Solvochem East Africa Limited v Kenya Revenue Authority (Commercial Case E332 of 2023) [2025] KEHC 15084 (KLR) (Civ) (15 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15084 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

COMMERCIAL CASE E332 OF 2023

CJ KENDAGOR, J

OCTOBER 15, 2025

BETWEEN

SOLVOCHEM EAST AFRICA LIMITED ..... PLAINTIFF

AND

KENYA REVENUE AUTHORITY ..... DEFENDANT

JUDGMENT

1. The Plaintiff imported denatured methanol and the consignment arrived in Mombasa on 9th May, 2022. The Defendant demanded an import certificate for its clearance, stating that methanol products are restricted goods and an import certificate was mandatory. The Plaintiff did not have the import certificate because it thought that denatured methanol was not a restricted good. It however had to procure the same as a result of which the clearance process took longer than it had anticipated. The Defendant issued the Import Certificate on 26th July, 2022 and released the consignment on 8th September, 2022.

2. The Plaintiff claims that the Defendant's decision to classify denatured methanol as a restricted product was unlawful. It also claims that the Defendant delayed in processing its application for Import Certificate. It claimed that the delay caused additional storage and demurrage charges, and that it also lost its clients who were to purchase the denatured methanol. It also claimed that the delay caused it to breach the terms of a pre-import financing it had obtained from C.F.C Stanbic Bank and was forced to pay an additional penalty interest and denied further refinancing facilities.

3. The Plaintiff brought this suit and prays for judgment in its favor against the Defendant for;

    a. USD 70,459/= as Demurrage and storage costs incurred.

    b. USD 28,948/= as Penalty interests incurred on its Bank loan facility.

c. USD 69,262/= as Loss of business from the loss of use of money.

d. USD 60,266.84/= as Loss of business from increased costs.

e. General Damages for denial of refinancing facilities.

f. Interest on (a-e) above at court rates until payment in full.

g. Costs of and occasioned by this suit.

h. Any such other or further relief as this Honourable Court may deem fit to grant.

4. The Defendant filed a Statement of Defense dated 29th August, 2023, which it later amended on 5th March, 2024. It stated that its decision to place denatured methanol under restricted goods was lawful and within its statutory mandate. It claimed that Kenyan law classifies denatured methanol as an excisable good and thus the Plaintiff was mandated to have a license prior to its importation. It also claimed that it should not be blamed for the delay experienced in the clearance of the consignment, insisting that the delay was caused by the Plaintiff's omission to obtain all the requirements prior to importation.

5. The Plaintiff further filed a reply to the Defendant's amended Statement of Defense dated 22nd July, 2024. It stated that denatured methanol is not listed as a restricted good in the Second Schedule of the East African Community Customs Management Act, 2004 or under any other laws, provisions, or regulations under Kenyan law. It also stated that the public notice allegedly published on 5th October, 2020 does not apply to denatured methanol as the same is not an excisable good. It stated that it had obtained all required licenses before importing the consignment and that excise license was not a requirement.

6. The matter proceeded to hearing. Each party produced their list of documents as exhibits at the hearing and presented its respective witnesses. The parties were directed to file written submissions.

Plaintiff's written Submissions

7. The Plaintiff submitted that the Defendant had no legal basis to insist that it required an import certificate for the importation of the denatured methanol. It submitted that an import certificate was not required for its shipment, reasoning that denatured methanol is neither a controlled substance within the meaning of the Food, Drug and Chemical Substances Act, nor an excisable good under the *Excise Duty Act* 2015. It argued that denatured methanol is not excisable goods because, according to the *Excise Duty Act*, denatured spirits do not fall under the classification of spirits for the purposes of taxation under the Act.

8. The Plaintiff also submitted that the Defendant breached its legitimate expectation by abruptly changing the classification of denatured methanol as a controlled substance subject to excise duty - without any change in law or statutory directive authorizing such a reclassification. Given the clarity in law that denatured methanol is not excisable, it argued that the Defendant went against the law to then claim that denatured methanol is excisable at zero rate. It stated the Defendant's conduct violated the expectation that that any change in tax laws is communicated vide legal notice and amendments.

