



**Waki Clearing & Forwarding Agents Limited v County Government of Machakos  
(Commercial Case 4 of 2020) [2024] KEHC 15164 (KLR) (3 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15164 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
COMMERCIAL CASE 4 OF 2020**

**FR OLEL, J**

**DECEMBER 3, 2024**

**BETWEEN**

**WAKI CLEARING & FORWARDING AGENTS LIMITED ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF MACHAKOS ..... DEFENDANT**

**JUDGMENT**

**A. Introduction**

1. The plaintiff vide their plaint dated 10<sup>th</sup> February 2020 filed this claim as against the defendant, where they averred that in November 2015, the defendant advertised a tender in the Daily Nation Newspaper seeking eligible suppliers and contractors to bid for “Proposed Civil works for Desilting of Maruba Dam”. They did submit their bid and after the evaluation process, the tender committee approved of the same and they were awarded the said tender valued at Kshs.89,001,000/= .
2. On 5<sup>th</sup> January 2016 a contract stipulating the work to be done, the manner in which it was to be carried out amongst other parameters was executed by the parties. They thereafter provided the performance bond and the defendant did issue them with a duly executed local purchase order (LPO) for Kshs.89,001,000/= confirming that funds were available. As per the contract, the works to be carried out included clearing the site, construction of a site house and lay down areas, delivery of equipment to the site, to create temporary access trucks, desilt the reservoir of “Maruba Dam” to hold 240,000 cubic meters of water, fence the reservoir and too plant grass.
3. The works under the contract were to be carried out within 5 months from the date of mobilization subject to other factors like delayed payment of certificates and any other reasonable occurrence that would entitle the plaintiff to claim for extension of time. They mobilized and started the work immediately and by April 2016, the Defendants Engineers had confirmed/ certified that 64.2% of the works had been complete. The continued to work and as at 25<sup>th</sup> May, 2016 he had completed the



contracted work and raised the final invoice of Kshs.17,800,000/=, which remains unpaid, and formed the basis of the claim before court.

4. It was to be noted that the Defendant never subsequently raised any issue regarding the workmanship carried out nor did they invoke the defect liability clause and were therefore estopped from rejecting this claim, which had been filed about three (3) years after the last invoice had been raised. They had also attempted to resolve this matter amicably as provided for under clause 3.18.1 of the contract but the said negotiations had failed to bear any fruits.
5. The plaintiff thus averred that, they were entitled to be paid the sums claimed in their last invoice of Kshs.15,345,000/= plus Kshs.7,792,629.72/= being compound interest calculated at 14 % from 25<sup>th</sup> July 2016, when the said invoice was raised. This was also expressly provided for under Section 48 of the Public Procurement and Assets Disposal Act, 2015. The plaintiff also claimed VAT on this sum.
6. The defendant relied on their amended statement of defense, where they denied all the plaintiff's averments as contained in the plaint. In the alternative they further stated that the plaintiff did not complete the works they were contracted to undertake and had failed to create and deliver temporary access tracks, failed to desilt the dam to the required standard and also failed to fence off the reservoir and plant grass as contracted. The suit was therefore prematurely filed as the matter ought to have gone for Arbitration first. They thus urged this court to dismiss the claim.

