



**Prime Mattress Limited v National Youth Service & 3 others (Civil Case 10 of 2018) [2024] KEHC 12952 (KLR) (23 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12952 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE 10 OF 2018  
SM MOHOCHI, J  
OCTOBER 23, 2024**

**BETWEEN**

**PRIME MATTRESS LIMITED ..... PLAINTIFF**

**AND**

**NATIONAL YOUTH SERVICE ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL YOUTH SERVICE ..... 2<sup>ND</sup> DEFENDANT**

**THE CABINET SECRETARY, MINISTRY OF PUBLIC SERVICE,  
YOUTH AND GENDER AFFAIRS STATE DEPARTMENT OF PUBLIC  
SERVICE ..... 3<sup>RD</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The instant case lays bare how suppliers of goods and services to government Ministries Departments and Agencies (MDA’s) deliver the on the tender and at times end up going without pay or remain unpaid falling into the infamous “pending bills”.
2. This case sadly demonstrates the want of diligence, by State Counsel from the office of the Attorney General, ultimately resulting in the suit being heard undefended while the defendants had more than ample opportunity to defend the same.

**Brief Facts of the Case**

3. The Plaintiff instituted the pleadings herein vide the plaint dated 9<sup>th</sup> March, 2018 seeking for the following orders:
  - a. A sum of Kshs.68, 812, 250/- at prevailing commercial interest rates till the date of payment.



- b. Costs of this suit.
  - c. Interest on (a) and (b) above at a commercial rate since the respective amount was due until payment in full.
  - d. Any other remedy that the Honourable Court may deem fit and fair to grant.
4. Basis for the claim was contained in Paragraph 6 of the plaint, that is, that the Plaintiff entered into a contract with the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant for the plaintiff to supply uniforms, uniforms material, beddings and CMT service (mattresses).
  5. It is Plaintiff's case that it duly performed and delivered the goods as per the contract and Local Purchase Orders issued to that effect.
  6. Despite the plaintiff making several demands and reminders for payment of the outstanding balance of Kshs. 68,812,250, the defendants have refused to pay the contractual amount necessitating the suit herein.
  7. This matter came up for hearing on the 13<sup>th</sup> February 20-24 where the plaintiff was ready to proceed while Ms Shirika for the Attorney General sought for more time to file a further (unspecified) document which application was allowed with the Court directing that the hearing shall commence de novo on the 20<sup>th</sup> February 2024.
  8. On the 20<sup>th</sup> February 2024 the Court confirmed compliance of the plaintiff, the Attorney General was absent and the Court directed the hearing to proceed on 25<sup>th</sup> April 2024 with notice served upon the Respondent.
  9. The Hearing proceeded as scheduled with Plaintiffs showcasing the repeated service upon the Respondents with all notices including the instant hearing notice.
  10. The Plaintiff Called PW1 Peter Mwangi Mucheru the manager with the Plaintiff Company who adopted his statement dated 9<sup>th</sup> March 2018 as evidence in chief and produced the Bundle of supporting documents dated 9<sup>th</sup> March 2018 as exhibits 1-102.
  11. The witness further produced the three (3) supplementary documents dated 20<sup>th</sup> March 2019 as exhibits 103-105.
  12. Finally, the witness produces a forensic audit report filed on the 17<sup>th</sup> February 2023 as Exhibit 106.
  13. Reference was made to the Defendants list of documents 1 and 2 that is LPO No. 1843 dated 13<sup>th</sup> March 2013 and received on 23<sup>rd</sup> March 2014 that concurs with his documents at page 49 and is the original LPO and Exhibit number (2) for the amount Ksh 7,062,150/- tallies with the LPO.
  14. That the unit price for supply was Kshs 3, 250/- which equally tallies and that page 74 of the 1<sup>st</sup> Defendants documents issue and receipt voucher is Kshs 32,500,000 and at page 119 of the plaintiff's bundle is the LPO for the said sum of Kshs 32,500,000 (Exh 66)
  15. The Plaintiff closed its case and the Court directed parties to file written submissions of which both the Plaintiff and the Respondents/ Defendants failed to comply.

### **Analysis and Determination**

16. This suit was filed 9<sup>th</sup> March 2018 show cases the pitfalls of suppliers of goods and services to the state, ministries departments and agencies who end up going without pay and are exposed to high interest rates and ultimate bankruptcies.



17. It is common knowledge that “pending bills” in the public sector has assumed monstrous proportion and continues to balloon by the day. This Court believes that the state, ministries departments and agencies should lead from the front by strictly procuring to pay against funds available and disbursed for the purpose and that businesses and suppliers of goods and services need legal protection.
18. In this instance the defence filed by the Defendants would constitute mere denial which this Court dismissed as an afterthought.
19. For all intents and purpose the suit herein was undefended and this Court is persuaded to find in favour of the plaintiff for the following reasons:
  - a. The Plaintiff was contracted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant to supply uniform materials, beddings and CMT Service (mattress)
  - b. The Plaintiff fully satisfied the performance of the contract and delivered the goods as per the contract and the LPO.
  - c. That despite several demands for payment of an outstanding balance of kshs 68,812,250/- the defendants have refused, failed and or declined to pay the aforesaid amount.
20. This Court thus issues the following final orders:
  - a. The Plaintiff is awarded a sum of Kshs.68, 812, 250/- being an outstanding contract sum.
  - b. Costs of this suit.
  - c. Interest on (a) and (b) above at a commercial rate since the 9<sup>th</sup> March 2018 until payment in full.

It is so Ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 23<sup>RD</sup> DAY OF OCTOBER 2024.**

**MOHOCHI S. M.**

**JUDGE**