9. The Plaintiff filed supplementary submissions dated 23rd June, 2025, and the same was considered at length. It argued that the Defendant is wrong to rely on Section 27 of the Excise Duty (Regulations) 2017. The said Section provides that a person shall not import denatured spirits without the written approval of the Commissioner. The Plaintiff submitted that this particular Section does not give the Defendant the authority to demand for an import certificate from a person importing denatured

methanol. It urged this Court to construe the intention of the legislature and uphold the intention of the Parliament.

Defendant's written Submissions

10. The Defendant submitted that its action to place methanol under restricted goods was lawful. It submitted that the Plaintiff was mandated to have an excise license before importing denatured methanol, arguing that the same is an excisable good pursuant to the public notice issues on 5th October, 2020 as read with the *Excise Duty Act*, and the Regulations (2017) & (2020). In addition, it stated that the Food Drug and Chemical Substance Act lists methanol as a controlled substance as read with *Excise Duty Act*. It argued that the Plaintiff did not meet the law requirements at the time of importation and was thus flagged out by the system.

11. It submitted that the East African Customs and Management Act 2004 grants it wide discretion in administration of imports in the country including the powers of examination of goods upon entry to determine the accuracy of the entries made, and the power to take sampled of goods subject to customs control. It implored this Court to avoid reading the provisions of Excise Duty in isolation, but rather taking a harmonious approach, incorporating other statutes in order to give the Excise Duty a broader statutory context. It submitted that, at all times, it was merely acting within its statutory limits.

Issues for Determination

12. Having carefully considered the pleadings, the evidence placed before the Court, and the respective submissions, I find that there are three issues for determination;

    a. Whether denatured methanol is a controlled substance under the Food, Drug and Chemical Substance Act.

    b. Whether denatured methanol is an excisable good under the *Excise Duty Act*, and the Regulations (2017) & (2020).

    c. Whether an Importation Certificate was necessary for the importation of denatured methanol.

    d. Whether there was unreasonable delay in the clearance of the Consignment.

    e. Whether the Plaintiff is entitled to General Damages.

    f. Whether the Plaintiff has proved its claims for special damages.

Whether denatured methanol is a controlled substance under the Food, Drug and Chemical Substance Act

13. The parties herein disagreed on whether denatured methanol is a controlled substance under the Food, Drug and Chemical Substance Act. The Defendant argued that the Act lists methanol as a controlled substance, while the Plaintiff submitted that denatured methanol is not controlled substance within the meaning of the Act. This Court is being invited to relook at the contents of the said Act with a view to determining the Act's position on this issue.

14. I have accessed the said Act, (Food, Drugs and Chemical Substance Act, Cap. 254). I could not trace the words 'methanol,' 'ethanol,' 'spirits,' or 'denatured' in its text. In addition, the Act defines the word 'chemical substance' to mean any substance or mixtures of substances prepared for use as a germicide; (b) an antiseptic; (c) a disinfectant; (d) a pesticide; (e) an insecticide; (f) a rodenticide; (g) a vermicide; or (h) a detergent. In my view, I find that the said Act has little or no significance on the question of whether denatured methanol is a controlled substance or not.

Whether denatured methanol is an excisable good under the *Excise Duty Act*, and the Regulations (2017) & (2020)

15. The parties also disagreed on whether denatured methanol is an excisable good under the *Excise Duty Act* and its subsidiary legislations. The Defendant claimed that denatured methanol is an excisable good while the Plaintiff maintained that the same is not classified as an excisable good. This Court is again being invited to relook at the contents of the said Act and its subsidiary legislations with a view to determining the Act's position on this issue.

16. Section 7 of the Act provides for goods and services not liable to excise duty. It provides as follows:

> 7. Goods and services not liable to excise duty
>
> (1) Subject to this section, no excise duty shall be charged on the following—
>
> (e) denatured spirits for use in the manufacture of gasohol or as a heating fuel;

17. In addition, Section 2 of the same Act defines the term 'spirits' in the following terms;

> "spirits" means spirits of any description and includes all liquor mixed with spirits and all mixtures and compounds or preparations made with spirits, but does not include denatured spirits;"

18. The definition of the term 'spirits' is very important in the instant dispute because the Defendants classified denatured methanol as a spirit. DW1 told the Court that denatured methanol is in the classification of spirits. In my view, the definition of the term 'spirits' under Section 2 seems to have removed denatured spirits from the purview of the Act, hence making them non-excisable goods.

