



D.Light Limited v Wanjala t/a Viusasa Enterprise (Commercial Case E003 of 2024) [2024] SCC 4 (KLR) (16 May 2024) (Judgment)

Neutral citation: [2024] SCC 4 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT LAMU
COMMERCIAL CASE E003 OF 2024
FM MULAMA, RM
MAY 16, 2024**

BETWEEN

D.LIGHT LIMITED CLAIMANT

AND

NICHOLAS SIMIYU WANJALA T/A VIUSASA ENTERPRISE ... RESPONDENT

JUDGMENT

Introduction

1. The claimant seeks compensation for Kshs.163,780/= being the value of the lost and or damaged stock that was allocated to him by the claimant for sale.
2. It is the claimant's case that in the year 2022 the claimant entered into a contractual relationship with the respondent to be its distributor for its products and the respondent would in return receive commissions for all the sales made.
3. Under the said contract it was the obligation of the respondent to ensure daily stock reconciliation is done and reports made to the Territorial Sales Manager(TSM) and Regional Stock Controller(RSC).
4. That sometimes between 2022 and 2023 the RSC carried out a physical verification of stock products at the respondent's shop as against the Atlas software's stock balance in which it was discovered that stock worth Kshs.163,780 was missing and/or uncounted for hence this suit.
5. The respondent on the other hand denied the claim and, in his response, stated that he did not have any contractual agreement with the claimant at the time and point when the products got lost.
6. He further stated that the alleged lost products were not delivered to him either physically or virtually through atlas software.

Issue for Determination.



- a. Whether there is a contract between the claimant and the respondent.
- b. Whether the alleged lost stock was ever delivered the respondent
- c. Whether the claimant is entitled to the amount claimed

Analysis and Determination.

a. Whether there is a contract between the claimant and the respondent.

7. It is the claimant's case that it had a contract with the respondent dated 22/2/2023. The claimant produced the said contract as an exhibit. The respondent in his testimony did not dispute or deny the said contract.
8. The Respondent further admitted dealing with the Claimant and indeed received some products and even some commission for the sales he made until such a time the claimant reduced the stock allocated to him and he started making loss and he eventually closed shop.
9. it is therefore the finding of the court that there was a contract between the claimant and the respondent.

b. Whether the alleged lost stock was ever delivered the respondent

10. It is the claimant's claim that the stock that is missing was delivered to Viusasa enterprises and the receipt thereof acknowledged both physically and electronically through the Atlas software operated by the claimant.
11. On the other hand, the respondent avers and strongly so that the viusasa enterprises was not originally registered in his name. according to him it was first owned by someone in Mpeketoni before being owned by someone else at Lamu island before it finally got to him.
12. It was his case that he started dealing with the claimant way back in 2019 bur working for some distributor out of Lamu and finally wanted to have his own after the covid pandemic and at that time it happened the claimant was not registering new distributors and that is how one Daniel gave him an already registered code under the name Viusasa but he did not have all the rights to the said account as he could not even access its registered email.
13. All that was done was he was given the login credentials and allowed to change the number to his so that he could receive the commission.
14. He therefore found some stock in the Atlas software platform but the stock was not physically in the shop and CW 1 was clear that once goods are dispatched via courier to a distributor, the distributor is expected to confirm and acknowledge receipt both physically and through the Atlas software.
15. I have carefully perused the documents by the claimant and I have not seen any evidence of the physical delivery of the said stock to the respondent so that it tallies with what was keyed in the atlas platform and similarly no report of the physical stock take conducted by the CW1 and confirmed by the Respondent when the exercise was completed.
16. There is no evidence of when the alleged missing stock was entered into the atlas software and received physically by the respondent.
17. Furthermore and to give credit to the defence by the respondent, it is clear that he was not aware of any communication vide email as the address to which the communication was sent belongs to one



Elseba Simiyu(elsebahsimiyu33@gmail.com) and there is no evidence place before me to show that the email belongs to the respondent.

18. All the product models/stock listed in the statement of claim have no trail as to how they moved from the claimant to the respondent and the fact that the respondent denied receiving the said stock, the claimant was obligated to prove to this court that indeed the said stock was delivered to the respondent to which he acknowledged receipt thereof.
19. Furthermore, it was incumbent upon the claimant to prove by way of evidence and not mere averment that the respondent was the registered owner of viusasa at the exclusion of any other person so that the burk stops with him on anything relating to viusasa and since the respondent indicated that Viusasa was owned by several person, the claimant who is the custodian of all registration application details ought to have provided the same to court.
20. The respondent has stated that Daniel a representative of the claimant and whom the claimant has not denied that he's not its employee gave him the account viusasa and it is clear now that there was no proper handover in terms of the stock in the atlas software and the physical stock before the account was handed over.
21. This was the responsibility of Daniel before handing over the account to the respondent so that should any liability attach after such a handover would now be squarely at the foot of the respondent.
22. The respondent has denied the claim on account that the alleged stock that is unaccounted for was not delivered to him but was in the viusasa atlas software but there was no physical stock, in essence the Atlas software indicated that he had stock when in actual sense there was no physical stock.
23. It is therefore my finding that in the absence of any records to show that the alleged missing stock was actually uploaded in the Atlas software while it was in the custody and control of the respondent, sent via courier to the respondent and physically received by the respondent, it cannot be said that the said stock was ever delivered to the respondent.

c. Whether the claimant is entitled to the amount claimed.

24. Having found that the unaccounted stock was not delivered to the respondent, the claimant cannot blame the loss to the respondent.
25. Liability could have attached to the respondent had the claimant proved that it indeed delivered the goods to the respondent and the claimant has failed to account for them.
26. The respondent from the onset denied any knowledge of the said stock and he even stated how he has been engaging CW 1 on the whereabouts of the unaccounted stock.
27. Having found that the respondent is not to blame for the loss of the unaccounted stock and that liability cannot attach without any prove, the claimant is not entitled to the amount claimed as against the respondent.

Conclusion and Disposition.

28. The upshot of the foregoing I make the following final orders;
 - a. The claim for Kshs.163,780/= is not proved for reasons set out hereinabove and the claim is thus dismissed.
 - b. Respondent is granted costs of the suit limited to disbursements only.



c. Let the file be closed forthwith.

29. Orders accordingly.

FLAVIAN.M. MULAMA

ADJUDICATOR SCC LAMU

In the presence(virtually) of:

Court Assistant:- Fathiya Loo.

Ms Muchemi – Advocate for the Claimant.

Mr. Nicholas Simiyu Wanjala.

**DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS 16TH DAY OF
MAY 2024.**

HON. FLAVIAN.M. MULAMA

ADJUDICATOR SCC LAMU

In the presence of:

Court Assistant:- Vivian Wambui.

Ms Muchemi – Advocate for the Claimant.

Mr. Nicholas Simiyu Wanjala.

