



REPUBLIC OF KENYA



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**Green Development AS v Rural Development Solutions Limited (Civil Case E074 of 2019)
[2025] KEHC 15054 (KLR) (Commercial and Tax) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15054 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E074 OF 2019
BK NJOROGE, J
OCTOBER 23, 2025**

BETWEEN

GREEN DEVELOPMENT AS PLAINTIFF

AND

RURAL DEVELOPMENT SOLUTIONS LIMITED DEFENDANT

JUDGMENT

1. This Judgement is in respect of a claim for breach of a series of agreements between the Plaintiff and the Defendant.

Background Facts

2. The Plaintiff filed an Amended Plaint amended on 1st October 2020 stating that it carries on business as a carbon credit facilitator through the sale and use of ethanol stoves in Kenya, among other places.
3. Further, by an agreement contained in the letters of offer dated 10th August 2017 and 21st August 2017 from the Plaintiff and an acceptance letter dated 25th August 2017 from the Defendant, it was agreed inter alia that;
 - a. The Defendant purchased 14 single-burner and 59 double-burner ethanol stoves at the warehouse in Nairobi at US\$40 per stove for single burners and US\$60 for double burners. Payment was to be made half upon delivery of the stoves and the balance after 6 months or as an advance on the share of the income.
 - b. The Defendant was to take over the tenancy of the warehouse in Kisumu and purchase the bottling plant in Kisumu at a price of US\$2,000.



- c. The Defendant purchased 205 single-burner and 239 double-burner stoves in Kisumu at US \$40 per stove for single burners and at US\$60 per double burners. Payment was to be made half upon delivery of the stoves and the balance after 6 months or as an advance on the share of the income.
 - d. The Plaintiff also offered the Defendant ethanol stoves from a warehouse in Mombasa at US \$40 per stove, the purchase price to be paid in full upon delivery.
4. The Plaintiff averred that the Defendant took possession of the bottling plant, 4 ISO tanks, delivery of 517 ethanol stoves from the warehouses in Nairobi and Kisumu, and a Probox motor vehicle, but the Defendant did not make any payment to the Plaintiff.
5. Further to the above, there was a further contract dated 29th September 2017 in which the Plaintiff leased to the Defendant a bottling plant, and another loan agreement dated 29th September 2017 where the Plaintiff agreed to lend the Defendant the sum of 300, 000 Norwegian Kroner (NOK) and the Defendant agreed to repay the same in instalments. In addition, there was an extended loan agreement dated 9th November 2017 in which the Plaintiff agreed to lend the Defendant a sum of 100, 000 NOK at an interest of 0.5% per month to be repaid in full within 12 months from the date of disbursement.
6. The Plaintiff prayed for judgment against the Defendant for;
 - a. US\$28,640 plus interest at court rates until payment in full.
 - b. Norwegian Kroner 1,425,503 plus interest as follows;
 - i. Norwegian Kroner 318, 503 at the rate of 0.5% p.m. from 3rd October 2018 until payment in full.
 - ii. Norwegian Kroner 107,000 at the rate of 0.5% p.m. from 9th February 2019 until payment in full.
 - iii. Norwegian Kroner 1, 000, 000 at court rates until payment in full.
 - c. Kshs. 9,442,000 plus interest at court rates until payment in full.
 - d. Costs of the suit.
7. In response, the Defendant filed the Statement of Defence and Amended Counter-claim dated 23rd July 2021. The Defendant denied being in breach as alleged or at all. It further stated that it was the Plaintiff who deviated and misled the Defendant materially in regard to the true situation about the sales thus leading to massive losses and shambolic business returns to the Defendant. The sales were diminished and incapable of facilitating a cash flow sufficient to cause repayments.
8. It was the Defendant's averment that it was a term of the agreement that the Plaintiff takes back the business in the eventuality of the Defendant's failure or inability to make sales. The Defendant thus avers that the filing of this suit is rushed and premature and intended to embarrass the Defendant.
9. In the Counter-claim, the Defendant averred that it was the agent of the Plaintiff in the business of sale of cookstoves and Ethanol. The said business and operations were facilitated by the Plaintiff to the Defendant. That the repayment was subject to actual sales and/or realization of profits. The Plaintiff made the Defendant believe that the sales could be viable and characterized by profits only to be confronted by massive losses initially amounting to Kshs.3.5 million net loss. That this situation portended a persistent loss and shambolic business situation.



