

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**CIVIL CASE NO E002 OF 2023**

**CITY CLASSIC ENTERPRISES LIMITED.....1<sup>ST</sup>**  
**PLAINTIFF**

**GA'ALS AGENCIES LIMITED.....2<sup>ND</sup>**  
**PLAINTIFF**

**KRUGA ENTREPRISES AND CONTRACTORS.....3<sup>RD</sup>**  
**PLAINTIFF**

**LIBIQRAR CONSTRUCTION LIMITED.....4<sup>TH</sup>**  
**PLAINTIFF**

**VS**

**THE COUNTY GOVERNMENT OF WAJIR.....1<sup>ST</sup>**  
**DEFENDANT**

**THE GOCERNOR, COUNTY GOVERNMENT OF WAJIR.....2<sup>ND</sup>**  
**DEFENDANT**

**THE CHIEF OFFICER, FINANCE COUNTY**  
**GOVERNMENT OF WAJIR.....3<sup>RD</sup>**  
**DEFENDANT**

**JUDGMENT**

1. The plaintiffs via a plaint dated 28.10.2023 moved this honourable court seeking orders that judgment be entered for the plaintiffs against the defendants for:

**a) Kenya shillings Twenty Sic Million and Twenty-Eight Thousand Five Hundred and Eighty-One (Kes. 26,028,581/-).**

**i. Kenya Shillings Fourteen Million Two Hundred and Sixty-Eight Thousand Five Hundred and One. (Kes. 14,268, 501 /-) to the 1<sup>st</sup> plaintiff;**

- ii. Kenya Shillings Three Million Nine Hundred and Ninety - Nine thousand; Six Hundred and Eighty Shillings (Kes. 3,999,680/-) to the 2<sup>nd</sup> plaintiff;**
  - iii. Kenya Shillings Three Million Eight Hundred and Sixty-Two Thousand, Eight Hundred (Kes. 3, 862.800/-) to the 3<sup>rd</sup> plaintiff;**
  - iv. Kenya Shillings Three Million Eight Hundred and Ninety-Seven Thousand, Six Hundred (Kes. 3,897,600/-) to the 4<sup>th</sup> plaintiff.**
- b) General damages for breach of contract.**
- c) Interest on (a) and (b) above at the prevailing commercial rates of interest until payment in full from the date of the filing the suit.**
- d) Costs of this suit.**
- e) Any such other or further relief as this Honourable Court may deem appropriate to so grant.**

2. The plaintiffs' claim against the defendants is to the effect that on diverse dates and upon request by the defendants, they supplied various services to the defendants as particularized here below;
- a) That pursuant to a request for quotation, the chief officer, medical services, a department of the first 1<sup>st</sup> defendant, successfully notified and awarded the 1<sup>st</sup> plaintiff quotation Number WCG/QT/H/732/2018-2019 for proposed construction of No.3 VIP toilets at Qarsa primary school Khorof Harar Location Wajir East Sub-county, Wajir County at a cost of kshs 2,783,478/=. That the 1<sup>st</sup> plaintiff accepted the award and executed the a foresaid works to the satisfaction of the defendants and a certificate of practical completion to that effect was issued.

- b) That pursuant to a request for quotation, department of water services through the chief officer, a department of the 1<sup>st</sup> defendant on 20-12-2019 successfully notified and awarded the 1<sup>st</sup> plaintiff tender number WCG/QT/W/104/2019-2020 for proposed construction of reticulation system at Kutulo special forces camp at Wargadud ward at a cost of Kenya Kshs3,999,985. That the 1<sup>st</sup> plaintiff accepted the award and executed the a foresaid works to the satisfaction of the defendants and a certificate of practical completion to that effect was issued.
- c) That pursuant to a request for quotation, department of health through the chief officer, public health and sanitation, a department of the 1<sup>st</sup> defendant on 19-02-2020 successfully notified and awarded the 1<sup>st</sup> plaintiff tender number WCG/QT/W/1442/HEALTH/2019-2020 for the 2 no.2 door VIP latrine and water reticulation system at Bojigaras dispensary at a cost of kshs3, 895,338/= . That the 1<sup>st</sup> plaintiff accepted the award and executed the a foresaid works to the satisfaction of the defendants and a certificate of practical completion to that effect was issued.
- d) That pursuant to a request for quotation, department of water services through the chief officer, a department of the 1<sup>st</sup> defendant on 17-01-2020 successfully notified and awarded the 1<sup>st</sup> plaintiff tender number WCG/QT/W/254/2019-2020 for proposed construction of reticulation system at Kutulo primary and surrounding Bulla from Kutulo main borehole at a cost of Kenya Kshs3,589,700. That the 1<sup>st</sup> plaintiff accepted the award and executed the a

foresaid works to the satisfaction of the defendants and a certificate of practical completion to that effect was issued.