## **B. Evidence**

7. PW1 Chege Mwangi, stated that he was a senior surveyor and offered consultancy services. He adopted his witness statement as his evidence in chief and also produced his Surveyor's report dated 04.12.2020 and topographic sketch map as Exhibit 1(a) &(b). The plaintiff company had been contracted to desilt an area of 240,000 m<sup>3</sup> but had exceeded and desilted an area of 245,250m<sup>3</sup>. It was his professional opinion that the objective of the contract had been achieved.
8. Under cross examination he confirmed that he was a senior registered surveyor and when he conducted his survey, the river bed was dry thus he was able to pick both longitudinal and sectional points across the dam which enabled him to correctly find the level of work, which was volume of distillation done. His recordings were captured in his report and could be used to justify his findings.
9. PW2 Obadhiah Kamau Kihara stated that he was the Managing director of the plaintiff company which had been in business for over thirty years dealing in construction works and clearing and forwarding business. He relied on his witness statement as his evidence in chief, which basically rehashed his pleadings and produced his documents as exhibits herein. There was no dispute that he was awarded the tender after competitive bidding but was owed Kshs.22,737,629.00/= which he was claiming plus interest until date of payment in full. Further he urged the court to allow his prayer for release of the performance bond.
10. As at 26.04.20216, he had been paid a sum of Kshs.57,160,600/=. He proceeded to finalize the remaining works, final inspection was done and raise the final invoice of Kshs.17,800,200/=: which invoice remained unpaid. They had tried to negotiate settlement of this matter but that had failed, engaged an advocate to do a demand letter and still received no response hence moved to court to claim sums owed. As part of their obligation under the contract, they had to take out a performance bond (Exhibit 5) and had secured the same using the company's logbooks and title deeds. The defendant had not raised any issue regarding their performance of the contract hence he prayed that the performance bond be released to enable them access the securities attached thereto



11. Under cross examination, PW2 confirmed that under the said contract, they had been paid Kshs.57,160,000/= based on several certificates for work done. Specifically Exhibit 7 showed that 64.2% of the work had been completed and subsequently they had complete the remaining works, and inspection undertaken by the county Engineer, though they did not release to him the final completion certificate.
12. PW2 was referred to the letter dated 02.08.2016 (MFI D4) in the defendants bundle of document's, where the county Engineer had demanded that the plaintiff company complete the remaining works of Kshs.17,120,800/=. The plaintiff denied ever receiving the said letter, and was adamant that the contents of the said letter were incorrect as they had satisfactorily completed the civil works undertaken and were entitled to demand final payment for completed works.
13. PW2 further confirmed that before filing the suit they had served the defendant with a demand letter but did not received any response. As per the contract signed under clause 3.18.1 and 3.18.2, they had tried to resolve the matter amicably but had not succeeded in their effort. The negotiations undertaken were not formal and the parties did not undertake any formal Arbitration process. Clause 3.6.4 also stipulated that his performance bond was to be released 30 days after completion of the contract. The county had never written to dispute the completed works, thus expected to have his security released.
14. PW2 also confirmed that he did not have the completion certificate, nor had he received any termination of contract letter from the defendant. Under reexamination PW2 referred to Exhibit 8, which confirmed that as at 19.04.2016 the civil works done were at 62.4% (177,240 cubic meters) had been excavated, and they had subsequently finished the remaining works. The defendant never sent them the letter dated 02.08.2016 (MFI D4) nor had the county responded to the demand letter sent by his advocate before the suit was filed.
15. The defendant had also not demanded that they go for Arbitration before filing the suit. Finally, they could not terminate the contract as they had completed all works specified under the said contract and took their equipment away from the site. He urged the court to allow their claim.
16. PW3 Antony Kathurima Muriuki, stated that he was a Engineer by profession and specialized in Civil, water and environmental engineering. He held practicing license Number B15361. He worked for the plaintiff company and adopted his witness statement dated 28.02.2023 as his evidence in chief. He confirmed that he was the site Engineer for the distilling of Maruba dam project, which also included fencing works, planting trees, grass, landscaping amongst other civil works.
17. The project lasted for about 6 to 8 months and they completed the desilting works to expected volumes and did the environmental works but the final payments were not effected. He was referred to the letter dated 02.08.2016 (MFI D4) and confirmed that the same was never received by them while undertaking this project. Under cross examination, PW3 confirmed that he was a qualified engineer and was the one who had signed the contract on behalf of the plaintiff company.
18. The inspection works were carried out jointly with Engineer Ndwiki, and even after they had competed the contractual works, they had jointly conducted the final inspection, but he was not involved in issuance of the final certificate as that was done by Engineer Ndwiki, the county Engineer. There was also no evidence that they had continued with the civil works after April 2016 as they did not have any certificate to confirm the same. But he affirmed that they had completed the works as stipulated under the contract.
19. In Reexamination, PW3 confirmed that he graduated from Egerton University in 2010 and had specialized in water and Environmental Engineering. By 2016 he was a graduate Engineer but was formally registered by the Engineering Board on 09.11.2018. He faulted the county for failing to pay