19. However, the Defendants further relied on Section 27 of the Excise Duty (Regulations) 2020 to argue that denatured methanol is an excisable good. The said section provides as follows;

> 27. Denaturing of spirits.
>
> (1) A person other than a licensed distiller shall not denature spirits.
>
> (2) A licensed distiller who denatures spirits—
>
> (a) shall denature spirits under the supervision of the Commissioner; and
>
> (b) shall not release denatured spirits without approval of the Commissioner.
>
> (3) A person shall not import denatured spirits without the written approval of the Commissioner.

20. The Plaintiff argued that the Defendants should not rely on the Excise Duty Regulations to override the definition clearly stated under Section 2 of the *Excise Duty Act*. It relied on the sentiments of the Court of Appeal in the case of Wavinya Ndeti v Independent Electoral & Boundaries Commission (IEBC) & 4 others [2014] KECA 629 (KLR)where the Court held as follows;

> "[10] It is an established principle of construction of statutes that no subsidiary legislation shall be inconsistent with the provisions of an Act (See section 31(b) of the *Interpretation and General Provisions Act* – Cap 2 Laws of Kenya). A subsidiary legislation cannot repeal or contradict express provisions of an Act from which they derive their authority."

21. I have carefully considered the wording of the two legal documents; the Act and its subsidiary legislation, with a view to ascertaining whether Section 27 (c) of the Regulations is in conflict with the parent Act. In my view, the contradiction alleged by the Plaintiff is not apparent. Section 27 (c) of the Regulations does not contradict Section 2 of the Principal Act, in that it does not say, expressly or by implication, that denatured spirits are excisable goods. In my considered view, Section 27 (c) has little or no significance on the question of whether denatured spirits are excisable or not.

22. In my analysis, what I see in Section 27 of the Regulations is an attempt by the Government of Kenya to regulate the importation of denatured spirits and its handling, and to secure its place in the denaturing processes. It is a prudent government approach to public health and a regulatory framework to ensure that denatured spirits do not land in the wrong hands. The Section does not, by any means, make denatured spirits an excisable good. If the Kenyan Parliament wanted to make denatured spirits an excisable good, it would have done so expressly, and Section 2 of the Principal Act would have read otherwise.

Whether an Importation Certificate was necessary for the importation of Denatured Methanol

23. Having found that the consignment was not an excisable good or a controlled substance, the next question is whether the Plaintiff needed to have an Importation Certificate to import the denatured methanol. The answer to this question revolves around the interpretation of Section 27 of the Excise Duty (Regulations) 2020, which provides as follows: (3) A person shall not import denatured spirits without the written approval of the Commissioner. The question now turns to what constitutes 'the written approval of the Commissioner.'

24. I have considered the jurisprudence on this area. It occurs to me that where the law requires an importer to get 'the written approval of the Commissioner,' the importer is supposed to write to the Commissioner, seeking his approval for the proposed importation. The Commissioner is required to consider the application and ensure that the applicant has met all the conditions set out in the relevant law. (See Republic v Kenya Revenue Authority Ex parte Majid Al Futtaim Hypermarkets Limited [2020] KEHC 1216 (KLR))

25. The Commissioner then issues an 'approval letter' in which he may stipulate the qualifying conditions for importation. (See Bamburi Cement PLC v Commissioner of Customs and Border Control (Tax Appeal 1573 of 2022) [2024] KETAT 1020 (KLR) (28 June 2024) (Judgment))

26. In my view, the Defendant did not have a legal basis to ask for an Importation Certificate for the importation of the denatured methanol. The position of the law as of May, 2022 was that the importation of denatured methanol did not require an Import Certificate but rather the written approval of the Commissioner. The Plaintiff should not have been subjected to any extraneous demands for an import certificate, as the same was not a demand specifically couched in any of the statutes that the Defendant relied on.

Whether there was Unreasonable Delay in the clearance of the Consignment

27. The Plaintiff claimed that it was subjected to an unreasonable delay during the clearance of the consignment. It claimed that although the shipment arrived at the port on 9th May, 2022 and it lodged the first entry for clearance on 11th May 2022, it was not cleared until 26th July, 2022, which is sixty-two (62) days after their entry. On the other hand, the Defendant maintained that it the Plaintiff caused the delay because it failed to carry due diligence of the requirements needed prior to importation of the consignment. It argued that the delay would not have occurred had the Plaintiff procured the importation certificate.

