



**The Sunday Publishers Limited & another v Nairobi City County (Civil Case E172 of 2020) [2024] KEHC 13881 (KLR) (Civ) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13881 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL CASE E172 OF 2020  
JM OMIDO, J  
NOVEMBER 8, 2024**

**BETWEEN**

**THE SUNDAY PUBLISHERS LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**MELSAV COMPANY LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NAIROBI CITY COUNTY ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs herein The Sunday Publishers Limited and Melsav Company Limited, brought this contractual claim against the Defendant Nairobi City County seeking judgement for the following reliefs:
  - a. Ksh. 25,351,443/- in favour of the 1<sup>st</sup> Plaintiff.
  - b. Ksh.16,300,000/- in favour of the 2<sup>nd</sup> Plaintiff.
  - c. Interest on amounts set under (a) and (b) above at court rates from the date of filing the suit until full payment.
  - d. Costs of the suit.

**A. Pleadings**

2. The Plaintiffs presented the suit *vide* a plaint dated 21<sup>st</sup> May, 2020 which was filed in court on 20<sup>th</sup> November, 2020.



3. The Plaintiffs pleaded that at all times material to the suit, the 1<sup>st</sup> Plaintiff was the proprietor and publisher of Sunday Express newspaper and that the 2<sup>nd</sup> Plaintiff was the publisher of CEO Africa magazine.
4. The Plaintiffs further pleaded that on diverse dates in the years 2015, 2016 and 2017, at the Defendant's request and order, the 1<sup>st</sup> Plaintiff placed advertisements in the Sunday Express newspaper on terms and conditions that were mutually agreed upon by the 1<sup>st</sup> Plaintiff and the Defendant.
5. It was further pleaded by the Plaintiffs that on diverse dates in the years 2016 and 2017, at the request of the Defendant and on terms and conditions that were agreed upon between the 2<sup>nd</sup> Plaintiff and the Defendant, the 2<sup>nd</sup> Plaintiff placed advertisements in the CEO Africa magazine.
6. The Plaintiffs pleaded that in breach of its respective contractual obligations, the Defendant failed to honour its terms of the bargains by failing and/or refusing to pay the Plaintiffs for the advertisement services, particularized as follows:

Plaintiff Total amount

1st Plaintiff Ksh.25,352,443/-.

2nd Plaintiff Ksh.16,350,000/-.

7. The Plaintiffs stated that despite demand having been made to the Defendant and notice of intention to institute recovery proceedings having been issued, the Defendant did not make good the Plaintiffs' claims, necessitating this suit.
8. The Defendant resisted the Plaintiffs' suit by filing a statement of defence dated 30<sup>th</sup> November, 2020.
9. The Defendant denied that there existed any agreements for the provision of advertisement services between the Plaintiffs and itself and put the Plaintiffs to strict proof. The Defendant denied being indebted to the Plaintiffs as per the particulars that were set out by the Plaintiffs (as above) or at all.

#### **B. The Plaintiffs' Case.**

10. The Plaintiffs called Ayub Savula Angatia (PW1) as their sole witness. He testified and adopted the contents of his witness statement dated 21<sup>st</sup> May, 2020 as his testimony-in-chief.
11. In his statement, PW1 stated that he was a director of both Plaintiffs (companies) and that he had the instructions of his co-directors to represent the two companies in the instant suit.
12. PW1 told the court that at the times material to the present suit, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs were proprietors and publishers of the Sunday Express newspaper and the CEO Africa magazine, respectively. That the Defendant prequalified the two Plaintiffs to provide advertisement services that related to the Defendant on terms that were respectively agreed upon by each Plaintiff and the Defendant and that the 1<sup>st</sup> Plaintiff provided the advertisement services on diverse dates between the years 2015 to 2017 while the 2<sup>nd</sup> Plaintiff provided the advertisement services on diverse dates between 2016 and 2017.
13. PW1 stated in his witness statement that the Defendant breached the two contracts it had with the Plaintiffs by failing to honour its obligations under the contracts, particularly by failing to pay for the advertisement services, and was indebted to the 1<sup>st</sup> Plaintiff in the sum of Ksh.25,351,443/-; and to the 2<sup>nd</sup> Plaintiff in the sum of Ksh.16,350,000/-