- e) That pursuant to a request for quotation, the department of roads and transport through the chief officer, a department of the 1<sup>st</sup> defendant on 04-03-2019 successfully notified and awarded the 2<sup>nd</sup> plaintiff tender number WCG/RDS/QT/1145/2018-2019 for heavy bush clearing at Kutulo-Biyaad Road at a cost of Kshs 3,999,680. That the 2<sup>nd</sup> plaintiff accepted the award and executed the a foresaid works to the satisfaction of the defendants and a certificate of practical completion to that effect was issued.
- f) That pursuant to a request for quotation, the department of roads and transport through the chief officer, a department of the 1<sup>st</sup> defendant on 04-03-2019 successfully notified and awarded the 3<sup>rd</sup> plaintiff tender number WCG/RDS/QT/1189/2018-2019 for gravelling at Kutulo town Kutulo power station road at a cost of Kshs 3,862,800. That the 3<sup>rd</sup> plaintiff accepted the award and executed the a foresaid works to the satisfaction of the defendants and a certificate of practical completion to that effect was issued.
- g) That pursuant to a request for quotation, the department of roads and transport through the chief officer, a department of the 1<sup>st</sup> defendant on 27-12-2019 successfully notified and awarded the 4<sup>th</sup> plaintiff tender number WCG/RDS/QT/132/2019-2020 for grading at Kajaja 2-Erib at a cost of Kshs 3,862,800. That the 4<sup>th</sup> plaintiff accepted the award and executed the a foresaid works to the satisfaction of the defendants and a certificate of practical completion to that effect was issued.

3. It was averred that despite the defendants issuing local service orders confirming that funds were available and that the aforesaid works and or services were done, rendered professionally and completed to their satisfaction, they have failed to honour their part of the bargain by refusing to pay kshs 26,028,581 being the amount due and owing to the plaintiffs hence breach of contract.
4. That as a consequence of the non-payment, the plaintiffs have suffered loss and damage particularized as hereunder;
  - a) Loss of the full and total contractual amount of the Kshs 26,028,581/=.
  - b) Skyrocketing interest on the borrowed amounts by financial institutions.
  - c) Being deprived of the use of the contractual proceeds after duly performing the works as a greed in the subject contract.
  - d) Loss of time in pursuing payment of the contractual sum.
  - e) Anxiety, stress and loss of sleep to the directors of the plaintiffs.
5. The defendants filed a joint statement of defence dated 08.12.2023 denying the claim and allegations by the plaintiffs. It is their case that the alleged projects could not be physically verified as no authentic documents were produced. It was their contention that they did not owe the plaintiffs the amount demanded as no proof was put forward to support the same.
6. They further denied ever entering into any contract or procurement arrangement with the plaintiffs. That the claim is intended at extorting the defendants of money for no work done. They further

averred that they were not served with any demand notice. They urged the court to dismiss the suit with costs.

7. During the hearing, PW1, Abbas Sarat Yusuf, a businessman, director and shareholder of the 2<sup>nd</sup> plaintiff stated that he recorded his witness statement on 28.10.2023. He adopted his statement as evidence in chief and further produced the list of documents listed as No. 1-10 and produced as Pex 1-10. Basically, it can be discerned from his statement that the second plaintiff to which he is a director quoted and received an award from the department of roads and transport Wajir county vide tender number number WCG/RDS/QT/1145/2018-2019 for heavy bush clearing at kutulo-biyaad road at a cost of kshs 3,999,680.
8. That he was assured that funds were available hence performed his part of the contract. He stated that he was issued with the practical completion certificate showing that he did deliver services as per the contract. In his testimony, he produced 1<sup>st</sup> plaintiff's exhibit numbers 1-10 being; a copy of the 2<sup>nd</sup> plaintiff's certificate of incorporation( 2<sup>nd</sup> plaintiff pex1), CR 12 dated 4-10-2023( 2<sup>nd</sup> plaintiff pex 2), business permit( 2<sup>nd</sup> plaintiff ex.3), copy of the notification award for quotation No. WCG/RDS/QT/1145/2018-2019 dated 4-3-2019( 2<sup>nd</sup> plaintiff's ex.4), copy of the 2<sup>nd</sup> plaintiff's acceptance of award for quotation No. WCG/RDS/QT/1145/2018-2019 quotation No. WCG/RDS/QT/1145/2018-2019 dated 6-3-2019( 2<sup>nd</sup> plaintiff's ex.5), copy of form of contract between the 2<sup>nd</sup> plaintiff and the defendants for quotation No. WCG/RDS/QT/1145/2018-2019 ( 2<sup>nd</sup> plaintiff's ex.6), a copy of a local service order for quotation no. WCG/QT/H/1145/2018-2019 issued by the defendants to the 2<sup>nd</sup> plaintiffs dated 24-3-2019