The First Entry for Clearance

28. I have analyzed the evidence before the Court to ascertain whether the Defendant unreasonably delayed in clearing the consignment. The parties agree that the Plaintiff lodged the first entry for clearance on the customs clearance portal on 11th May, 2022. PW1 told the Court that the first entry had a Kenya Bureau of Standards (KEBS) hold, which meant that KEBS had not cleared the consignment. She told the Court that the Defendant could not work on the first entry because of the KEBS hold, and that the Defendant advised it to cancel and relodge the entry to remove the hold.

29. From the evidence, it is not really clear to this Court when the said KEBS hold was removed because PW1 gave conflicting statements on this issue. At some point, she told the court that the KEBS gave clearance on 11th May, 2022, and that the clearance from KEBS was an online system message. In another statement, she stated that it took 14 days delay to clear the issue, and that she lodged the second entry for clearance on the customs clearance portal on 25th May, 2022.

30. Be as it may, in my analysis, it cannot be said that the Defendant failed to work on the first entry. This is because the Plaintiff admitted that there was a hold by KEBS, which is a different entity, and not an agent of the Defendant. For these reasons, I find that the delay experienced in clearing the hold from the system cannot be attributed to the Defendant; therefore, I conclude that the Defendant did not delay in processing the first entry.

The Application for an Importation Certificate

31. The Plaintiff claimed that the Defendant delayed in processing its application for an Importation Certificate. It argued that it made an application on the i-tax portal on 8th June, 2022 but it could not complete the application because it was required to attach a tax clearance certificate, for which it did not have at that time. The Plaintiff subsequently obtained a tax clearance certificate on 16th June, 2022 and proceeded with the application on the i-tax portal.

32. The Plaintiff claimed that an error message occurred on the portal stating that another application for an Importation Certificate for the selected class of goods was already in process. It claimed that it subsequently wrote to the Defendant on 16th June, 2022, requesting them to clear the said error message. The Plaintiff claimed that the Defendant did not cooperate or facilitate in rectifying the error in the system despite various reminders. It claimed that the Defendant cleared the error (27 days later) on 13th July, 2022, after which it successfully lodged its application for an importation certificate.

33. I shall analyze the evidence to ascertain whether the Defendant delayed in processing the application.

34. The Defendant claimed that it wrote to the Plaintiff on 8th June, 2022, asking for documents required for an importation certificate. I have seen the said email; it's dated 8th June, 2022. I have also read its contents. The Defendant was telling the Plaintiff the requirements for an Import Certificate. However, PW1 in cross-examination admitted that they furnished the requirements on 30th June, 2022. She acknowledged that it was about 21 days later. I have also seen a KRA Form dated 30th June, 2022 and signed by Plaintiff's officer (PW1), indicating the documents they submitted that day.

35. In addition, PW1 told the Court that on 16th June, 2022, the C & BC Port Operations requested KRA's Inspection and Testing Centre to test samples of the consignment. I have seen a Laboratory Sampling Form dated 16th June, 2022. It confirmed that the request for sampling the consignment was made that day. The form also showed that the said samples were submitted the same day.

36. Further, DW1 corroborated that the drawing of samples for lab analysis was done on 16th June, 2022. He stated that the lab results were out within 18 days, even though their service level agreement showed that lab results should be out within 21 days.

37. Moreover, evidence showed that the Commissioner issued the tariff ruling on 4th July, 2022, vide a letter, in which it communicated the results of the sample testing. I have seen the said letter. It is authored by the Defendant and addressed to the Plaintiff. In the letter, the tariff ruling was addressed to the Plaintiff, and PW1 confirmed that the postal address indicated in the correspondence was the Plaintiff's official address.

38. Lastly, the Defendant claimed that the Plaintiff supplied the last document on 13th July, 2022. On cross-examination, PW2 was referred to an email sent to them by the Defendants on 13th July, 2022. He admitted that the email showed that the Plaintiff was still furnishing documents as at 13th July, 2022. I have seen the said email. In the email, the Defendant was requesting the Plaintiff to submit the Agent's Bank details to allow the Defendant finalize the Plaintiff's application process. I thus agree with the Defendants that the Plaintiff was still furnishing documents as at 13th July, 2022.

