



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CIVIL CASE NO. 1693 OF 2001**

**DIVERSEYLEVER EAST AFRICA LIMITED.....PLAINTIFF**

**-VERSUS-**

**MOHANSON FOOD DISTRIBUTORS LIMITED....1<sup>ST</sup> DEFENDANT**

**PRITPAL SINGH KANDHARI.....2<sup>ND</sup> DEFENDANT**

**J U D G M E N T**

**PRELIMINARY**

1. This case was filed on 7<sup>th</sup> November 2001. The hearing of the Plaintiff's evidence commenced on 11<sup>th</sup> June 2014 and was closed on that day. The defence case was severally adjourned at the instance of the Defendant's or their Advocate. On 21<sup>st</sup> March 2016 the Defendant's and their Advocate failed to attend Court and the Court proceeded to mark the defence case as closed. The Defendants filed an application dated 30<sup>th</sup> May 2016 seeking to re-open the defence case. Parties consent to the granting of the order in that application.

2. The Defendant's again persisted in failing to attend Court on subsequent dates fixed for hearing of the defence case. On 18<sup>th</sup> October 2018 an application for an adjournment was made on the basis at the Defendant was unwell. The case was adjourned to 26<sup>th</sup> November 2018. That adjournment on 18<sup>th</sup> October 2018 was marked as the last adjournment for the defence.

3. On 26<sup>th</sup> November 2018 the Court was again informed the Defendant was unwell. The matter was placed aside to enable counsel provide evidence of sickness of the Defendant. On the matter being called up again at 10.50am and in the absence of the Defendant's and their Advocate the defence was marked by the Court as closed. The Defendant's filed an application dated 19<sup>th</sup> February 2019 seeking the re-opening of the defence case. By this Court's ruling dated 24<sup>th</sup> July 2019 the Defendants were unsuccessful. The Court ordered parties to file their final submissions.

4. The Plaintiff filed its final submission on 14<sup>th</sup> February 2019 but the Defendants failed to file their submissions.

**THE CASE**

5. The Plaintiff **DiverseyLever East Africa Limited** supplied to the 1<sup>st</sup> Defendant, **Mohanson Food Distributors Limited**, various products such as detergents. The 1<sup>st</sup> Defendant was the Plaintiff's distributor. They had a distribution agreement.

6. The Plaintiff's witness, Ngugi Kiuna stated in evidence that the 1<sup>st</sup> Defendant would place its order with the Plaintiff for those various products. The products would be supplied and the 1<sup>st</sup> Defendant would be invoiced at the end of each month. At the end of each month a statement of account was sent to the 1<sup>st</sup> Defendant. The parties retained a running account.

7. Although the 1<sup>st</sup> Defendant was expected to make payment every month the witness stated that he often had to pursue for such payments. As a consequence, the 1<sup>st</sup> Defendant always had an outstanding balance owing to the Plaintiff.

8. The 1<sup>st</sup> Defendant also issued cheques to the Plaintiff but some of those cheques were dishonoured by the bank. The 1<sup>st</sup> Defendant was charged finance charges, for late payments, which was a term on the invoices.

9. Parties regularly undertook reconciliation of the account. Employees of the Plaintiff and the 1<sup>st</sup> Defendant would sign the reconciliation.
10. The Plaintiff's witness referred to pages 26, 27 and 28 of the agreed bundle of documents which he stated was a list of outstanding invoice not settled by the 1<sup>st</sup> Defendant and those showed, which was admitted by the 1<sup>st</sup> Defendant, the debt owed to the Plaintiff by the 1<sup>st</sup> Defendant was Kshs. 27,078,418.20.
11. The witness also referred to page 33 and 47 which is the statement of account from the Plaintiff. That reflected the amount due as Kshs. 26,478,572.20. That is the figure the Plaintiff seeks Judgment for, against the 1<sup>st</sup> Defendant.
12. Following many meetings between the witness and the Defendant's, the Director of the 1<sup>st</sup> Defendant admitted indebtedness to the Plaintiff for Kshs. 16,284,295.55. Judgment was entered in favour of the Plaintiff, in this matter for that admitted amount.
13. The 2<sup>nd</sup> Defendant executed a guarantee for Kshs. 17,657,219. The 2<sup>nd</sup> Defendant by that guaranteed the 1<sup>st</sup> Defendant's debt. The Plaintiff therefore seeks Judgment against the 2<sup>nd</sup> Defendant for Kshs. 17,657,219 with interest at 2.5% per month from 10<sup>th</sup> May 2001.
14. Although the Defendants filed a counterclaim it was not proved since the Defendants did not adduce evidence. It therefore fails.
15. The Plaintiff proved on a balance of probability its claim against both Defendants. The Plaintiff relied on documents which prove the Defendant's indebtedmentss. The Plaintiff's claim therefore does succeed.
16. The Judgment of the Court is for the Plaintiff as follows;

- a. **Against the 1<sup>st</sup> Defendant Judgment for Kshs. 26,478,572.20 plus interest at 2.5% per month from 10<sup>th</sup> May 2001.**
- b. **Against the 2<sup>nd</sup> Defendant Judgment for Kshs. 17,657,219 plus interest at 2.5% per month from 10<sup>th</sup> May 2001.**
- c. **The Plaintiff is awarded costs of suit and of the counterclaim.**

Orders accordingly.

**DATED, SIGNED and DELIVERED at NAIROBI this 4<sup>TH</sup> day of OCTOBER, 2019.**

**MARY KASANGO**

**JUDGE**

***Judgment Read and Delivered in Open Court in the presence of:***

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

.....FOR THE 1<sup>ST</sup> DEFENDANT

.....FOR THE 2<sup>ND</sup> DEFENDANT