



**Thames Electricals Limited v Aee Power Limited (Commercial Case E196 of 2024)  
[2025] KEHC 9764 (KLR) (Commercial and Tax) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9764 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E196 OF 2024**

**MA OTIENO, J**

**JULY 3, 2025**

**BETWEEN**

**THAMES ELECTRICALS LIMITED ..... PLAINTIFF**

**AND**

**AEE POWER LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff, Thames Electricals Limited, is a limited liability company registered under the *Companies Act* of Kenya and operating in Nairobi. The Defendant, AEE Power Limited, is similarly a limited liability company.
2. The Plaintiff, vide a Plaint dated 7/12/2023, instituted this suit against the Defendant for the recovery of an outstanding debt arising from the supply of goods to the Defendant, together with interest and costs.
3. The Plaintiff claimed that on various dates between 3<sup>rd</sup> June 2015 and 29<sup>th</sup> May 2019, it supplied electrical goods to the Defendant on agreed terms and conditions, which included that the goods remained the Plaintiff's property until paid for in full, payment was due within 30 days, and overdue accounts attracted 2% monthly interest. The agreement also stipulated that goods were not returnable, and the customer bore the risk during transit.
4. It was further the Plaintiff's case that it issued several invoices and received several payments over time. However, as of 30/4/2020, the Defendant still owed the Plaintiff KES 33,892,659.92.
5. The Plaintiff contended that through its Advocates, a formal 14-day demand for the amount owed was issued on 11<sup>th</sup> June 2021, but the Defendant still failed to respond or settle the claim.



6. The Plaintiff asserted that the Defendant unlawfully refused to pay the debt, thereby subjecting the Plaintiff to significant financial loss. Consequently, the Plaintiff seeks the recovery of KES 33,605,617.92, interest at 2% per month from 24/10/2019 until full payment, and the costs of the suit.
7. The Plaintiff called one witness, Cherylyn Abayo, its legal officer, who adopted her witness statement dated 7<sup>th</sup> December 2023 as evidence in chief and produced invoices, delivery notes, and correspondence forming part of the Plaintiff's bundle dated 7<sup>th</sup> December 2023 and supplementary bundle dated 14<sup>th</sup> December 2024.
8. The witness's testimony was that the Plaintiff supplied and delivered various goods to the Defendant between 3/6/2015 and 29/5/2019. Upon confirming orders, the Plaintiff would deliver the goods and issue invoices detailing the items, their quantity, rate, total price (including VAT), and applicable terms and conditions. These terms included a 30-day payment period, a 2% monthly interest on overdue accounts, a retention of ownership until full payment, and disclaimers regarding transit damage, verification upon delivery, and non-return of goods once sold.
9. Ms. Abayo further testified that the Defendant purchased goods from the Plaintiff as evidenced by various invoices and made some payments, but a balance remained outstanding. On 11/6/2021, the Plaintiff's advocates wrote to the Defendant demanding payment of KES 34,179,701.92 (inclusive of legal fees), but the Defendant failed to respond.
10. Finally, the witness stated that the Defendant continued to refuse to settle the outstanding debt. Ms. Abayo presented the Plaintiff's bundle of documents as evidence and prayed for judgment in favour of the Plaintiff for KES 33,605,617.92, interest at 2% per month from 24/10/2019 until full payment, and costs of the suit.

#### **Defendant's case**

11. The Defendant filed a statement of defence dated 3/7/2024 generally denying the averments by the Plaintiff. In response to paragraphs 3 to 10 of the plaint, the Defendant stated that it was a stranger to the contents of paragraphs 3, 4, 5, 8, 9, and 10. It denied the contents of paragraphs 6 and 7 and put the Plaintiff to strict proof.
12. The Defendant however confirmed that it had entered into an Assignment Agreement with the Plaintiff dated 11/10/2017, which agreement assigned the supply of materials directly to the Kenya Power and Lighting Company (KPLC). According to the Assignment Agreement, payments were to be made directly from the African Development Bank (AFDB) to the Plaintiff through KPLC. These payments were to be treated as though they had been made to the Defendant, thereby absolving the Defendant of any payment obligation.
13. The Defendant asserted that, after 11/10/2017, all payments were supposed to come directly from AFDB to the Plaintiff, and all parties, including the Plaintiff, were fully aware of this arrangement. For any payments not covered by the assignment, the Defendant claimed that those payments had been paid directly to the Plaintiff, and the Plaintiff had acknowledged receipt.
14. On that basis, the Defendant claimed it owed the Plaintiff no money, as all due payments had been made according to their agreement. The Defendant asked for the suit to be dismissed with costs.
15. However, the Defendant elected to close its case without filing any documents or witness statement(s) in support of its case.



### Reply to the defence.

16. The Plaintiff filed a reply to the defence dated 17/7/2024, in which it clarified that the assignment referenced in the defence was strictly for facilitating payments and did not involve the supply of materials to Kenya Power and Lighting Company Limited. The Plaintiff further stated that the assignment did not permit it to invoice Kenya Power directly, as the Defendant retained the responsibility of invoicing and following up on payments.
17. The Plaintiff emphasized that the assignment's only purpose was to allow KPLC to remit payments directly to the Plaintiff, bypassing the Defendant. However, since the Plaintiff had not received the outstanding payments from Kenya Power, the assignment remained unfulfilled and was effectively rendered null, and the Defendant could not be absolved of liability.