( Pex.7), a copy of a certificate of practical completion dated 18-7-2019 for quotation no. WCG/QT/H/1145/2018-2019 dated 4-6-2019( 2<sup>nd</sup> plaintiff's ex8), copy of invoice raised by the 2<sup>nd</sup> plaintiff for works done dated 8-6-2019 ( 2<sup>nd</sup> plaintiff's ex. 9) and a copy of payment voucher prepared for the 2<sup>nd</sup> plaintiff by the defendant's( 2<sup>nd</sup> plaintiff's ex 10).

9. On cross examination, he stated that he is the only director of the said company and that the tender in question was awarded on 04.03.2019 as he was to clear a bush within Tarbaj Constituency in Wajir County. That he raised a quotation after which he was issued with the necessary documents upon which he presented the same to the relevant department together with a certificate of completion. He also stated that he was aware of the audit report from the Auditor General of 2020 and that the same did not state that he was ineligible to be paid. That he was aware of the special audit report that had a list of companies that were not eligible for payment. On re-exam, he stated that he was aware that the Sub-County Engineer certified his work.
10. Pw2 Dakane Dimbili being the director of the 1<sup>st</sup> plaintiff adopted his witness statement dated 28.10.2023 literally reiterating the content contained in the plaint. In respect to quotation No.WCG/QT/H/732/2018-2019, he produced the following documents; certificate of incorporation ( pex 1), CR 12 dated 4-10-2023(pex 2), business permits dated 1-1-2019 and 1-2-2020(pex.3),copy of tender award for quotation No.WCG/QT/H/732/2018-2019 dated 5-6-2019 to the 1<sup>st</sup> plaintiff (pex 4), copy of the 1<sup>st</sup> plaintiff's letter of acceptance for quotation no. WCG/QT/H/732/2018-2019 dated 5-6-2019( pex 5), a copy of

the 1<sup>st</sup> plaintiff's and the defendants' form of contract for quotation no. WCG/QT/H/732/2018-2019 dated 21-6-2019 (Pex 6), a copy of a local service order dated 21-06-2019 for quotation no. WCG/QT/H/732/2018-2019( Pex.7), a copy of a certificate of practical completion dated 18-7-2019 for quotation no. WCG/QT/H/732/2018-2019(pex8), a copy of the 1<sup>st</sup> plaintiff's inspection and acceptance certificate for quotation no. WCG/QT/H/732/2018-2019( pex.9) and a copy of the 1<sup>st</sup> plaintiff's health occupation certification issued by the 1<sup>st</sup> defendant ( pex 10), copy of 1<sup>st</sup> invoice dated 18-7-2019( 1<sup>st</sup> plaintiff's ex 11),copy of payment voucher(1<sup>st</sup> plaintiff's ex12).

11. For tender a ward quotation No.WCG/QT/442/HEALTH/ 2019-2020, he produced a copy of a tender a ward dated 19-02-20 (1<sup>st</sup> plaintiff ex13), copy 1<sup>st</sup> plaintiff's letter of acceptance for quotation dated 20-2-2020( 1<sup>st</sup> plaintiff's exs14); copy of form of contract dated 26-2-20( 1<sup>st</sup> plaintiff's ex15), copy of local purchase order for quotation dated 26-2-2020( 1<sup>st</sup> plaintiff's ex16), copy of certificate of practical completion dated 17-9-2020( 1<sup>st</sup> plaintiff's ex 17), copy of the 1<sup>st</sup> plaintiff's invoice for quotation dated 17-9-2020(1<sup>st</sup> plaintiff's ex18), copy of the defendant's payment voucher(1<sup>st</sup> plaintiff's ex19).

12. Regarding tender quotation No.WCG/W/104/2019-2020 dated 20<sup>th</sup> December 2019, he produced the following documents; copy of notification of successful quotation dated20-9-2019( 1<sup>st</sup> plaintiff's ex 20), copy of acceptance letter dated 20-9-2019( 1<sup>st</sup> plaintiff's ex 21), copy of local service order dated 23-12-2019(1<sup>st</sup> plaintiff's ex22), copy of practical completion certificate( pex 23), copy of 1<sup>st</sup> plaintiff's invoice to the defendants dated 25-5-2020(pex24), copy of defendant's payment voucher ( pex 25).

