



Nanchang Foreign Engineering Co (K) Ltd v Straight Security Limited (Civil Appeal E467 of 2023) [2024] KEHC 8866 (KLR) (Civ) (4 July 2024) (Judgment)

Neutral citation: [2024] KEHC 8866 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E467 OF 2023

AB MWAMUYE, J

JULY 4, 2024

BETWEEN

NANCHANG FOREIGN ENGINEERING CO (K) LTD APPELLANT

AND

STRAIGHT SECURITY LIMITED RESPONDENT

(Being an Appeal against the Judgment and Decree of the Hon. S.A. Opande (PM) delivered on 8th May, 2023 in Milimani CMCC No. E11290 of 2018)

JUDGMENT

1. The Appellant is aggrieved with the Judgment of the Trial Court in which the lower court awarded the Respondent Kes. 981,841.00 in outstanding invoice amounts arising from services rendered to the Appellant, as well as contractual interest on that sum at 10% per month. The Trial Court also dismissed the Appellant's counterclaim and awarded the Respondent the costs of the suit.
2. In the Memorandum of Appeal dated 5th June, 2023 states the following six grounds:
 - i. The Learned Magistrate erred in law and fact in allowing a prayer for punitive interest against the principles of the common law;
 - ii. The Learned Magistrate erred in law and fact in dismissing the Appellant's counterclaim without giving due regard to evidence and the Appellant's submissions;
 - iii. The Learned Magistrate erred in law and fact in failing to give due regard to the fact that the claimed interest was unconscionable and against public policy;
 - iv. The Learned Magistrate erred in law and fact by failing to appreciate the Respondent's duty to insure the Appellant's against loss and damage;



- v. The Learned Magistrate erred in law and fact by failing to find that the agreement between the Appellant and the Respondent was reduced in writing; and the interest clause extremely sharp, oppressive, harsh and unfair and the court of equity would never countenance the enforcement of such harsh and punitive terms whether written or not; and
 - vi. The Learned Magistrate erred in law and fact by failing to find that the interest and penalty clause in the agreement entered into by the Appellant and the Respondent made it a special one which equity should be availed to aid the disadvantaged party from a bad bargain.”
3. In its written submissions dated 18th March, 2024, the Appellant restated the facts of the case. The Appellant argues that on 29th June, 2018 a burglary occurred on its premises which were guarded by the Respondent and the Appellant incurred losses amounting to Kes. 689,000.00. The Appellant sought to have that sum offset from the Kes. 981,841.00 owed to the Respondent in unpaid invoices, which would reduce the figure owed by the Appellant to the Respondent to Kes. 292,491.00.
 4. On the interest awarded by the lower court, the Appellant states that the same should not be due as the Respondent had breached its contractual obligations to the Appellant and it had refused to indemnify the Appellant against those losses and to cooperate with police investigations into the burglary. The Appellant’s submissions do not address the issues of the nature of the contract that were stated as grounds of appeal in the Memorandum of Appeal.
 5. However, the Respondent’s Written Submissions dated 20th June, 2024 address that point. The Respondent argues that it is not the role of this Court to rewrite the contract that was willingly entered into by the parties; and thus, the interest rate in the contract dated 1st January, 2018 cannot be oppressive or unconscionable.
 6. The Respondent’s approach to the counterclaim as well as the issue of indemnification of the Appellant is the same; that no burglary took place or at the very least the Appellant did not prove that a burglary took place or that the Respondent failed to cooperate with the police in their investigations. Consequently, the Respondent avers that there could not have been a breach of its contractual obligations to the Appellant.
 7. Having considered the record of the Trial Court, the Memorandum of Appeal, and the written submissions of the parties, I find no error in law or in fact in the Judgment dated 8th May, 2023.
 8. The Appellant admitted the outstanding invoice amounts but sought to offset the same partially through alleged losses that it failed to prove and which allegedly arose from a burglary that it also failed to prove. Thus, the counterclaim was properly dismissed and the Respondent’s claim for Kes. 981,841.00 was properly proved.
 9. The Trial Court was also correct in finding that the 10% per month penalty was a contractual obligation on the Appellant arising from Clause 5 of the Contract between the parties. The contract was entered into voluntarily and the Learned Magistrate was correct in finding that the reasons that could justify the court’s interference with the contract as executed by the parties did not apply in this case.
 10. Overall, I am satisfied that the Appellant was given a fair opportunity to present its case and that the Trial Court properly considered the Appellant’s case, which the Appellant was however unable to prove to the required standard both in terms of the counterclaim as well as its defence to the plaint.
 11. Consequently, I dismiss the Appeal herein with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI



THIS 4TH DAY OF JULY,2024.

BAHATI MWAMUYE

JUDGE

In the presence of:

Ms. Wacuka h/b Mr. Mugo Counsel for the Appellant

Mr. Obuya Counsel for the Respondent

Ms Achieng, Court Assistant

