



REPUBLIC OF KENYA



**Star Tours and Travel Limited v Chege & another (Civil Case 166 of 2017)
[2024] KEHC 12745 (KLR) (Civ) (23 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12745 (KLR)

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

**CIVIL
CIVIL CASE 166 OF 2017**

AN ONGERI, J

SEPTEMBER 23, 2024

BETWEEN

STAR TOURS AND TRAVEL LIMITED PLAINTIFF

AND

KENNEDY GICHUHA CHEGE 1ST DEFENDANT

DEBONAIR TRAVEL LIMITED 2ND DEFENDANT

JUDGMENT

1. The plaintiff herein Star Tours & Travel Ltd filed this suit on 11/3/2015 seeking the following remedies against the two defendants, Kennedy Gichuha Chege & Debonair Travel Ltd
 - i. The sums of USD 83,516.00 and Kshs.905,785.00 being the amounts due and owing from the defendants to the plaintiff as at 10th December 2013.
 - ii. Interest on (i) above at commercial rate from 10th December, 2013 until payment in full.
 - iii. Costs of this suit together with interest thereon at court rates.
 - iv. Any further or other relief that this honourable court may deem fit to grant.
2. The claim arose out of a contract entered into between the plaintiff and the two defendants for the supply of air tickets.
3. The plaintiff avers in its plaint dated 11/3/2015 that on or about 3rd December, 2012 the 1st defendant, vide a guarantee dated the same day, guaranteed payment for the air tickets supplied to the 2nd defendant in the event the 2nd defendant defaulted on its obligations.



4. The plaintiff per the terms of the contract delivered to the 2nd defendant, on diverse dates, air tickets valued at USD.83516.40 and kshs.905,785.
5. It was an express and/or implied term of the contract between the parties that
 - a) payment on various tickets would be effected on or before the 10th day of each month the ticket are issued, and
 - b) In default of payment of the respective amounts as and when the same fell due, the defendants would be liable to pay interest thereon at commercial rates prevailing from time to time.
6. The 2nd defendant in purported settlement of the debt issued 12 cheques drawn in the plaintiff favour amounting to USD 15,778.90 and kshs.905,785.00.
7. The plaintiff duly banked the cheques which were all dishonoured and returned to the plaintiff due to insufficient funds in the 2nd defendant's account. The cheques particular are as follow;

Cheque no.	Account no.	dated	Amount in USD
001899	029xxxx65	10/12/2013	596.00
001897	029xxxx765	10/12/2013	5,831.88
001893	029xxxx765	10/12/2013	9,882.00
001898	029xxxx765	10/12/2013	14,339.70
001897	029xxxx765	10/12/2013	5,831.80
302228	022xxxx850	15/1/2014	1,435.50
001894	029xxxx765	10/12/2013	13,864.00
Total			51,778.90
Cheque no.	Account no.	dated	Amount in ksh.
004486	0290xxxx91	10/01/2014	190,536.00
004485	0290xxxx91	10/01/2014	291,403.00
004487	0290xxxx91	10/01/2014	423,846.00
Total			905,785.00

8. Consequently, the plaintiff's claim as against the defendant is for a sum of USD83,516.00 Ksh.905,785.00 due and owing as at 10th December, 2013 together with interest till payment in full.
9. The defendants filed a defence dated 10/10/2017 denying the plaintiff's claim.