13. Concerning quotation of tender No. WCG/GT/W/254/2019-2020, he produced the following documents; copy of notification of tender dated 17-1-2020(ex 26), copy of 1<sup>st</sup> plaintiff's acceptance letter dated 21-1-2020( pex 27), copy of local service order dated 21-1-2020( p ex28), copy of project site handover to 1<sup>st</sup> plaintiff dated 24-1-2020(pex 29), copy of completion certificate dated 1-2-2020(pex30),copy of invoice by the 1<sup>st</sup> plaintiff sent to the defendants dated 18-2-2020(pex31), copy of payment voucher (pex 32).
  
14. In addition, the 1<sup>st</sup> plaintiff filed supplementary list of documents thus producing; chief's letter kutulo location dated 7-3-2-24 addressed to whom it may concern confirming that construction and reticulation system at kutulo special forces camp wargadud ward was carried out by city classic and got completed in June 2020(pex34), photo of the same project indicating it was complete(pex35), copy of letter by chief of Bojigaras loc dated 13-12-2024 confirming that construction of 2 no.2 door VIP latrine and water reticulation at bojigaras dispensary was done by city classic and completed in sept 2020( pex36), photos of the said project duly completed(pex37), letter from chief kutulo, confirming completion of construction and reticulation of kutulo primary and surrounding bulla from kutulo borehole( pex 39),and certificate of electronic evidence( pex 40).
  
15. On cross examination, he stated that there were three directors of the company and that the company did three projects within Tarbaj constituency. That two projects were in Kutulo location in Tarbaj Constituency and that they performed the work that was expected

of them and a completion certificate issued. On re-exam, he stated that he was awarded the contract procedurally as the company was expected to construct toilets. He further stated that his four projects were in the Auditor's report as it was cited that the procurement process was outside the budget. It was his case that as far as he is concerned, he delivered his part of the bargain and therefore, his company ought to be paid.

16. At this juncture, Mr. Kusow for the 4<sup>th</sup> plaintiff informed the court that the 4<sup>th</sup> plaintiff wished to withdraw his claim against the defendants with no order as to costs. The said prayer was thus allowed and the 4<sup>th</sup> plaintiff's case was marked as withdrawn with no order as to costs.

17. PW3, Omar Abey Muhumed, a contractor adopted his witness statement dated 28.10.2023 reiterating the content contained in the plaint. He further produced a list of 10 documents dated 28-10-2023 and one supplementary document. From his statement, he relied on various documents to prove the existence of the subject contract in respect of tender quotation No. WCG/RDS/QT/1189/2018-2019.

18. Among the documents produced were; a copy of certificate of incorporation(3<sup>rd</sup> plaintiff's ex 1), copy of company's CR 12(3<sup>rd</sup> plaintiff's ex 2), copy of notification of award for quotation dated 4-3-2019( 3<sup>rd</sup> plaintiff's ex3), copy of letter of acceptance dated 6-3-2019( 3<sup>rd</sup> plaintiff's ex4), copy of form of contract ( 3<sup>rd</sup> plaintiff's ex 5), copy of local service order dated 24-3-2019 issued to the plaintiff by the defendants( pex 6), copy of site hand over notes dated 3-3-2019( 3<sup>rd</sup> plaintiff's ex 7), copy of final inspection report

issued to the 3<sup>rd</sup> plaintiff dated 6-6-2019( 3<sup>rd</sup> plaintiff's ex 8), copy of certificate of practical completion dated 16-6-2019( 3<sup>rd</sup> plaintiff's ex9) and demand letter ( 3<sup>rd</sup> plaintiff's ex 10). He further produced supplementary document dated 22-4-2024 being a letter written to whom it may concern by the chief Kutulo location confirming that gravelling at kutulo town- kutulo power station road was done (3<sup>rd</sup> plaintiff's ex 11).

19. On cross examination, he stated that the contract in question provided the scope of work that he was supposed to undertake and that he was not aware that the documents did not exist. He continued that he signed a contract document dated 16.03.2019 and that he was also aware of the Auditor's report but in the same breadth, he was not privy to the allegation that the auditor dismissed his claim.

