



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MOMBASA
Civil Appeal 117 of 1995**

**MABATI ROLLING MILLS LIMITED
.....APPELLANT**

AND

**COMMISSIONER OF CUSTOMS & EXCISE
RESPONDENT**

**(Appeal from a Ruling and Order of the High Court of Kenya at Mombasa (Justice
Wambilyangah) dated 7th day of February, 1994**

IN

H. C. C. C. NO. 169 OF 1994)

JUDGMENT OF THE COURT

This appeal must succeed. Payment made by the respondent to a firm called Pwani Forwarders was not made to Pwani Forwarders Limited, the appointed agent of the appellant. As the debt was otherwise admitted there is clearly no defence to the appellant's claim. The fact that the proprietor of the firm to which payment was made was at some stage an employee of Pwani Forwarders Ltd is neither here nor there.

For these reasons we allow the appeal, set aside the ruling and order of the High Court dated 7th February, 1994, and in Lieu thereof enter judgment for the appellant in the sum of Shs. 1,065,891/= together with interest at court rates from the date of filing the plaint until payment in full. The appellant will have the costs of the suit and the appeal.

Date and delivered at Mombasa this 18th day of January, 1996.

R. O. KWACH

.....

JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

A. B. SHAH

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR