



IN THE HIGH COURT OF KENYA AT KISII

CORAM: D.S MAJANJA J.

CIVIL SUIT NO. 15 OF 2017

BETWEEN

MULTILINE MOTORS (KENYA) LIMITED..... PLAINTIFF

AND

KISII COUNTY GOVERNMENT.....DEFENDANT

JUDGMENT

1. The plaintiff in this case is Multiline Motors (Kenya) Limited. Its case is that by a letter dated 17th February 2014, the defendant notified it that following a successful tender, it had been awarded contracts to supply to the defendant the following items for a total sum of **Kshs, 58,320,000/=**:

(1) 2 Refuse Collection Compactor

Truck (2) Kshs. 34,600,000/=

(2) 2 Exhauster Truck Kshs. 18,500,000/=

(3) 30 Refuse Skips (Bins) Kshs. 5,220,000=

2. The plaintiff averred that following the award, the defendant raised Local Purchase Orders (LPO's): No. 2061231 for Kshs. 34,600,000/=, No. 2061232 for Kshs. 18, 500,000/= and No. 2061233 for Kshs. 5,220,000/=and that it delivered the items which the defendant duly accepted. The plaintiff avers that it was paid Kshs. 46,897,931.05 leaving a balance of Kshs. 11,462,068.95 which it now claims together with interest.

3. In its amended defence dated 2nd July 2018, the defendant denied the claim. It contended that the plaintiff did not meet the contract specifications and that the parties agreed that the agreements were discharged based on payments made and after discussing the matter orally. It also avers that any breach ought to be resolved in accordance with the prevailing procurement laws.

4. This matter was set down for hearing today, 10th December 2018, by consent of the parties Advocates. Neither the defendant's employees or agents or its advocates appeared in court despite the matter being called out at 9.00am and 11.00am. It therefore proceeded ex-parte.

5. The plaintiff's accountant, Raphael Mwangi (PW 1), gave evidence in which he reiterated the claim as I have set out above. He produced the letter of award of tender, the LPO's, delivery notes and statement of account showing that part payment had been made. He also testified that the plaintiff's advocates issued a demand letter for the outstanding amount. He denied the allegations in amended defence.

6. I am satisfied that the plaintiff proved its case on the balance of probabilities. The specific items were delivered and part payment made. The defendant did not raise any issue about non-compliance with the contract terms by responding to the demand letter sent by the plaintiff's advocates. The issues raised in the defence were not supported by any evidence and it is therefore dismissed.

7. Although the plaintiff has prayed for substantial interest, I do not see any contractual basis to depart from the normal principles governing award of interest. In this case I shall award interest from the date of default which according to the paragraph 14 of the plaint is 21st February 2017.

8. As this is a straightforward claim, I also assess and award costs based on the **Schedule VI** of the **Advocates Remuneration Order, 2014** which I assess at Kshs. 360,000/-.

9. I therefore enter judgment as follows:

(1) Judgment be and is hereby entered for the plaintiff against the defendant for the sum of **Kshs. 11,462,068.95/=** only.

(2) The amount in (a) shall accrue interest from **21st February 2017** at court rates until payment in full.

(3) The plaintiff shall have costs of this suit assessed at **Kshs. 360,000/=** exclusive of any court fees.

DATED and DELIVERED at KISII this 10th day of December 2018.

D.S MAJANJA

JUDGE

Mr. Mbaka Advocates for the Plaintiff.