14. The witness stated that he personally followed up on the payments on behalf of the Plaintiffs but the payments were not forthcoming, more than three years later. That despite demand having been made to the Defendant and notice of intention to institute recovery proceedings having been issued, the Defendant did not make good the Plaintiffs' claim, necessitating the filing of this suit.
15. The witness produced the following documents in support of the Plaintiffs' claim against the Defendant: CEO Magazine of October, 2016. CEO Magazine of August, 2016. CEO Magazine of November, 2016. CEO Magazine of January, 2016. CEO Magazine of April, 2016. CEO Magazine of May, 2016. CEO Magazine of June, 2016. CEO Magazine of July, 2016. 2<sup>nd</sup> Plaintiff's invoice dated 28<sup>th</sup> October, 2016. 2<sup>nd</sup> Plaintiff's Advertisement Order Number 014 of 6<sup>th</sup> October, 2016. 2<sup>nd</sup> Plaintiff's invoice dated 28<sup>th</sup> January, 2016. 2<sup>nd</sup> Plaintiff's Advertisement Order dated 14<sup>th</sup> December, 2016. 2<sup>nd</sup> Plaintiff's invoice dated 27<sup>th</sup> April, 2016. 2<sup>nd</sup> Plaintiff's Advertisement Order dated 6<sup>th</sup> April, 2016. 2<sup>nd</sup> Plaintiff's invoice dated 30<sup>th</sup> August, 2016. 2<sup>nd</sup> Plaintiff's Advertisement Order dated 10<sup>th</sup> August, 2016. 2<sup>nd</sup> Plaintiff's invoice dated 28<sup>th</sup> July, 2016. 2<sup>nd</sup> Plaintiff's Advertisement Order dated 4<sup>th</sup> July, 2016. 2<sup>nd</sup> Plaintiff's invoice dated 28<sup>th</sup> May, 2016. 2<sup>nd</sup> Plaintiff's Advertisement Order 2<sup>nd</sup> May, 2016. 2<sup>nd</sup> Plaintiff's invoice dated 28<sup>th</sup> June, 2016. 2<sup>nd</sup> Plaintiff's Advertisement dated 6<sup>th</sup> June, 2016. 2<sup>nd</sup> Plaintiff's invoice dated 28<sup>th</sup> November, 2016. 2<sup>nd</sup> Plaintiff's Advertisement Order dated 2<sup>nd</sup> November, 2016. Letter from the 1<sup>st</sup> Plaintiff to the Defendant dated 17<sup>th</sup> December, 2019. Defendant's Local Purchase Order No. 001831 addressed to the 1<sup>st</sup> Plaintiff. Defendant's Local Purchase Order No. 001830 addressed to the 1<sup>st</sup> Plaintiff. 1<sup>st</sup> Plaintiff's Invoice dated 3<sup>rd</sup> April, 2017. 1<sup>st</sup> Plaintiff's Space Order No. 203 dated 29<sup>th</sup> January, 2017. Defendant's Memo dated 11<sup>th</sup> April, 2016 from the Director of Public Communications to the County Secretary. Various Advertisement Notices published by the 1<sup>st</sup> Plaintiff at the Defendant's request. 1<sup>st</sup> Plaintiff's Invoice dated 3<sup>rd</sup> March, 2017. 1<sup>st</sup> Plaintiff's Advertisement Order No. 204. Various Advertisement Notices published by the 1<sup>st</sup> Plaintiff on behalf of the Defendant. 1<sup>st</sup> Plaintiff's Invoice dated 6<sup>th</sup> April, 2017. Various Advertisement Notices published by the 1<sup>st</sup> Plaintiff on behalf of the Defendant. 1<sup>st</sup> Plaintiff's Advertisement Order No. 205. Various Advertisement Notices published by the 1<sup>st</sup> Plaintiff on behalf of the Defendant. 1<sup>st</sup> Plaintiff's Invoice dated 28<sup>th</sup> April, 2017. 1<sup>st</sup> Plaintiff's Advertisement Order No. 206. Various Advertisement Notices published by the 1<sup>st</sup> Plaintiff on behalf of the Defendant. Defendant's payment voucher No. 18986 dated 16<sup>th</sup> February, 2017. 1<sup>st</sup> Plaintiff's letter detailing the Defendant's Statement of Account. Defendant's payment voucher No. 13033 dated 22<sup>nd</sup> June, 2016. Defendant's payment voucher No. 1300 dated 2<sup>nd</sup> June, 2016. 1<sup>st</sup> Plaintiff's letter dated 17<sup>th</sup> December, 2019 addressed to the Defendant. Statements from Co-operative and Standard Chartered Banks as evidence of previous transactions between the Plaintiffs and the Defendant.