20. He further stated that he was aware that the report classified his contract (item 129) as among those whose documents that were not produced for verification. That he had proof that indeed, he worked as the county government issued him a completion certificate. On re-exam, he stated that he was awarded the contract and further, the same was inspected and he got issued with a CSO. According to him, he did his work, the same was inspected and practical completion certificate issued to him. He contended that in as much as his tender was listed as having been awarded outside the budget, he surely did his part of the bargain.

21. PW4, Issack Sheikh Osman P/No. 009133892, chief at Kutulo location testified that he was summoned in respect to documents 1, 3 and 5 in the supplementary list of documents (page 102), letter

dated 07.03.24 and another on page 112,123 and 126. He confirmed that he authored the said letters and thus produced them as exhibits Pex No. 41-44. On cross examination, he stated that he is the chief Kutulo location and was testifying for the City Classic (1<sup>st</sup> plaintiff). That he had powers to supervise government projects. On re-exam, he stated that indeed, Classic did the work.

22. PW5, Mr. Yussuf Muhumed Abdi, a Senior Chief Bojigaras Loc. stated that he recalled recording a witness statement and a letter dated 13.12.2023. He confirmed that City Classic did construct 2 door latrine and water reticulation at Bojigaras dispensary. He produced the documents as Pex 45. On cross examination, he stated that he was not required to supervise any project from the County Government in as much as he had the powers to supervise government projects within his area. On re-exam, he confirmed that indeed, the projects were done as required.

23. Upon the plaintiffs closing their case, the defence tendered their evidence. DW1, Ali Osman, a procurement officer adopted his statement dated 19.05.2025 as his evidence in chief and further produced his documents as evidence in this case. According to his testimony, the contracts in question were either overpriced, do not exist or no work was done at all. That the subject contracts were not included in the governor's assumption of office report as of August 2022. That the said contracts were absent from the auditor's report of June 2022.

24. He further stated that any procurement associated with the subject procurement would have been done unlawfully as they deviated from the established procedures. That the engineer who signed the

completion subject certificates was not an official employee of the county government. That the local service orders were not properly signed or authenticated. That the absence of site hand over date is questionable. That the agreements related to the subject contracts are questionable and that they fail to offer a comprehensive description of the work to done.

25. He went further to state that the works done lacked verifiability. That opening tender committees and evaluation committees were not formally constituted or appointed. That the contracts in question were carried outside budget and work plan. Finally, it was stated that the defendants cannot condone illegalities. That the claim is frivolous and constitutes abuse of office hence fit for dismissal. He produced the auditor's report and the Governor's assumption of office report as evidence

26. On cross examination, he stated that he was conversant with the procurement procedures and further, that he was aware of the requirement of quotation on works below 3 million for goods and 5m for services.

27. When cross examined by Mr. Kussow, he stated that he could not confirm whether the LSOs in question were issued by the county government. When referred to page 251 coram 184 of the governor's assumption of office report with regard to contract number WCG//H/QT/032/2018-2019 in respect to the construction of 3 no VIP toilets at Qarsa primary school, it was confirmed that work was done.

28. On the auditor's report at pages 50 and 60 touching on the same contract on construction of 3 VIP Toilets at quarsa primary, he

stated that the project was funded out of budget. On the status of second contract on reticulation system at special camp, he answered that at page 305 of the governor's assumption of office, it was indicated as complete. He further stated that at page 177 of the governor's assumption report it confirmed as complete kutulobiyaad road done by Gaals Co. was complete.

29. On the question whether it was the business of the contractor to know whether funds are available before bidding, he answered in the affirmative. As to the question whether the projects in question were completed, he answered that he was not aware.

### **Submissions**

30. The plaintiff filed submissions dated 01.07.2025 and supplementary submissions dated 08.09.2025 distilling two issues for determination as follows:

- i. Whether the plaintiffs have indeed proved on a balance of probability that they supplied services to the defendant and if so, whether they are entitled to the sums/amounts sought.**
- ii. Whether the plaintiffs are entitled to general damages, interest and costs.**

31. On the first issue, counsel urged that the contracts were not only procured lawfully and executed to specification but were also completed as evidenced by the plaintiffs' testimonies interalia; the award letter, acceptance, form of contract, local service orders and inspection and completion certificates; the photographic evidence adduced by the plaintiffs as exhibit 35, 37 and 39 which showed the actual structures which still stand to date; equally, the

testimonies of PW4 and PW5 who are the Senior Chiefs of the areas the projects were done which confirmed that the same existed and were serving the community; and lastly, the assumption of the office of the governor committee report dated August 2022 which listed all the projects as complete and done.

32. It was submitted that the reservations in the auditor general report that the projects were procured outside budget were neither here nor there as the County Government was the contracting authority thus, it was best placed to know whether it had a budget or not.

