



**Ujenzi Spreadmix Paints Co Ltd v Chasim Construction Co Ltd & another
(Commercial Case 122 of 2021) [2021] SCC 4 (KLR) (21 June 2021) (Judgment)**

Ujenzi Spreadmix Paints Co. Ltd v Chasim Construction Co. Ltd & another [2021] eKLR

Neutral citation: [2021] SCC 4 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI SMALL CLAIMS COURT
COMMERCIAL CASE 122 OF 2021
SG GITONGA, RM
JUNE 21, 2021**

BETWEEN

UJENZI SPREADMIX PAINTS CO LTD CLAIMANT

AND

CHASIM CONSTRUCTION CO LTD 1ST RESPONDENT

SYMON GATUIKU MUKUHA 2ND RESPONDENT

JUDGMENT

1. Vide a statement of claim dated 17th May 2021, the claimant herein sued the respondent seeking recovery of a sum of Kshs.185,375 that was incurred after they supplied the respondent with various types of paints.
2. The respondent filed a response to the claim in which he denied owing some of the amount claimed and admitted owing a sum of Kshs. 124,935. They disputed the remaining amount and argued that the disputed amount comprises of V.A.T charges on the sold goods but the claimant had not produced any receipts i.e. an ETR generated receipt or a taxi compliance certificate to enable the respondents to pay it directly to KRA.
3. When the matter came up for hearing, counsel for the respondent told the court that the respondent admits a sum of Kshs. 124, 935 and disputes the amount of Kshs. 60,422 which was on account of V.A.T and no documents has been supplied as proof.
4. Munyoki counsel for the claimant in response thereto argued that the disputed amount of Kshs. 60,422 is purely V.A.T charges and it is the business of the claimant to pay tax. He submitted that V.A.T will be paid to the tax man once the respondent pays for the goods supplied to them which they have admitted. It was his further submission that tax is to be paid as you earn and not before.



5. That the claimant will pay V.A.T once the respondent pay for the goods.
6. That the claimant is a producer of paints; and once he supplies paint, he raises invoices inclusive of V.A.T and upon payment V.A.T is paid to KRA.
7. The court proceeded to enter judgment on the admitted amount of Kshs. 124,935 for the claimant as against the respondent. The only issue for determination before me is whether the remaining amount which was on account of V.A.T Kshs. 60,422 should be paid by the respondent.
8. Payment of tax is mandatory statutory duty. Section 5 & 8 of *V.A.T Act* 2018 prescribes payment of 16% on taxable supply made by a registered person in Kenya at the place of business. The statement of claim indicates that the claimant is involved in the business of manufacture of paints. His claim was he supplied different kinds of paints to the respondent.
9. According to the 1st schedule, section A and paragraph 27 to the Value Added Tax (V.A.T)2013, the following goods are V.A.T exempt.

“Plants and machinery of chapter 84 and 85.”

10. In light of the foregoing provisions of the V.A.T, it is clear that the goods supplied by the claimant are not exempt from V.A.T.
11. The V.A.T is normally included in the purchase price and tax withheld by the plaintiff to remit to KRA.
12. No evidence has been tabled by the Respondent that he remitted to KRA the disputed amount which is V.A.T which would then have been to the credit of the claimant and the claimant would then not have to pay for V.A.T.
13. V.A.T is normally included in goods purchased or supplied. In this case the claimant supplied paints. V.A.T ought to be included in the goods supplied. The claimant acts as a collection agent to KRA. Once the respondent pays for goods inclusive of V.A.T, the claimant then remits the V.A.T payment to KRA.
14. To this end, I find that the claimant has proved its entitled to be paid the remaining amount of Kshs. 60,422. Consequently, judgment is entered for the claimant as against the respondents jointly and severally in the sum of Kshs. 185,375.
15. Disbursements upon proof of receipts is hereby awarded to the claimant.

Orders accordingly.

S. G. GITONGA (MRS)

RESIDENT MAGISTRATE/ADJUDICATOR SMALL CLAIMS COURT

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JUNE 2021.

In the presence of;

Mildred – Court Assistant

Munyoki for Claimant

In the absence of:

Respondent