### **C. The Defendant's Case.**

16. Although the parties were through their Advocates on record informed of the hearing date, no appearance was made on the part of the Defendant when the matter proceeded on 27<sup>th</sup> June, 2024. No evidence was therefore offered on the part of the Defendant.

### **D. Issues For Determination**

17. Having considered the evidence of the single witness for the Plaintiffs and the record in its entirety, the issues this court discerns are for determination are the following:
  - a. Whether the Defendant entered into a contract with the 1<sup>st</sup> Plaintiff for the latter to provide advertising services.



- b. Whether the Defendant entered into a contract with the 2<sup>nd</sup> Plaintiff for the latter to provide advertising services.
- c. Subject to (a) above, whether the 1<sup>st</sup> Plaintiff provided advertisement services at the request of the Defendant.
- d. Subject to (b) above, whether the 2<sup>nd</sup> Plaintiff provided advertisement services at the request of the Defendant.
- e. Whether, subject to (a) and (c) above, the Defendant is indebted to the 1<sup>st</sup> Plaintiff to the tune of Ksh.25,251,443/-.
- f. Whether, subject to (b) and (d) above, the Defendant is indebted to the 2<sup>nd</sup> Plaintiff to the tune of Ksh.16,300,000/-.

### **E. Analysis And Determination On The Issues.**

- 18. It is to be noted, as stated above, that neither the Defendant's Advocate nor witness attended court when this matter proceeded on 27<sup>th</sup> June, 2024. The consequence thereto is that PW1's evidence was not challenged or controverted.
- 19. With regard to the first and second issues for determination, the Plaintiffs produced documents through their witness who testified to the effect that the Defendant entered into agreements with the Plaintiffs for the latter to provide advertisement services for the former through their respective publications, Sunday Express newspaper and CEO Africa magazine.
- 20. The Plaintiffs' witness produced copies of advertisements made in the Sunday Express newspaper and the CEO Africa magazine, Local Purchase Orders and invoices relating to the same.
- 21. With regard to the Sunday Express newspaper, the witness produced a letter dated 17<sup>th</sup> December, 2019 authored by the 1<sup>st</sup> Plaintiff and addressed to the Defendant requesting for payments for the services. PW1 also produced copies of Local Purchase Orders issued to the 1<sup>st</sup> Plaintiff by the Defendant, invoices issued by the 1<sup>st</sup> Plaintiff to the Defendant and other supporting documents including the actual advertisements posted in the Sunday Express newspaper.
- 22. From the unchallenged material presented before me by the Plaintiffs, I am satisfied that the two Plaintiffs have proved on a balance of probabilities that Defendant entered into separate contracts with the two Plaintiffs for the latter to provide advertising services.
- 23. The third and fourth issues for determination are whether the two Plaintiffs respectively provided advertisement services at the request of the Defendant. On these, we have seen above that PW1 produced copies of several advertisements posted by the Defendant in the Sunday Express newspaper and the CEO Africa magazine and the answer to the question is in the affirmative, having been proved by the Plaintiffs on a balance of probabilities through PW1's uncontested testimony and documentary evidence.
- 24. I will now turn to the fifth and sixth issues for determination, which concern the questions whether the Defendant is indebted to the 1<sup>st</sup> Plaintiff to the tune of Ksh.25,251,443 and to the 2<sup>nd</sup> Plaintiff to the tune of Ksh.16,300,000/-. I have looked at the documents that the Plaintiffs produced in support of their respective positions and my view is that the same provide the answers to these questions.



