



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)**

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL CASE NO.42 OF 2017**

**INTERNATIONAL PARTNERSHIP SERVICES**

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

**VERSUS**

**THE ATTORNEY GENERAL ..... DEFENDANT**

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

**INTRODUCTION**

The Plaintiff filed this suit on 27<sup>th</sup> January 2017 against the Defendant seeking **Kenya Shillings Seventy Five Million Shillings (Kshs. 75,000,000.00)** being value for firefighting equipment supplied to National Youth Service under Ministry of Devolution and Planning. The Plaintiff contends that it executed contract No. S/69772 with the Ministry of Land, Housing and Urban Development, Supplies' Branch, for supply of firefighting equipment to user ministries, government departments and institutions as and when they were required.

Plaintiff further seeks accrued interest on the principal amount from the date of the default being the 15<sup>th</sup> August, 2015.

The Defendant filed statement of defence dated 13<sup>th</sup> March 2017. However, the Defendant's representatives failed to attend Court on 21<sup>st</sup> March 2018 when the matter was scheduled for hearing. The hearing date having been taken in Court in the presence of all parties the case proceeded for hearing.

**SUMMARY OF EVIDENCE**

The Plaintiff availed one witnesses Hezron Arunga (PW1) who is the Managing Director of the Plaintiff Company. He testified that tender document No. SB/36/2013-2014 for supply of firefighting equipment was advertised on or around 11<sup>th</sup> March 2014 at the supplies branch cash office. He obtained a complete set of tender and submitted within timelines set for the tender.

By a letter dated 16<sup>th</sup> March, 2015 signed by the Officer in Charge of Supplies Branch in the Ministry of Land, Housing and Urban Development (Supplies Branch), and Plaintiff was informed that their tender had been approved. He added that, acceptance was communicated within the required time 7 days in the notification.

On 30<sup>th</sup> April 2015, the Plaintiff executed a contract Agreement No. S/69772 with the Ministry for the supply of firefighting equipment.

Following execution of the said contract, the Plaintiff approached the Bank of Africa and was granted finances to secure contracted goods. He testified that the National Youth Service under the Ministry of Devolution and Planning having indicated that the items supplied were within their procurement plan, proceeded to make an order for 2000 AFFF concentrate (cold fire) vide local purchase order No. 2607737 on the 25<sup>th</sup> June, 2015 with each unit cost of **Kenya Shillings Thirty Seven Thousand, Five Hundred (Kshs. 37,500)** totaling to **Kenya Shillings Seventy Five Million Shillings (Kshs. 75,000,000.00)**

Pw1 testified that the goods were delivered vide Delivery Note No. 451 dated 30<sup>th</sup> June, 2015 and the items were received by the National Youth Service Central stores officials. After subsequent confirmation of receipt of the products, the National Youth Service approved payment of **Kenya Shillings Seventy Five Million Shillings (Kshs. 75,000,000.00)** and forwarded it to the IFMIS system for processing of payment. He said that despite several verbal exchanges, the payment was never effected.

Due to pressure from the bank arising from default in loan repayment, the Plaintiff sought assistance from the Principal Secretary at the

Ministry of Devolution and Planning who wrote a letter dated 6<sup>th</sup> October 2015 to the bank confirming that the payment was being processed and a subsequent letter to the Ministry inquiring when the payment will be executed was not replied to.

**DEFENDANT’S STATEMENT OF DEFENCE**

Defendant failed to participate in the hearing but I find it prudent to peruse and consider statement of defence filed on 17<sup>th</sup> March 2017 and note as follows:-

It confirms that the Plaintiff entered into a contract No. S/69772 for supply of firefighting equipment following tender No SB/362013-2014 dated 30<sup>th</sup> April 2015 which was advertised in the Daily Nation on 11<sup>th</sup> March 2014.

The Defendant however contends that the tender was skewed in the Plaintiff’s favour thus rendering it irregular and unenforceable.

The Defendant further denies being a neither procuring entity nor party to the said contract. Further that the entire contract is tainted with irregularities and malpractices rendering it unenforceable and the claim under the said contract cannot be maintained.

**ANALYSIS**

Having perused pleadings herein and considered evidence adduced, I consider issues for determination as follows:-

1. Whether the contract between Plaintiff and Ministry of Lands , Housing and Urban Development (Supplies Branch) is valid,
2. Whether Plaintiff is entitled to the sum claimed,
3. Who should pay costs of this suit?

There is no dispute that the Ministry of Lands, Housing and Urban Development (Supplies Branch) advertised tender to supply firefighter equipment. This has been confirmed in statement of defence. Plaintiff filed documents to confirm advertisement of the tender in the daily nation. The letter of acceptance dated 16<sup>th</sup> March 2015 confirms that the Ministry of Land accepted the Plaintiff’s offer. This is further buttressed by correspondences between the Plaintiff and Defendant dated 16th July 2014 and 15<sup>th</sup> September 2014 and the contract agreement executed on 30th April 2015 produced by the Plaintiff. The Plaintiff further proved delivery of the goods by producing Delivery Note NO.451.Local Purchase Order No. 2607737.

Beside the Defendant stating in the Statement of Defence that the contract was skewed to favour the Plaintiff, no evidence has been adduced to prove the allegations. The Statement of Defence remains a mere denial.

From the foregoing, I find that the Plaintiff has proved that the contract herein was regularly obtained, and further proved that goods were supplied as ordered and that no payment for the goods has been made by the Ministry of Land, Housing and Urban Planning.

The Plaintiff is therefore entitled to payment of 75 million.

**FINAL ORDERS**

1. Judgment is hereby entered judgment for the Plaintiff against the Defendants for Kshs. 75,000,000 (seventy five million).
2. Interests on 1 above at Court’s rate from the date of filing suit.
3. Costs of this suit to be paid by the Defendant to the Plaintiff.

**Judgment dated, signed, and delivered at Nairobi this 11th day of May, 2018.**

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**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF:**

..... :COURT ASSISTANT

..... :COUNSEL FOR THE PLAINTIFF

..... :COUNSEL FOR THE DEFENDANT