



**Mogas Kenya Limited v Spin Masters Limited & another (Commercial Suit 72 of 2016)
[2025] KEHC 10494 (KLR) (Commercial and Tax) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT 72 OF 2016**

NW SIFUNA, J

JULY 3, 2025

BETWEEN

MOGAS KENYA LIMITED PLAINTIFF

AND

SPIN MASTERS LIMITED 1ST DEFENDANT

CHRIS KINYUA 2ND DEFENDANT

JUDGMENT

1. It its Plaintiff dated 11th March 2016, the Plaintiff has averred that it on diverse dates in the year 2009, and at the request of the Defendants, supplied to them, petroleum products worth USD 229, 449/22.
2. The Defendants had issued the Plaintiff a Performance Guarantee from Dubai Bank Limited. The Plaintiff wrote to the bank severally to invoke the Guarantee, but the bank did not honor the demand to facilitate payment under the guarantee.
3. The Defendants made payment of USD 27, 705=, and defaulted on the balance of USD 201, 744/22; which the Plaintiff claims the Defendants have refused to settle.
4. The Plaintiff has now by this suit claimed against the Defendants jointly and severally, judgment for the following reliefs:
 - a. The sum of USD 201, 744/22
 - b. Interest on [a] at court rates.
 - c. Costs of this suit.



5. The Defendants have through their Amended Statement of Defence dated 9th May 2017 denied receiving the said goods- stating that no such delivery was ever made. They further averred that the suit is time-barred under the provisions of Section 4 of the Limitations of Actions Act since the cause of action supposedly arose in 2009 and the suit was filed in 2016. They prayed that the suit be dismissed with costs.
6. In its response to the said defence, the Plaintiff stated that the liability of the Defendants crystallized when the bank failed to pay on demand as provided for in the guarantee; hence that the suit is not time-barred. The Bank received the Plaintiff's demand on 5th September 2024 but refused to pay the Plaintiff. That subsequently the said Dubai Bank was put in liquidation in 2015, and that the Defendants are therefore liable to pay the amounts demanded.

Analysis and Determination

7. The hearing of the suit proceeded ex parte on 30th September 2024, and PW1 testified. He stated that fuel worth USD 229, 449/22 was supplied, and that the Defendants paid only USD 27, 705=, thereby leaving a balance of USD 201, 7444/22. Which stands unpaid to date. The guarantee that was to be paid by Dubai Bank was not honoured, and later the Bank collapsed and is no longer operative.
8. Before delving into the determination, this Court notes that the Defendants had raised a Preliminary Objection on the ground that the suit is time-barred. An issue that was settled by the Court's ruling of 30th October 2018. In which the Court dismissed the Preliminary Objection.
9. It was the Plaintiff's submission that the Defendants received the goods from the Plaintiff and paid only USD 27,705=. Leaving a balance of USD 201, 7444/22; which remains owing to date. According to the Plaintiff, the part payment is a form of admission of receipt of the goods from the Plaintiff.
10. There are invoices that show evidence of all transactions done in the process of purchase and delivery of the petroleum goods. Such evidence includes Invoice Numbers MGSDB, 032, 1302, 1327, 033, 1373, 1374, and Delivery Numbers 1571,1548,4192,1575,1565,1566 and Credit Note No. 63.
11. There is also a ledger account for the 1st Defendant; there are also email correspondences exchanged between the parties, thus it is now common ground that there were transactions between them. In addition, there was a Performance Guarantee by Dubai Bank Limited for the amount of USD 350, 000=. Which was not honoured, and the same bank has since been liquidated, leaving the buyer with the obligation to pay the balance.
12. In this case, the Plaintiff is deemed to be an unpaid seller within the meaning in Section 39 of the [Sale of Goods Act](#) [Cap 30 Laws of Kenya]. Since the property in the goods had passed, the remedy for the Appellant was an action for the price of the goods under Section 49 [1] of the [Sale of Goods Act](#), which provides that:

Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.
13. From the foregoing, this Court finds that the documents produced in support of the Plaintiff's suit have met the evidentiary threshold for proof of debt. The Defendant truly owes the Plaintiff the sum of USD 201, 744/22 claimed in this suit. I therefore allow this suit, and enter judgment for the Plaintiff against the Defendant for:
 - a. The sum of USD 201, 744/22.



- b. Interest on [a] above, at court rates.
- c. Costs of this suit.

DATED AND DELIVERED AT NAIROBI ON THIS 3RD DAY OF JULY 2025.

PROF [DR] NIXON SIFIUNA

JUDGE