10. The resultant effect was that the Defendant suffered losses which inhibited any remittances to the Plaintiff in respect of the seed or facilitating capital or cash. Thus, the Defendant's claim against the Plaintiff among other prayers, is for damages in the sum of Kshs.139, 382, 875. It also seeks general damages for misrepresentation, breach of agreement and losses attendant to opportunity costs visited on the Defendant by the Plaintiff.
11. The Defendant prayed in the Amended Counter-claim for orders that;
 - a. The Plaintiff's suit be dismissed with costs and judgment entered in favour of the Defendant.
 - b. Special damages in the sum of Kshs.139, 382, 875 arising from misrepresentation and breach of contract on the part of the Plaintiff.
 - c. Any relief deemed fit for grant by the Court in the circumstances.

Evidence

12. This suit commenced before Hon. E.C. Mwita J who heard all the witnesses. Upon his departure from this division, the matter was assigned for highlighting of submissions and delivery of Judgement before this Court. There was no objection by either party to this procedure and the proceedings have been duly typed.
13. PW1 Harvard Nortstobotestified on behalf of the Plaintiff, adopting his witness statements. He testified that under multiple agreements, the Defendant took possession of various assets, including a bottling plant, ethanol stoves (517 units), ISO tanks, and a vehicle (Probox), but failed to make any payments. Additionally, the Defendant did not repay NOK 300,000 and NOK 100,000 advanced under the 3rd and 4th agreements, respectively. PW1 also claimed that 9,442 ethanol stoves were sold in Mombasa without the agreed payment of KES 1,000 per stove to the Plaintiff.
14. Under cross-examination, PW1 admitted that the Plaintiff had no prior involvement in the ethanol or stove manufacturing business. He acknowledged that the agreements were discussed in Kenya and Norway. He denied making any representations regarding fuel consumption, business profitability, or the viability of selling stoves in the Kakuma refugee camp.
15. On behalf of the Defendant, DW1 SVEINE RENE gave testimony by adopting his written statements from the Defendant's trial bundle. He admitted that the Defendant and the Plaintiff entered into several agreements. Notably, he testified that the projections on sales and income could not be met. That the actual sales did not meet the projections. He added that the Plaintiff misled them to believe that they were making huge sales. They also agreed that if the Defendant failed the Plaintiff was to take up the business.
16. Counsel for the parties filed detailed submissions and also appeared in Court virtually on 9th December, 2024 to highlight the same.

Issues for determination

17. The Court has perused and understood the contents of the pleadings; submissions and the exhibits referred to by the parties. The following are the issues for determination;
 - a. Whether there was a breach of contract by the Defendant.
 - b. Whether there was fraudulent misrepresentation by the Plaintiff
 - c. What reliefs arise from this suit either by way of the Plaintiff or the Counter-claim?



Analysis and determination

18. It is undisputed that there exist four contracts between the Plaintiff and the Defendant. The basis of the suit was the allegation that the Defendant in breach of the contract failed and/or refused to honour its payments to the Plaintiff. The contracts were as follows;
- a. An agreement contained in the letters of offer dated 10th August 2017 and 21st August 2017 from the Plaintiff and an acceptance letter dated 25th August 2017 (the 1st agreement). This was for the purchase of various burner stoves in Nairobi, Kisumu, and Mombasa, the takeover of the tenancy of the warehouse in Kisumu and the purchase of the bottling Plant in Kisumu.
 - b. An agreement dated 29th September 2017 (the 2nd agreement) through which the Plaintiff leased to the Defendant a bottling plant and 4 ISO Tanks at a monthly rent of KES 100,000 per month payable semi-annually and for the sale of a Probox motor vehicle for Norwegian Kroner (NOK) 1,000,000.
 - c. A loan agreement dated 29th September 2017 (the 3rd agreement) between the Plaintiff and the Defendant where the Plaintiff agreed to lend the Defendant the sum of NOK 300,000.
 - d. An extended loan agreement dated 9th November, 2017 (the 4th agreement) by which the Plaintiff agreed to lend the Defendant a further sum of NOK 100,000. It was also agreed that the Defendant will pay the Plaintiff KES 1,000 for each ethanol stove the Defendant sells in Mombasa.