- for works done under the contract and also for failing to issue the final certificate, yet it was their duty to do so.
20. DW1 Stephen Ndwiki, stated that he was an employee of Machakos county government, working as the resident water Engineer. He had recorded his witness statement dated 05.07.2021 and adopted the same as his evidence in chief. He also produced the documents filed on 05.07.2021 as Exhibit D 1 to D4.
  21. Under cross examination, DW1 confirmed that in 2016 he was a graduate engineer and was formally registered by the Engineering board in 2019. His role was to supervise the project and would collaborate with the contractors engineer to measure works done. He did not have the various reports of supervised works but had signed the partial completion certificate, which confirmed the works that had been carried out. The partial completion certificate dated 29.04.2016 confirmed that the scope of work done by then had covered 177,240 cube meters, which was valued at Ksh.55,830,600/=. This represented 64.2% of the works satisfactorily done.
  22. There was the partial completion certificate dated 21.06.2016 ( Exhibit D3) confirmed that the level of excavation carried out was 212,670 cubic meters and the value of works undertaken was Kshs.71,880,200/= being equivalent of 80.76% of works successfully completed. On 02.08.2016, they had written to the plaintiff company notifying them to clear the pending works left, valued at Kshs.17,120,800/=:, but had no proof of delivery of the said letter. He also confirmed that he only dealt with the technical issues relating to the project and not the financial aspect. After issuing the relevant certificates, the other departments would deal as appropriate.
  23. DW1 confirmed that he was not a surveyor and was not present when the plaintiff's surveyor did his measurements, but the said report should have been jointly undertaken for it to be reliable. The plaintiff company need to remobilize, complete the remaining works before demanding for final payments. He also confirmed that the contract signed had a termination clause and was not aware if the county had enforced the same.
  24. In Reexamination, DW1 confirmed that his mandate was to supervise the project and would issue partial completion certificates once joint inspections had been carried out. The plaintiff company only completed about 80% of the works but did not complete the works as expected. If they had a report alleging completion, the same was not accurate. The payment withheld was for uncompleted works and vide his letter dated 02.08.2016, he had demanded they complete the same. To his knowledge the contractor had not done any excess work nor had he gone back to site to complete the pending works, thus was not entitled to be paid.

## **B. Parties Submissions**

### **(i) Plaintiff's Submissions**

25. The plaintiff submitted that it was not in doubt that the parties herein did sign a contract to undertake civil works to desilt Maruba dam and upon acceptance of the said award, the plaintiff did undertake and fulfilled its obligation under the said agreement and was therefore entitled to the balance, which had remained unpaid and accruing interest arising therefrom. The defendant on their part had denied the plaintiff's contention that they had satisfactorily completed the assigned civil works under the said contract and this therefore became the only issue for determination and whether the plaintiff was entitled to the reliefs sought.
26. PW1, surveyor and water engineer consultant had measured the amounts of works done and also did a topographical survey of the desilted area. His report {Exhibit 1(a) & (b)} confirmed that indeed the



- desilted area was 245,250m<sup>3</sup> exceeding the contracted volume of 240,000m<sup>3</sup>, which was stipulated under the said contract. His evidence was supported by that of PW2 and PW3 both of whom confirmed completion of works done under the said contract.
27. Based on the evidence presented and the Exhibits produced especially the survey report, photographs of the site after completion of the works undertaken, final invoice sent and two demand letters received by the defendant, and which had elicited no response, the plaintiff averred that they had discharged the evidential burden of proof in line with Section 108 of the *Evidence Act* and were entitled to the orders sought. Reliance was placed in the case of *Mbuthia Macharia Vrs Annah Mutua & Another (2017) eklr & Photo Production Vrs Securicor Limited (1980) AC 827*.
28. Both parties had confirmed that there was a pending bill of Kshs.17,120,800/=, which had yet to be paid, and having satisfactorily established that they had completed the works assigned under the contract, it was prudent that this sum be paid plus interest at 14% P.A as provided for under Section 140 of the *Public Procurement and Asset Disposal Act* 2015. Reliance was placed in the case of *Aridsun Contractors & 3 others Vrs County Government of Kitui (Civil case No 1 of 2019)*.
29. The plaintiff thus urged the court to award them the sum claimed plus interest and also order release of the performance Bond. They also urged the court to award them costs of this suit.

