performed.

34. In his quest to interrogate the compensatory nature of damages in a breach of contract, Lord Diplock in the case of *Photo Production Ltd vs Securicor Transport Ltd*: - [1980] AC 827 stated that:

“The contract, however, is just as much the source of secondary obligations as it is of primary obligations ... Every failure to perform a primary obligation is a breach of contract. The secondary obligation on the part of the contract breaker to which it gives rise by implication of the common law is to pay monetary compensation to the other party for the loss sustained by him in consequence of the breach ...” (p 849).

35. Closer home, Mativo J. (as he was then) in the case of *Dormakaba Limited v Arcitectural Supplies Kenya Limited (Civil Suit 136 of 2020)* [2021] KEHC 210 (KLR) observed that, to successfully claim damages, a Plaintiff must show that:

- (a) a contract exists or existed; (b) the contract was breached by the defendant; and (c) the Plaintiff suffered damage (loss) as a result of the defendant's breach. The Plaintiff 'is not required to establish the causal link (between breaches of an agreement and damages) with certainty, but only to establish that the wrongful conduct was probably a cause of the loss, which calls for a sensible retrospective analysis of what would probably have occurred, based upon the evidence and what could be expected to have occurred in the ordinary course of human affairs, rather than an exercise in metaphysics.'

36. In the instant case, the existence of a framework contract between the plaintiff and the defendant for the supply of food stuffs is not in dispute. What is in dispute however is the question whether any delivery was made in respect to L.P.O. No. 24XXX02. The plaintiff on its part alleged that it supplied dry foodstuffs to the defendant who has since declined to honour its part of the bargain by paying for the goods.



37. The defendant on its part argued that it was expected of the plaintiff to satisfy that the LPO number 24XXX02 was indeed issued regularly and the said goods delivered to the defendant against the LPO. Additionally, that the LPO's booklet series containing serial numbers 24XXX01 and 24XXX02 were issued to the plaintiff and that supply was made against the said LPO's.
38. In order to determine whether the plaintiff delivered the alleged goods forming the substratum of the alleged contract, a review of the evidence by the parties becomes necessary. It is trite that in civil cases the measure of proof is on a preponderance of probabilities.
39. The above notwithstanding, the South African Supreme Court in the case of Stellenbosch Farmers Winery Group Ltd & Another vs Martell & Others 2003 (1) SA 11 explained how a court should resolve factual disputes and ascertain as far as possible, where the truth lies between conflicting factual assertions. It stated: -

To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extra curial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events.

As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues.

In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it.

The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equiposed probabilities prevail."

40. On credibility, this court had the benefit of not only hearing the parties orally, but also relating the evidence to the pleadings, affidavits, witnesses' statements, documents produced and the submissions. As such, it sits at a vintage position to assess the probabilities as they manifest within the circumstances prevailing, and as they apply to the particular witnesses.
41. PW1 stated that the plaintiff was one of the contractors doing business with the defendant. In fact, the alleged payment on LPO Number 24XXX02 was just one of the business deals that the parties had engaged in. It therefore follows that that PW1, a representative of the plaintiff and DW2 were persons well known to one another. PW1's evidence was corroborated by DW2 who stated that PW1 was a person well known to him as the plaintiff was one of the contractors doing business with the defendant. That the parties had entered into a framework agreement and that under the said framework, several LPOs had been issued and paid for. That a dispute only arose out of L.P.O. 24XXX02, which was subject of the proceedings herein.
42. Counsel for the defendant argued that ordinarily, all the goods supplied to the defendant were to be supplied to the defendant's central stores while on the other hand, PW1 testified that he was directed to deliver the goods to the county stores as that is the place he used to deliver goods. PW2 corroborated



PW1's evidence that he was the person who received the goods supplied by PW1 as he was an employee of the defendant. The fact that PW2 was an employee of the defendant was not controverted. In fact, DW2 confirmed knowing PW2 and further stated that at times, he could man the stores. In as much as the defendant claims that the goods were not delivered as the same ought to have been delivered at the central stores, it is my belief that indeed the goods were delivered and received by the defendant. At this point, it doesn't matter whether the same were received at the central stores or elsewhere.