33. The plaintiffs termed as baseless the defendants assertion that the tenders do not exist and no work was done yet documentation evidence showed otherwise. To support their case, the plaintiffs relied on the case of **William Kabogo Gitau vs George Thuo & 2 Others [2010] 1 KLE 526** where Kimaru J held thus:

**“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”**

34. The plaintiffs contended that what emerged from a wholesome consideration of the plaintiffs’ testimony and the evidence as adduced and uncontroverted is that, the contracts were procedurally and lawfully procured, work was done and completed

as evidenced by the Assumption of the office of the governor committee report and thus payment of the same is due.

35. On whether the plaintiffs are entitled to general damages, interest and costs, it was submitted that over and above the specific damages, the plaintiffs sought for general damages, interest from the date of filing the suit and costs. The plaintiffs contended that ordinarily, general damages are awardable in exceptional circumstances as was held in **Jemmina Holdings Limited vs County Government of Kitui; County Assembly of Kitui (Interested Party) (Civil Suit E004 of 2022) [2023] KEHC 22201 (KLR) (27 April 2023)** thus;

**“On the third issue, whereas the general legal principle is that courts do not normally award damages for breach of contract, there are exceptions such as when the conduct of the respondent is shown to be oppressive, high handed, outrageous, insolent or vindictive.**

**The defendant’s conduct in not making payments immediately as agreed is deemed to be insolent and I so hold. In Jamuto Enterprises Ltd v County Government of Meru [2021] eKLR, the court while considering an almost similar situation as obtains herein held as follows: - “...Having found the delay to have been unconscionable, oppressive and injurious, it becomes axiomatic that the defendant breached the contract with the plaintiff as far as payment was concerned...I take the reality that there is always cost of money and that when one keeps away another’s money unfairly, the innocent party suffers. That is**

**when the remedy for damages for breach of contract sets in to restate the offended to the position he would have been if not for the breach...” Considering the facts of the case, an award of that general damages for breach of contract has been made out. I do assess damages at a sum of Kshs. 2,000,000/=. In arriving at that sum, I have given regard to the fact that had the money been availed to the plaintiff, he would have used it to better its business and was otherwise unfairly kept from it.”**

36. The plaintiffs contended that they completed the projects in the year 2019 and 2020 and the same have been serving the communities as required. That had the defendants availed the monies to the plaintiffs, they would have used the same to better their businesses. It was contended that by unfairly keeping the plaintiffs away from their money, they suffered loss which is compensable by way of general damages at the court’s discretion. In conclusion, the plaintiffs urged this court to allow their case as prayed with costs.

37. The defendants on the other hand filed submissions dated 31.07.2025 citing the following issues for determination:

- i. Whether the nature of the RFQ (Request for Quotation) Process and its application are under Kenyan Law.**
- ii. Whether the plaintiffs lack of work and invalid documentation(sic).**
- iii. Whether there is lack of nexus between provided photographs, witnesses and the alleged projects.**

- iv. Whether the use of non-staff to verify and sign documents amounts to criminal irregularity and implications.**
- v. Whether the words 'complete' and 'done' mean issuance of the tender and not the actual completion of the tender.**
- vi. Whether the principle of prudent use of public resources and prohibition against unauthorized payments(sic).**

38. On the first issue, the defendants submitted that the request for quotation is one of the recognized procurement methods under the Public Procurement and Asset Disposal Act, 2015. That the same was intended for low value procurements of readily available goods, services or small works which do not require elaborate procurement methods such as tendering or restricted bidding.

39. That contrary to the plaintiffs' assertions, the use of RFQ method does not lower the legal bar for accountability of performance. That the law requires that any procurement under the RFQ method must be supported by an approved procurement plan and allocated a budget line. That the plaintiffs did not produce any credible procurement plan and budget document capturing the tenders they now claim to have performed.

40. It was contended that, the review of their official financial records as corroborated by the Auditor General's special Audit Report on pending bills as at 30.06.2020 revealed that the tenders cited by the plaintiffs were not part of any recognized procurement plan or expenditure framework. To that end, reliance was placed on the

case of **Republic vs Public Procurement Administrative Review Board & Another Ex parte Sistemi Integrati [2008] eKLR** where it was held that failure to comply with the statutory framework governing public procurement vitiates the process and renders the resultant contracts unenforceable.