#### **(ii) Defendant's Submissions**

30. The defendant on the other hand did contend that as at 21.06.2016 only 80.16% of the project works had been completed and the plaintiff had subsequently left site without waiting for issuance of the final completion certificate, by the project resident engineer (DW1). Subsequently they did send to the plaintiff a letter dated 02.08.2016 giving them notice of the incomplete works and sort compliance from the plaintiff, but they never acted as expected.
31. The plaintiff's contention that they had completed the desilting works and/or even over done the same, therefore had to be taken with a pinch of salt as PW1 ought to have undertaken the survey work immediately following their exit. It was also to be noted that the surveyors report produced was dated 04.12.2020, which was about four years after the fact and there was high probability of it being inaccurate and bias. Parties were bound by the contractual terms and the court could not be called to interfere with the same. Reliance was placed in the case of *South Nyanza Sugar co ltd Vrs Leonard O Arera (2020) eklr* where *National Bank of Kenya Ltd Vrs Pipe plastic Samkolit (K) Ltd (2002) 2 EA, 503, (2011) eklr*, & *Pius Kimaiyo Langat Vrs Coopertive Bank of Kenya (2017)* which were all quoted with approval.
32. The defendant further submitted that the plaintiff had failed to complete the agreed works under the contract and the county was right to withhold the final payments due in line with Section 56(2) & 64 of the *Public Procurement and Asset Disposal Act*, 2015 as read with Section 55 of the Contracts Act. Interest could also not accrue on sums not legally owed, particularly where there was no breach by the paying party. Reliance was placed on *Spenco Services Ltd Vrs Kenya Pipeline Co Ltd (2015) Eklr & Tarmal Wire Products Ltd Vrs Kneya Ports Authority (2015) eklr*
33. The plaintiff had also challenged issuance and delivery of the letter/notice dated 02.08.2016. Reliance was placed on Section 66 of the *Evidence Act*, which provided that documents served in the ordinary course of business maybe presumed to have been delivered unless rebutted with compelling evidence. The plaintiff had failed to provide such evidence and it was to be rightly presumed that the notice to complete the civil works was duly served. Reliance was placed on *Republic Vrs National Transport and Safety Authority & 10 others, Ex parte James Maina Mugo (2015) eklr*.



34. The plaintiff having breached the contract by failing to fully comply with the terms thereof, could not be heard to cry wolf and demand payment for works not done. Their failure amounted to repudiation of the contract and such a party could not seek to enforce the obligations of the “innocent party”. Reliance was placed on the case of Pius Kimaiyo Langat vrs Cooperative Bank of Kenya Ltd (2017) eklr & Solai Milling Ltd Vrs Shipco Transport (K) ltd ( 2019) eklr.
35. The defendant’s refusal to release the performance bond was also justified, under Section 57 of the Public procurement and Disposal Act 2015, which required the performance security be maintained until the works had been satisfactorily completed.
36. The defendant therefore prayed that the plaintiff’s claim be dismissed with costs.

### **C. Analysis and Determination**

37. From the pleadings filed herein, it is common ground that the defendant caused to be published an open tender for, “Proposed Civil works for Desilting of Maruba Dam” and after evaluation, the plaintiff was awarded the said tender, valued at Kshs.89,001,000/=. It was the plaintiff’s contention that they undertook the works as stipulated thereunder and upon completion raised the final invoice. The defendant on the other hand rebutted these allegation and averred that the plaintiff did not complete works stipulated under the said contract and they were therefore not entitled to make further payments as demanded.
38. The only issues which therefore arise for determination is whether the contractual works were undertaken by the plaintiff to completion as provided for under the said contract and if they are entitled to payment for balance demanded, plus interest accruing therefrom.

