



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CORAM: D. S. MAJANJA

CIVIL CASE NO. 502 OF 2016

BETWEEN

BENSON KANG'ARA T/A PINKSTONE ENTERPRISES.....PLAINTIFF

AND

NAIROBI CITY COUNTY.....DEFENDANT

J U D G M E N T

1. The plaintiff's claim against the defendant is for goods sold and delivered by the plaintiff to the defendant at its request. According to the Amended Plaint dated 27th July 2018, the plaintiffs claim is for Kshs. 25,180,000.00 for supply and delivery of construction and assorted materials after Local Purchase Orders (LPO's) were issued to it as follows:

PARTICULARS OF LOCAL PURCHASE ORDERS

L. P. O N O.	ITEM SUPPLIED	TOTA L COST
00 09 76	250 Lamps	3,440,0 00
00 18 83	Cruserun	4,900,0 00
00 11 26	½ Ballast	6,500,0 00
00 13 30	- Hatari Tiles - 280 Tones Ballast - 280 tones	6,825,0 00

	sand	
	- 300 bags cement	
	- 200 bags of cement	
	- 100 bags of cement	

2. In its statement of defence dated 14th February 2017, the defendant denied the claim put the plaintiff to strict proof.

3. Only the plaintiff testified at the hearing. He explained that he was prequalified by the defendant to supply material and was requested to make supplies from time to time by through the issue of LPOs. After each LPO was issued, he made the supplies which were evidenced by a delivery note and after such supply, he issued an invoice to claim payment. The plaintiff claimed that despite demand for payment, the defendant has no made good his claim.

4. The defendant did not call any witness but raised issues of discrepancies in the dates of the invoices and references in the delivery notes. On these issues, I have closely looked at the LPOs, delivery notes and invoices and the documents correspond to each other in material particulars. The LPO's are issued by the defendant and signed by at least two officers while the delivery notes have acknowledgement of delivery of the goods. I am therefore satisfied that the errors pointed out by counsel for the defendant are minor and do not detract from the claim as a whole.

5. The defendant's defence is a bare denial. The defendant did not give evidence that goods were not delivered or any other grounds which would invalidate the terms of the contracts as evidenced by the documents produced in evidence.

6. I therefore enter judgment for the plaintiff against the defendant for Kshs. 25,180,000.00 together with interest thereon at 12% per annum from the date of filing suit until payment in full. The plaintiff shall have costs of the suit.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF NOVEMBER, 2019.

D. D. MAJANJA

JUDGE

Court Assistant; Mr M. Onyango

Ms Kiiro instructed by Kiiro and Partners Advocates for the plaintiff

Mr Nyakoe instructed by Momanyi and Associates Advocates for the defendant.