10. The defendants averred in their defence that the 2nd defendant states that it does not owe the plaintiff any monies and the plaintiff is put strict proof thereof.
11. In further answer to paragraph 6, 7, 8 and 9 of the plaint and without prejudice to paragraph 5 and 6 herein, the 2nd defendant avers that the arrangement between it and the plaintiff was for the 2nd defendant to issue post-dated cheques to the plaintiff for the 15th day of the following month and the same would be settled through an electronic funds transfer (EFT) payment and the plaintiff would return the post-dated cheques but in the incident hand the plaintiff refused and/or neglected to return the cheques.
12. This suit was dismissed on 4/11/2021 for want of prosecution.
13. Upon application by the plaintiff the suit was reinstated on 26/1/2024 and the plaintiff was granted 90 days within which to fully prosecuted the suit.
14. Counsel for the defendant was in court when the suit was set down for hearing at 10am but he failed to appear for the hearing when his oral application for stay of proceedings pending appeal was declined.
15. The hearing proceeded exparte. The plaintiff produced her witness statement dated 11/3/2015 as her evidence in chief.
16. She stated in the said statement that she is the Director of the Plaintiff.
17. That the Plaintiff is a travel agency with its primary business being airline ticketing. The Plaintiff is licensed by IATA whereby it's given a ticketing machine which on prompt issues tickets on call by it from customers and whose money is supposed to remit to IATA.
18. The plaintiff said that she knows the 1st defendant herein, Mr. Kenedy Gichuha Chege, who is a Director of the 2nd Defendant.
19. She said that the 2nd Defendant used to operate under IATA but it defaulted. It then requested for services from the Plaintiff. Under this arrangement the 2nd Defendant would issue Local Purchase Order ("L.P.O") Vouchers plus post dated cheques.
20. It would collect cash from it's clients and pay the Plaintiff by post dated cheques.
21. That on or about the 3rd December, 2012 the 1st Defendant acting on behalf of the 2nd Defendant approached the Plaintiff and requested for supply of air tickets.
22. By a Guarantee dated the same day, the 1st Defendant guaranteed payment for the air tickets supplied to the 2nd Defendant in case it defaulted on its obligations.
23. On or about the 10th December, 2013, 10th January, 2014 and 15th January, 2014 the Plaintiff pursuant to the terms of the contract supplied the 2nd Defendant with air tickets worth U\$D 83,516.00 and Kshs. 905,785.00.
24. It was an express and/or implied term of the contract between the parties that:-
 - a. Payment on various tickets would be effected on or before the 10th day of each month the ticket are issued, and
 - b. In default of payment of the respective amounts as and when the same fell due, the Defendants would be liable to pay interest thereon at commercial rates prevailing from time to time.



25. The defendant in an attempt to pay drew in favour of the plaintiff numerous cheques that were dishonoured when they were presented to the Plaintiffs bankers M/S Chase Bank.
26. The plaintiff further stated that the total outstanding amounts are in USD 83,516.40 and in Kshs 905,785.
27. It is the duty of the plaintiff to prove her case to the required standard in civil suits which is on a balance of probabilities.
28. The plaintiffs submitted that it is undisputed that the plaintiffs and the defendant had a contractual relationship in which the plaintiff was to provide airline ticket booking at its own expense for and on behalf of the defendant and in exchange the defendant was to settle the booking costs incurred by the plaintiff.
29. The plaintiff submitted that there was no contention that the plaintiff fully performed its part of the contract. the plaintiff booked tickets as requested by the defendant to the tune of Kshs. 905,785 and USD 83,516. It was the defendants' obligation to pay the plaintiff but they breached the contract.
30. The issues for determination in this suit are as follows;
 - i. Whether the plaintiff has proved her case to the required standard.
 - ii. Whether the defendant is liable to pay the plaintiff the remedies she is seeking.
 - iii. Who pays the costs of this suit?
31. On the issue as to whether the plaintiff proved her case, I find that the evidence of PW 1 was not controverted.
32. The defendant did not appear for the hearing of the suit.
33. I find that the plaintiff has proved her case to the required standard.
34. On the issue as to whether the defendant is liable to pay the plaintiff the remedies it is seeking, I find that the answer is in the affirmative.
35. On the issue of costs, it is trite law that costs follow the event. The defendant to pay the plaintiff's costs of the suit.
36. I enter judgment in favour of the plaintiff against the defendant as follows;
 - a. USD in the sum of 83,516.
 - b. Ksh. In the sum of ksh.905,785.00
 - c. Costs and interest at court rates from the date of filing suit until payment in full.Orders to issue accordingly.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2024.

.....
A. N. ONGERI

JUDGE

In the presence of:



.....for the Plaintiff

.....for the Defendant