#### **i. Whether the contractual works were undertaken to Completion by the Plaintiff.**

39. Section 107(1) of the *Evidence Act*, Cap 80 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.”
40. Section 108 of the *Evidence Act*, Cap 80 further provides that;  

“ The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given by the other side.”
41. The court of appeal in *Mbuthia Macharia V Annah Mutua & Ano*, refer to *The Halsbury’s laws of England*, 4<sup>th</sup> Edition, Volume 17 at para 13 and 14 where it states that;  

“ The legal burden is the burden of proof which remains constant through a trial; it is the burden of establishing the facts and contentions which will support the parties case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied in respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is essential to his case. There may therefore be separate burdens in a case with separate issues.

(16) The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. These



constitutes evidential burden. Therefore, while both legal and evidential burden initially rests upon the appellant, the evidential burden may shift in the course of trial depending on the evidence adduced. As to weight of evidence given, by either side during the trial varies; so will the evidential burden shift to the party who would fail without further evidence.”

42. In the case of *Evans Nyakwana Vs Cleophas Rwana Ongaro* (2015) eKLR it was held that

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purpose of section 107(i) of the *Evidence Act*, Chapter 80 laws of Kenya. Furthermore the evidential burden..... is cast upon any party, the burden of proving any particular fact which he desired the court to believe in its existence. That is captured in section 109 and 112 of the law that proof of that fact shall lie on any particular person..... The appellant discharged that burden and as section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.”

43. In *Miller Vs Minister of Pensions* (1947) 2 ALL ER 372, Lord Denning did discuss the burden of proof and had this to say;

“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 is more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where the parties.....are equally (un)convincing, the party bearing the burden of proof will loose because the requisite standard will not have been obtained.”

44. PW1 a registered surveyor did produce his survey report dated 04.12.2020 supported by the topographical survey report which captured the area desilted by its sectional width and the Dam’s depth. It was his professional opinion that the total area desilted measured a total of 245,250m<sup>3</sup>, which was slightly more than the contracted area, of 240,000m<sup>3</sup>. PW2 the plaintiff managing director also confirmed that indeed they had met their end of the bargain and were therefore entitled to demand payment of the balance of the contract sum.

45. PW2 produced the final invoice sent dated 25.05.2016 and received by the defendant water, irrigation and sanitation department on 02.06.2016. Further he did produce forty (40) different photographs capturing the completed works (civil work’s, planted trees and fencing) and two demand letters dated 13.01.2017 and 19.12.2019 authored by his advocates Waweru Gatonye & Co Advocates received by the defendant on 20.01.2017 and 20.12.2019 respectively. PW3 was the plaintiff resident project Engineer confirmed PW2 evidence that all works were satisfactorily completed as stipulated under the contract signed.

46. DW1, who was the defendants project Engineer denied the plaintiffs contention and it was his evidence that the works completed were equivalent to 80.76% of the contract works, and the same were valued at Kshs.71,880.200/=. Vide their letter dated 02.08.2016, they had asked the plaintiff to complete the remaining works to enable them access the balance now demanded. The defendant did not return to site and therefore was not entitled to be paid sums claimed.

47. The evidence of PW1 remained unchallenged. He proved his credentials, and established the basis of his opinion using the topography survey data, which he also presented. His evidence was corroborated by



that of PW2 & pw3. The photographic evidence confirmed that fencing was done using concrete poles and vegetation was restored/ trees planted. Subsequently the plaintiff company formally demanded for payment, but the said demand letters, served upon the defendants did not elicit any response. On a balance of probability, I do find that the plaintiff adequately discharges the evidentiary burden placed on them.

48. The defendant doubted the surveyors report and stated that it was dated 04.12.2020 about four years after the project was completed. This is true, but the court notes that PW1 evidence as adopted in his witness statement, confirmed that he carried out his assessment in June 2016, which discounts the defendant's assertions. Secondly the best way the defendant would have challenged this report was by presenting their own complimentary survey report to show that the civil works were not completed.
49. The defendant also relied on their letter dated 02.08. 2016, where they outlined the remaining works. The defendant denied receiving this letter, but of concern is the fact that from 2016, when the project was completed until inception of this suit, the defendant never undertook any action to enforce the "purportedly remaining contractual obligations to be undertaken by the plaintiff". They received the plaintiffs advocate demand letters in 2017 and 2019 and failed to respond to the same.
50. Finally, the defendants never formally raised any issue as to the workmanship of the contracted works and also inexplicably slept on their right to invoke the defects liability or terminate clause on the basis of unfinished work. This inaction, speaks louder than words, and it has to be correctly assumed that this was due to the fact that this contract was satisfactorily completed.
51. I do therefore find and hold that the plaintiff has established on a balance of probability that they indeed completed their obligation under the said contract and were entitled to be paid the remaining sums due there under.