43. On the angle of probability, PW1 presented delivery notes which according to him was proof enough that the plaintiff indeed delivered the goods to the defendant. The counsel for the defendant urged that it was not enough that the plaintiff was in possession of the L.P.O. in question as it was not proved that the same emanated from the defendant.
44. It is trite to note that PW3 in his testimony testified that the L.P.O. in question was not only printed at the Government Printer but was also picked by an agent of the defendant by the name of Duale. And as Lord Denning held in *Miller vs Minister of Pension* {1947} 2ALL ER 372 "The...{standard of proof}...is well settled. It must carry a reasonable degree of probability...if the evidence is such that the tribunal can say: 'We think it more probable than not' the burden is discharged, but, if the probabilities are equal, it is not". It therefore follows that, this being a civil matter, the probability that can be formed from the foregoing is that the L.P.O 24XXX02 indeed originated from the defendant.
45. There was no evidence to suggest that pw3 was not an employee of the Government printer. He signed all deliveries indicating that they were in respect of the LPO No.24XXX02. It is not therefore correct for the defendant to claim that the deliveries were in respect of some other LPOS which are not mentioned. Nothing would have been easier than the defendant getting a confirmation from the head of government printer to ascertain whether pw3 was indeed an employee of that organization or not. This is a public office and a mere letter to the head of the department would have sufficed. It is unfortunate that the defendant had disowned the existence of the subject LPO as an accountable document in their office yet pw3 confirmed it was ordered for and collected by their staff one Duale.
46. Pw3's evidence was not controverted thus exposing the defendant as a dishonest party. Where did the rest of the leafs in the booklet of 50 containing the disputed LPO collected by the defendant go? This is proof enough that DW2 was not telling the truth by denying the existence of the disputed LPO. If indeed there were investigations of forgery pending, the same would have by now revealed that the impugned LPO was forged. It is an established principle that he who alleges must prove. See *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* (2005)1EA 334.
47. The defendant alleged forgery but failed to prove the same. For that reason, I have no reason not to believe the plaintiff's assertion that the LPO in question was issued by the defendant and the same was properly used to procure the goods in question which pw2 the defendant's agent then received and acknowledged receipt.
48. The above is further corroborated by the delivery notes duly signed by pw2. See the case of *E.P. Communications Ltd vs E.A. Courier services Ltd* [2019] eKLR where the court while quoting from the case of *Alfred Ndogi Mata vs Hellen Siemeko Adede* [2005] eKLR observed thus;

"The evidence show that a business relationship existed between the parties herein. There is also evidence that, goods were supplied to the Respondent during the business relationship on credit. However, 2 issues abound. Were the goods alleged to have been supplied actually supplied and received? And for the goods supplied and delivered, were they paid for by the Respondent? The appellant produced invoices, LPOs and delivery notes. The purpose of an invoice is that it is issued by a seller to request for payment for purchase. An LPO is sent



by Purchaser to the Seller to confirm, order and authorize the purchase. A delivery note is proof of delivery of goods...”

49. In the instant case, it is true as alleged by the defendant that the plaintiff ought to have produced the original L.P.O. to cement his case. But of importance to note is the fact that he explained that he did not have the original L.P.O. as the same was in the custody of the defendant. The plaintiff fully demonstrated that he did deliver the goods as per the contract and the procuring entity acknowledged receipt.
50. Allegations touching on forgery of the subject LPO were not proved. The burden was discharged by the plaintiff and shifted to the defendants who failed to discharge their burden. Failure by the plaintiff to follow a complaint lodged to the Procurement authority in respect of LPO number 24XXX01 does no invalidate an independent claim in respect of LPO No.24XXX02. Each case is determined on its own merits.
51. As to the allegations that the plaintiff previously was involved in making fraudulent claims, it was not enough for the defendant to produce a document wherein it had previously made such allegations against the plaintiff without further pursuing the allegations and prove that action was taken against the plaintiff. It was not enough to make an allegation against a person and expect the same person to prove his innocence. Clearly, the law is that he who alleges must prove. [See section 107 – 109 of the [Evidence Act](#)].
52. Having considered in totality the pleadings herein, oral evidence on record and parties’ able submissions, I am inclined to find that the plaintiff has proved its case on a balance of probability hence do hereby enter judgement in its favour against the defendant at a sum of Kes 42,028,000/= together with interest at court rates to be calculated from the date of filing the suit. As costs follow the event, am persuaded to order that costs be and is hereby awarded to the plaintiff. See [Supermarine Handling Services LMT vs Kenya Revenue Authority Civil Appeal No. 85 of 2006](#) where the court of appeal stated that costs follow the event unless the judge(court) for good reason directs otherwise.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF JULY 2025

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J. N. ONYIEGO

JUDGE