a) Whether there was a breach of contract by the Defendant.

19. It was the Plaintiff's submission that from the evidence, the Plaintiff performed its obligations under the 4 agreements. The Defendant has, however, failed to perform any part of these agreements. The Defendant has not made payment for any of the goods sold to it and has not repaid any of the loans advanced to it by the Plaintiff.
20. In contrast, the Defendant took the position that the Plaintiff fronted misrepresentation and duped the Defendant into an agreement that occasioned losses as prayed in the Counter-claim. The Plaintiff has failed to demonstrate that there was a breach of contract by the Defendant. The Plaintiff's case should suffer dismissal with costs. The Defendant pleaded and demonstrated the loss suffered as a result of misrepresentation on the part of the Plaintiff.
21. It is clear to the Court that the Defendant is not disputing that the loans totalling NOK 400,000 were advanced to the Defendant by the Plaintiff. The Defendant is also not disputing that it received and sold 14 single-burner and 59 double-burner ethanol stoves in Nairobi under the 1st agreement and 9,442 ethanol stoves in Mombasa under the 4th agreement. However, the Defendant's defence is that it should be allowed to walk away from its obligations due to the Plaintiff's misrepresentation.
22. The Defendant averred through its Counter-claim that the result of the Plaintiff's misrepresentations, the Defendant suffered loss in respect of projected sales of cookstoves numbering twelve thousand (12,000) cookstoves by December 2018 and misrepresented fuel/ethanol consumption and sale for the period January 2018 to December 2023 at the rate of ten (10) litres per month totalling to a loss of Kshs.139, 382,875.
23. Further to the above, the Defendant's claim against the Plaintiff is for damages for misrepresentation. It also claims breach of agreement, and losses occasioned and attendant to business losses and



opportunity costs visited on the Defendant by the Plaintiff. This is on account of misrepresentation and misleading projections on the part of the Plaintiff and on which the Counter-claim is predicated.

24. In contrast, the Plaintiff denied that he made any representations on the fuel consumption of the ethanol stoves and on the profitability of the business of selling ethanol stoves. PW1 also denied that he made any representations to the Defendant on the viability of selling stoves to Kakuma refugee camp.
25. Was the Defendant in breach of the contracts? It is very clear that the Defendant was in breach of the contracts, having failed to honour its part in the loan repayments.

b) Whether there was fraudulent misrepresentation by the Plaintiff

26. What is misrepresentation? Courts have, over time, dealt with the term. In *Kelvin Mutua and 197 Others v. Athi Water Services Board* (2021) eKLR the Court defined the word misrepresentation as follows:

“Mary Charman in her book *Contract Law* defines misrepresentation as follows: A misrepresentation is an untrue statement of fact, made by one party to a contract to another, which is not a term of the contract, but has an inducing effect on it. Misrepresentation of facts can be made by carelessly issuing facts without checking the actual details. Also, misrepresentation can be a deliberate lie, intended to deceive and state in the full knowledge that it is untrue. An innocent party in both types of misrepresentation is entitled to rescind the contract if they choose to.”