**ii. Whether the plaintiff is entitled to Interest on the unpaid contractual Sum and release of the performance Bond.**

52. The plaintiff claimed a sum of Kshs.7,392,629/= on account of Accrued interest, calculated at commercial rate of 14% P.A. and supported this contention based on the express provisions of section Section 140 (a) of the *Public Procurement and Asset Disposal Act*, 2015, which provides that "unless the contract provides otherwise, the procuring entity shall pay interest on the overdue amounts".
53. The general rule is that, a party cannot charge interest if it is not provided for in the contract or unless the right to charge interest was agreed to when the deal was made as held in the case of; King Road Paving and Land Scaping Inc Vs Plati (2017), ONSC 557.
54. However, common law seeks to remedy a party who has suffered loss due to delayed payment, where there is no contractual clause on interest. Indeed, the courts have come to accept without requiring special proof that, a party who has been deprived of use of his or her capital for a period of time has suffered loss, as held in the case of; *Thoroughbred Breeders Association v Price Waterhouse 2001 (4)SA 551 (SCA)* and that in the normal cause of events, such a party will be compensated for his loss by an award of mora interest. Also see *Omega Enterprises Kenya Limited vs Eldoret Sirikwa Hotel Limited & 2 Others [2001]eKLR*, *Nalinkumar M. Shah vs Mumias Sugar Company Ltd HHCC 40 of 2009*.
55. In the case of; *Crookes Brothers Limited Vs Regional Land Claims Commission & Others Case No. 590/2011*, the Supreme court of South Africa, held that;

“(14) Even in the absence of a contractual obligation to pay interest, where a debtor is in mora in regard to the payment of a monetary obligation under a contract,



his creditor is entitled to be compensated by an award of interest for the loss or damage that he has suffered as a result of not having received his money on due date”.

56. Similarly, it was held in the case of; Bellairs v Hodnett & another 1978 (1) SA 1109, that;
- “under modern conditions a debtor who is tardy in the due payment of a monetary obligation will almost invariably deprive his creditor of the productive use of the money and thereby cause him loss. It is for this loss that the award of mora interest seeks to compensate the creditor.
57. Taking into account the undisputed fact of inordinate delay in payment of the balance of the contract sum in favour of the Plaintiff, it is in the interest of justice and in accordance with custom and trade practice and/or principles of fair bargain, that they be awarded interest on the unpaid contractual sum from when it fell due until date of payment in full.
58. It is also not disputed that as stipulated under the contract, the plaintiff did executed a performance bond of Kshs.35,600,400/= (Exhibit 4), which was to remain in force during the contractual period, and would be returned to the plaintiff company not later than thirty (30) days following the date of completion of their obligations under the contract, including any warranty obligation, under the said contract.
59. Having found that the contract was satisfactorily completed, I do find that there is no basis for the defendant to continue holding onto the said performance bond and the same should thus be released.

#### **D. Disposition.**

60. It is clear beyond peradventure that the plaintiff is entitled to the sums claimed in the plaint and I do enter judgment in their favour in the sum of Ksh.22,737,629/= plus costs and Interest.
61. Interest on this sum is awarded at court rates of 14% P.A. from the date of filing the suit until date of payment of the said amount in full.
62. An order of Mandatory Injunction is also issued directing the defendant to release the Performance Bond, within the next 30 days failure of which the plaintiff is deem discharged of his obligations thereunder.
63. The Plaintiff is also awarded costs of this suit.
64. It is so ordered.

**JUDGMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 3<sup>RD</sup> DAY OF DECEMBER, 2024.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 3<sup>RD</sup> DAY OF DECEMBER 2024.**

In the presence of: -

Ms Gathoni for Appellant

Mr Mutuva for Respondent

Susan/Sam Court Assistant