### Analysis and determination.

18. The Plaintiff filed written submissions dated 9/12/2024 and supplementary submissions dated 24/3/2025. The Defendant, on its part, filed written submissions dated 13/3/2025. I have considered in light of the evidence on record and pleadings filed by the parties.
19. The issue that comes up for my determination is whether the Plaintiff proved its case against the Defendant on a balance of probabilities.
20. It is settled law that the burden of proof lies with the Plaintiff under Section 107 of the *Evidence Act*, which provides that he who alleges must prove. This position is reinforced by the holding in *Stephen Wasike Wakho & Another v Security Express Ltd* [2006] eKLR, where the Court emphasised the need to adduce evidence sufficient to support the legal rights being claimed.
21. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya, 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.”
22. In *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:-

“As a general proposition under Section 107(1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”
23. The degree of proof is as enunciated in the case of *Miller vs Minister of pensions* [1947] cited with approval in *D.T. Dobie Company (K) Limited vs Wanyonyi Wafula Chabukati* [2014] eKLR where the court stated that:-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say ‘we think it more probable than not’, thus proof on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are



equally unconvincing the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

24. The undisputed fact of this case is that the Plaintiff and Defendant entered into a supply of goods agreement which entailed the Plaintiff supplying electrical goods to the Defendant on credit, and the Defendant had the obligation to pay for the items within 30 days of delivery of the goods.
25. This is evidenced by the series of invoices and delivery notes produced by the Plaintiff to the Defendant between 3/6/2015 and 29/5/2019; the Defendant’s Local Purchase Order to the Plaintiff, and the partial payments made by the Plaintiff to the Defendant for some of the delivered goods. The documents are produced in the Plaintiff’s bundle of documents dated 7/12/2023.
26. The Defendant did not produce any evidence to controvert the Plaintiff’s assertion that goods were supplied to it between 3/6/2015 and 29/5/2019.
27. The Defendant’s primary defence was that an Assignment Agreement existed between itself and Kenya Power and Lighting Company Limited (KPLC), under which payments were to be made directly to the Plaintiff. The Defendant further contended that any amounts not falling within the scope of the assignment had been settled through direct payments to the Plaintiff.
28. Upon review of the record, I note that the said Assignment Agreement was produced by the Plaintiff in its supplementary bundle of documents at pages 1–2. The agreement is dated 11th October 2017 and bears the signatures of duly authorized representatives of both parties.
29. From a reading of the Assignment Agreement, it is clear that its primary purpose was to facilitate payments to the Plaintiff through KPLC. Any payments made to the Plaintiff pursuant to the assignment were deemed to be payments made by the Defendant.
30. This Court’s interpretation of the Assignment Agreement is that it was confined solely to the mechanism of payment facilitation and did not involve or transfer any obligation regarding the supply of goods to KPLC. The Defendant retained the duty to receive invoices from the Plaintiff and to follow up with KPLC to ensure settlement. As such, any shortfall or failure in remittance by KPLC did not absolve the Defendant of its payment obligations to the Plaintiff.
31. The Defendant made the assertion that it made direct payments for the goods not covered by the assignment, but did not support this with any evidence. Indeed, the Defendant opted not to adduce any evidence in support of its defence.
32. It is a well-known principle that he who alleges must prove, as stated under section 107 and 108 of the *Evidence Act*.
33. In *Billiah Matiangi v Kisii Bottlers Limited & another* [2021] eKLR, the Court held:

“Where a Plaintiff gives evidence in support of her case but the Defendant fails to call any witness in support of its allegations, then the Plaintiff’s evidence is uncontroverted and the statement of defence remains mere allegations. In *Janet Kaphiphe Ouma & Another vs. Marie Stopes International (Kenya) Kisumu HCCC No. 68 of 2007* Ali-Aroni, J. citing the decision in *Edward Muriga Through Stanley Muriga v Nathaniel D. Schulter Civil Appeal No. 23 of 1997* held that: In this matter, apart from filing its statement of defence the Defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st Plaintiff and that of the witness remain uncontroverted and the statement in the



defence therefore remains mere allegations...Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same by way of evidence.”

34. I concur with the authority above. In this case, the Defendant filed a defence and submissions but failed to produce any evidence in support of it. Therefore, its defence remains mere allegations, and the Plaintiff’s evidence is uncontroverted.
35. On the other hand, the Court finds that the Plaintiff has proved its case on a balance of probabilities that it supplied goods to the Defendant and was not fully paid for the same.
36. The upshot is that I hereby allow the Plaintiff’s claim against the Defendant and Judgment is entered in favour of the Plaintiff as follows: -
  - i. Principal sum: Kshs. 33,605,617.92;
  - ii. Interest: At the contractual rate of 2% per month from 24th October 2019 until full payment;
  - iii. Costs of the suit.
37. It is so decreed.

**SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS 3<sup>RD</sup> JULY 2025**

**ADO MOSES**

**JUDGE**

In the presence of: -

C/A – Moses

..... for the Plaintiff

..... for the Defendant