27. Representation made – it was the Defendant’s case that during the launch of the project, Harvard Nortstobo a General Manager of the Plaintiff presented and projected benefits to the Defendant that could last 7 years.
28. In the email dated 5th June 2018, the Plaintiff admitted that the sale of ethanol was not as they had foreseen. However, in the present suit, the Defendant has failed to demonstrate how the projected benefits presented to it by the Plaintiff amounted to a misrepresentation.
29. It is not lost to this Court that the suit is based on agreements entered into by the parties willingly. The rule against introducing extrinsic evidence to explain the terms of a contract that are clear and unambiguous still applies. The Court of Appeal in *Civil Appeal No. 61 of 2013, Fidelity Commercial Bank Limited versus Kenya Grange Vehicle Industries Limited* (eKLR) has stated as follows;

“In *Prudential Assurance Company of Kenya Limited v. Sukhwender Singh Jutney and Another*, Civil Appeal No. 23 of 2005 the Court citing a passage in *Ogden’s Construction of Deeds and Statutes* (5th edn.) at p.106 emphasized that in construing the terms of a written contract;

“It is a familiar rule of law that no parol evidence is admissible to contradict, vary or alter the terms of the deed or any written instrument. The rule applies as well to deeds as to contracts in writing. Although the rule is expressed to relate to parol evidence, it does in fact apply to all forms of extrinsic evidence.”

The supporting rationale for this rule is that, since the contracting parties have reduced their agreement to a single and final writing, extrinsic evidence of past agreements or terms should not be considered when interpreting that written contract agreement, as the parties had consciously decided to ultimately leave them out of the contract. In other words, one may



not use evidence made prior to the written contract to contradict the ultimate contract that has been reduced into writing.”

30. The parties negotiated terms and then entered into a contract. They are bound by the terms of that contract and not the negotiations prior. The Defendant did not file a suit seeking to be relieved of the terms of the contract which were either oppressive or entered into on the basis of misrepresentations. The issue of fraud in the misrepresentation was not proved to the required standard. No evidence was led to establish the elements of fraud save for mere averments. This line of defence is not persuasive to this Court and thus cannot hold. Therefore, the Counter-claim fails.

c) What reliefs arise from this suit either by way of Plaintiff of the Counter-claim?

31. Having found that the Defendant’s Counter-claim cannot succeed, the Court now turns to the reliefs sought by the Plaintiff in the Amended Plaintiff. The question that arises is whether the reliefs can be granted as prayed for?
32. It was the Defendant’s submission that the prayers set in the Amended Plaintiff are based on claim of alleged breach of contract. That this breach/ inability to pay on the part of the Defendant was agreed to be addressed through the exit clause in the contract. That the same accorded to the Plaintiff priority to take up the business in case of any business challenges occurring on the part of the Defendant.
33. However, the Plaintiff denied that it was a term of the agreement that the Plaintiff was obliged to “take back the business” or “resume management of the business” or “retake the business” in the event the Defendant failed or was unable to make sales. The Plaintiff maintained that it did not transfer a business to the Defendant. It rather sold goods and lent monies to the Defendant.
34. The Court observed that the said exit clause of the contract provided that;

“ Economy and Finance

Green Development shall contribute by:

Providing a loan of NOK 300, 000. A separate loan agreement shall be part of this agreement.

RDS shall have a postponement of the payments for the equipment RDS has purchased in Kisumu and Nairobi. This shall be paid back by 25 December 2017.

If RDS is unable to repay the loan of NOK 300,000 and pay for the equipment RDS has purchased as mentioned above, in accordance with this agreement, Green Development AS shall be entitled to take over RDS’s ethanol business free of charge. Green Development AS shall likewise be entitled to take over RDS’s ethanol business free of charge if:

RDS defaults on other loan agreements worth more than NOK 50,000 with more than 3 months.RDS is unable to have enough ethanol in bottles in the warehouse to meet the demand at least 95% of the time until the end of 2018.”

35. From the above excerpt, If RDS was unable to repay the loan of NOK 300,000 and pay for the equipment RDS purchased it, was a term of the agreement that Green Development AS shall be entitled to take over RDS’s ethanol business free of charge.
36. The Court is of the considered opinion that the property in the goods sold to the Defendant the Plaintiff passed. That is why the Defendant could be able to pass good title of the stoves and ethanol



to third parties. As to the monies lent and the motor vehicle sold, the property in the money as well as the motor vehicle passed.