41. In the end, it was urged that if the plaintiffs colluded with the previous county officers of the previous regime to circumvent the procurement rules, they thus cannot be heard seeking to use the court to enforce those irregular arrangements. Additionally, that the RFQ process requires a proper initiation of need, preparation of specification, quotation solicitation and award determination all of which must be recorded and signed off by authorized procurement officers. That in the case of the plaintiffs, they simply presented fragmented, unsigned or signed documents by individuals with no authority to commit public funds thus raising doubts about their origin and authenticity. Thus the plaintiff's reliance on the RFQ process is not sustainable as the very foundation of the RFQ tender was defective and incapable of giving rise to enforceable obligations.

42. On the second issue, the defendants argued that the plaintiffs failed to produce any evidence of completed works as alleged and further, that they did not produce completion certificates duly signed, site inspection reports or delivery notes that could satisfy even the most basic procurement audit. That the Auditor General's special Audit Report on pending Bills for the County of Wajir as at 30.06.2020 categorically listed some of these tenders as ineligible for payment.

43. It was urged that some projects were found not to be in existence at all. Noting that the office of the Auditor General as a constitutional organ is tasked with the oversight of public expenditure and the verification of pending bills, its findings carry a rebuttable presumption of correctness and in the absence of a strong, credible evidence to the contrary, the court ought to accord those findings due deference.

44. That in the absence of proper documentation, the plaintiffs' claims fall afoul of section 148 of the Public Finance Management Act, which imposes a legal duty on the County Accounting Officer to ensure that all expenditures are properly supported by vouchers, approvals and verification.

45. On the third issue, the defendants urged that the plaintiffs tendered photographic evidence purportedly depicting completed works but the same simply were devoid of context. That there were no sign boards indicating project names, tender names or contract reference details. It was contended that there was no accompanying documentation such as bills of quantities, measurement sheets, completion certificates or acceptance letter. That the photos were not linked to the alleged projects in question. That the mere assertion that the said projects come from the locality was not only vague but also unreliable. Reliance to support the foregoing was placed on the case of **Republic vs Minister for agriculture ex parte W'njuguna [2006] eKLR** where the court held thus:

**'a claimant must establish a clear, factual nexus between documentation and the act or service rendered.'**

46. On the fourth issue, it was submitted that the documents as provided by the plaintiffs signed by building supervisor/consultant engineers as a completion of public works were not authenticated as none of the individuals are currently, or were at the relevant time, employees or consultants of the County Government of Wajir. That this fact alone renders the documents unauthorized and legally void.

47. It was contended that the Kenyan jurisprudence underscores that contracts or documents procured through irregular means especially involving non-existent officials cannot be enforced. Reliance to that end was placed on the case of **Republic vs Public Procurement Administrative Review Board & 2 Others ex parte Kenya Power and Lighting Company Ltd [2017] eKLR** where it was held that:

**“where procurement steps are not followed, any award becomes null and void. Likewise, that signatories who do not exist within the official structure lack the authority to bind the County”.**

48. Thus this court was urged to find that the documents by the plaintiffs cannot support payments as claimed as prayed.

49. On the fifth issue, the defendants urged that in as much as the alleged tenders in question were entered in the Assumption of Office of the Governor Committee Report to suggest that the tenders were completed, it was crucial to clarify the words ‘complete’ and ‘done’ as used in such reports do not denote physical completion of works. That under section 7(1) of the Assumption of Office of Governors Act, 2012, the committee is

mandated to prepare an inventory of ongoing and concluded projects for briefing purpose to the incoming governor. That in this context, 'complete' or 'done' refers to the administrative stage of a tender or award not the actual execution or finalization of the works on the ground.

50. It was submitted that to interpret the words as proof of physical completion would be to assign it a function it does not have under the law and to accept unverified information as conclusive evidence. This court was thus urged to treat such references in the report as merely indicative of tender issuance, not proof of performance and certainly not a lawful basis to compel payment for works never executed.

51. On the sixth issue, this court was urged in reference to article 201(d) of the constitution that public resources should be used in a prudent and responsible manner. That prudent public finance management requires that disbursement of funds be anchored upon legitimate contracts entered into pursuant to the public procurement law, performance duly verified and timely audit trails. It was contended that in allowing this claim, the same would create a perverse incentive for contractors to claim public money without performing work or satisfying requirements. Reliance was placed on the case of **John Harun Mwau vs Peter Gastrow & Others [2014] eKLR** where it was stressed that public funds belong to the people of Kenya and disbursement must serve the public interest and not private gain. In the end, this court was urged to find that the plaintiffs claim was deficient of any merit and dismiss the same.