25. In respect of the 1<sup>st</sup> Plaintiff PW1 produced the following advertisement orders issued by the Defendant and corresponding invoices as supporting documents to the advertisements posted in the Sunday Express newspaper.

Order No. Amount

001831 Ksh.16,954,828/-.

001830 Ksh.4,620,753/-.

Not clear Ksh.5,700,000/-

204 Ksh.5,700,000/-.

205 Ksh.5,500,000/-.

206 Ksh.600,000/-.

Total Ksh.39,075,581

26. Out of the above amount as contained in the orders, the 1<sup>st</sup> Plaintiff's contention was that the amount of Ksh.25,351,443/- remained unpaid although the documentation submitted by the 1<sup>st</sup> Plaintiff was cleared by the Defendant for processing of payment. The documents listed above that were produced by PW1 all bear the Defendant's stamps.
27. As the claim by the 1<sup>st</sup> Plaintiff remained uncontested, I find that the 1<sup>st</sup> Plaintiff has proved that the Defendant is indebted to it in the sum claimed of Ksh.25,352,443/-.
28. With regard to the 2<sup>nd</sup> Plaintiff, the following advertisement orders and invoices were produced by PW1 as supporting documents to the advertisements posted in the CEO Africa magazine.

Order Date Invoice Date Amount

6<sup>th</sup> October, 2016 28<sup>th</sup> October, 2016 Ksh.2,000,000/-.

14<sup>th</sup> December, 2016 28<sup>th</sup> January, 2017 Ksh.3,000,000/-.

6<sup>th</sup> April, 2016 27<sup>th</sup> April, 2016 Ksh.1,200,000/-.

10<sup>th</sup> August, 2016 30<sup>th</sup> August, 2016 Ksh.1,800,000/-.

4<sup>th</sup> July, 2016 28<sup>th</sup> July, 2016 Ksh.1,200,000/-.

2<sup>nd</sup> May, 2016 28<sup>th</sup> May, 2016 Ksh.2,100,000/-.

6<sup>th</sup> June, 2016 28<sup>th</sup> June, 2016 Ksh.2,000,000/-.

2<sup>nd</sup> November, 2016 28<sup>th</sup> November, 2016 Ksh.3,000,000/-.

Total Ksh.16,300,000/-.

29. It is noteworthy that all the above advertisement orders have on their face the Defendant's stamps as the party awarding the orders and corresponding dates of the order.
30. As there is no evidence that was offered by the Defendant to controvert the 2<sup>nd</sup> Plaintiff's evidence as adduced by PW1, or to show that the invoices above that were issued on the orders placed by the Defendant, I am persuaded that the above amount of Ksh.16,300,000/- has been proved as due and owing to the 2<sup>nd</sup> Plaintiff.



**F. Disposition.**

31. In the result, being of the foregoing findings, I dispose off this matter as follows:

- a. Judgement is hereby entered for the 1<sup>st</sup> Plaintiff against the Defendant for Ksh.25,351,443/-.
- b. Judgement is hereby entered for the 2<sup>nd</sup> Plaintiff against the Defendant for Ksh.16,300,000/-.
- c. The amounts in (a) and (b) above will attract interest at court rates from the date of filing suit until payment in full.
- d. The Defendant shall bear the costs of this suit and interest thereon at court rates.

**DELIVERED (VIRTUALLY), DATED & SIGNED THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**JOE M. OMIDO**

**JUDGE**

For Plaintiffs: Ms. Obiri.

For Defendant: No appearance.

Court Assistant: Ms. Njoroge.