37. The Defendant would want to hold on to the Plaintiff first exercising the option of taking over the business. For that reason, they submit that the suit is premature.
38. The Court has noted that the Plaintiff was reminded to exercise this option prior to filing the suit but it declined. The Plaintiff was of the view that it had not engaged in the transfer of business which it could retake but a complete transfer of assets. That it had no intention of retaking back the business. It wanted to be repaid the monies for goods sold, as well as repaid monies lent.
39. To this Court, the Plaintiff could elect to take back the business or to sue. It depends on what made business sense. That take over clause does not preclude the Plaintiff from exercising its rights as it has done to seek recovery of damages arising out of breach. Such a right includes the right to sue for the unpaid goods as well as the monies lent and not repaid.
40. The Court is persuaded that the Plaintiff's claim as set out in the amended claim has been proven.
41. The Court proceeds to enter Judgement for the Plaintiff as against the Defendant as pleaded in the Amended Plaint and proved through the Plaintiff's documents and the evidence of PW1.
42. There then remains the question as to whether the Court should convert the foreign currency though not asked by either party. This is whether Judgement should remain partly in foreign currency and Kenyan Shillings (hence split) or it should all be converted to Kenyan Shillings. The Court follows the decision in *Finejet Limited v Five Forty Aviation Limited* [2012] KEHC 3019 (KLR). Justice Havelock stated the following words;

“As I have already stated above, the judgement amount has been detailed in US dollars. The Plaintiff did not pray for the judgement sum to be paid in Kenya Shillings. In my opinion, it is the prerogative and indeed the responsibility of the Plaintiff who has obtained an award in US dollars to arrange with its bank to have the same converted into Kenya Shillings if it should so wish.”
43. The Court also follows the decision of the Court of Appeal in *Beluf Establishment v Attorney-general* [1993] KECA 27 (KLR). This Court indeed has power to enter judgement in multiple currencies. It is for the Judgement creditor to elect to apply for a conversion if it so wishes. With the world having shrunk into a global village, the proliferation of trade, especially online trading platforms and emergence of other strong currencies to rival the dollar, the sterling pound and the franc, including virtual currencies hitherto unknown, disputes involving mixed currency obligations will become more common.
44. From the contracts and the pleadings, it is clear that the parties contracted in different currencies being U S Dollars, Norwegian Kroner and Kenyan Shillings. They also expressed payments of their obligations in those different currencies. For that reason, the Court sees no good reason to convert the payments into a single currency at this stage.
45. As to costs, the same ordinarily follow the event unless the Court determines otherwise. There is no reason to deny the successful Plaintiff the costs of the suit. Conversely the Defendant too ought to bear the costs of the dismissed Counter-claim.

Determination.

46. Judgement is entered for the Plaintiff as against the Defendant as follows;



- a. US\$28,640 plus interest at Court rates until payment in full.
- b. Norwegian Kroner 1,425,503 plus interest as follows;
- c. Norwegian Kroner 318, 503 at the rate of 0.5% p.m. from 3rd October 2018 until payment in full.
- d. Norwegian Kroner 107,000 at the rate of 0.5% p.m. from 9th February 2019 until payment in full.
- e. Norwegian Kroner 1, 000, 000 at Court rates until payment in full.
- f. Kshs.9,442,000 plus interest at Court rates until payment in full.
- g. The Plaintiff is awarded the Costs of the suit.
- h. The Defendant is to bear the Costs of the Counter-claim.
- i. Interest is awarded on Costs at Court rates from the date of Judgement until payment in full.

47. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 23RD DAY OF OCTOBER, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Michael Muriithi holding brief for Mr. Lawson Ondieki for the Plaintiff.

Miss Nyaboke holding brief for Mr. Nyambega for the Defendant.

Mr. Peter Wabwire - Court Assistant.