52. I have considered the pleadings herein, the evidence presented by parties and the arguments by the parties' counsel in their respective submissions. In my considered view, the issues that fall for determination are as follows:

- i. Whether there was any contract executed between the plaintiffs and the defendants.**
- ii. Whether the plaintiffs on a balance of probability have proved their case on a balance of probability that the defendants breached the agreement.**
- iii. Whether the reliefs sought should be granted.**

53. The plaintiffs alleged that on diverse occasions, they supplied services to the Defendants and despite completing the projects to the defendant's satisfaction, the latter refused and/or failed to pay for the same despite confirming availability of funds prior to issuing the award letters and the local service orders. On the other hand, the defendants denied the alleged liability as claimed by the plaintiffs.

54. The defendants on the other hand denied the existence of the alleged contract noting that they were either overpriced, non-existent or not completed and that they were procured outside budget and without proper documentation.

55. It is trite law that he who alleges must prove. See section 107 - 109 of the Evidence Act which provides that; -

“Part 1 - Burden of Proof 107;

**(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.**

**(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.**

**108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.**

**109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”**

56. Similar position was held in the case of **Evans Nyakwana vs. Cleophas Bwana Ongaro (2015) eKLR** where the court stated as follows: -

**“As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107(i) of the Evidence Act, Chapter 80 Laws of Kenya. Furthermore, the evidential burden ... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...”**

57. According to the 1<sup>st</sup>-3<sup>rd</sup> plaintiffs, they duly entered into various contracts as enumerated herein above. Their directors did submit the requisite contractual documents among them; quotation from the defendants inviting them to tender. They subsequently

qualified and were awarded contracts as reflected herein above in their respective exhibits to that effect. They commenced their works to completion. They had their site hand over notes done and eventually practical completion certificates issued by the defendants. To further corroborate their evidence, pw4 and pw5 being chiefs under whose jurisdiction those projects were undertaken confirmed that they were done and completed.

58. On cross examination of Dw1 who disowned the projects, he confirmed that status of those projects' was indicated as complete in the Governor's assumption of office committee's report. If the defendant admits that the projects were marked complete, what other project that was not done to completion or what was complete if they did not exist? The evidence of DW1 is self-defeating and indeed based on general denial. The explanation being given to interpret the word complete is not tenable.

59. For DW1 to argue that those projects were conceived by the former government regime does not make them irregular. County governments do not cease upon every election circle or upon a new government taking over. I do not find any reason given to justify the claim that all the documents relied on by the plaintiffs were forged. At least no complaint over fraud or forgery has been made or order for surcharging those officers involved. I do not believe that the entire documentation was done by strangers as DW1 would want this court to believe.

60. By acknowledging completion of those projects in the governor's assumption of office report is itself a manifestation that they were officially executed hence binding on the defendants. I have no

doubt those contracts existed and that the plaintiffs did their part of the bargain.

61. The claim by the Auditor general that those projects were undertaken out of budget or that they were not included in the work plan is just an internal departmental project to which the contractors (plaintiffs) had nothing to do with. Whether the respective departments had money or no but money or whether those projects were included in the work plans or not, it was not their business. They had no obligation to manage the affairs of the defendants. If the defendants' staff deliberately ignored the need to include the said projects in their work plans, they should have been charged or surcharged or dismissed from employment.

62. It is trite law that a party who fulfils his part of the contract is entitled to his dues and the offending party condemned to honour his part of the bargain. This court cannot rewrite the contract for parties. See the case of **National Bank of Kenya Ltd V. Pipeplastic Samkolit (K) Ltd & Another (2002) 2 EA 507** where the court held that it is not within the province of the court to vary contracts duly executed between parties. The court stated that a court of law cannot rewrite a contract between the parties. The parties are bound by their terms of contract unless coercion, fraud or undue influence is pleaded and proved.

63. Further in the case of **Fina Bank Ltd V. Spares and Industries Ltd (2000) 1 EA 52 Shah J.A** observed that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily not a function of equity to allow a party to escape from a bad bargain.

64. From the above analysis, it is quite clear in my mind that the 1<sup>st</sup> to 3<sup>rd</sup> plaintiffs have on a balance of probabilities proved their case against the 1<sup>st</sup> and 3<sup>rd</sup> defendants jointly and severally and judgment is accordingly entered against them for payment of the respective amounts stated in the plaint together with interest at court rates with effect from the date of filing this suit. I do award costs as they naturally follow the event. As for the rest of the prayers, I do not find any factual foundation for their award as the original claim is for specific performance which I have ordered. It is so ordered.

Dated, signed and delivered virtually this 30<sup>th</sup> day of October 2025

.....  
J. N. ONYIEGO  
JUDGE