39. Based on the above evidence, I find that the Defendants were all through working on the Plaintiff's application for Importation Certificate. The following documents demonstrate this: The Defendant's email dated 8th June, 2022; the Laboratory Sampling Form dated 16th June, 2022; the KRA Form dated 30th June, 2022 and signed by the Plaintiff's officer (PW1); the Commissioner's ruling on the tariff issued on 4th July, 2022; and the Defendant's email on 13th July, 2022. In my view, it cannot be said that the Defendant delayed in processing the application for the Importation Certificate.

Whether the Plaintiff has proved its claims for specific damages

40. The Plaintiff claimed a range of specific damages, including the demurrage and storage costs it incurred, the penalty interest it incurred on its loan facility, special damages for loss of business from the loss of use of money and loss of business from increased costs. I shall analyze each class of specific damages at a time.

USD 70,459/= being the demurrage and storage costs incurred

41. The consignment arrived at the Port on 9th May, 2022 and was released from the port on 8th September, 2022. The Plaintiff argued that all this while the consignment was incurring storage and demurrage charges from the shipping line Maersk Limited and the Defendants. The Plaintiff attached several tax invoices and a payment slip to support its claim. I have seen the said invoices and the payment slip.

42. However, this Court had a difficulty in ascertaining with certainty the extent to which this claim should succeed. This is because the invoices attached capture the demurrages incurred for the entire period when the consignment was held at the Port from 9th May, 2022 to 8th September, 2022. In my view, the Plaintiff is not entitled to claim compensation for demurrages for the entire period as claimed because the Defendant is not to blame for the entire delay.

43. This Court has already found that the Defendant did not delay in processing the consignment. It has, however, also found that the Importation Certificate was not necessary for this consignment and thus the Defendant should not have requested for the same. In my view, it is only fair that the Defendant should compensate the Plaintiff for the demurrages it incurred during the period that the Plaintiff sought to acquire the importation certificate. I shall now review the evidence and determine the extent to which the Defendant is liable.

44. The Defendant demanded for the Importation Certificate on 8th June, 2022, when it sent an email to the Plaintiff detailing the documents that would be required to obtain the certificate. The Plaintiff embarked on the process of obtaining the certificate and was granted the same on 26th July, 2022. In my calculation, the Plaintiff took around 48 days to acquire the certificate. In my view, the Plaintiff should not be found responsible for the demurrage charges incurred during these 48 days, when it was being subjected to an unnecessary procedure.

45. The Plaintiff has not proved why the Defendant should be condemned to compensate it for the demurrage charges incurred for the other days. This Court has already found that the Defendant should not be blamed for the time lost between 11th May, 2022 and 25th May, 2022 (15 days), because there was a KEBS hold on the consignment. Thus, the Defendant should not be held responsible for the demurrages incurred during that period.

46. In addition, the Plaintiff took considerable time to pay for the consignment after it had been issued with the importation certificate. Plaintiff was granted the Certificate on 26th July, 2022 but it paid for the consignment on 8th September, 2022. This means that, after receiving the certificate, the Plaintiff took approximately 43 days to pay the import duty and facilitate the release of the consignment.

47. The Plaintiff did not explain why it took so much time to make the payments. It also did not give reasons why the Defendant should be condemned to compensate it for the demurrage incurred between 26th July, 2022 and 8th September, 2022. PW1 told the Court that they were issued with the certificate on 26th July, 2022 and they lodged the clearance process on the same day. She stated that they paid for the clearance on 8th September, 2022, which she admitted it was 43 days after the import certificate was issued. She however did not explain why they took 43 days to make the payments.

48. For the lack on any explanation from the Plaintiff, this Court finds no reason why the Defendant should be condemned to compensate the Plaintiff for the demurrage incurred between 26th July, 2022 and 8th September, 2022.

49. In the end, the Court finds that both parties are responsible for the demurrages incurred in the following manner;

    a. The Plaintiff is responsible for charges incurred from 9th May to 25th May, 2022, which is 17 days. This delay was caused by the hold imposed by KEBS, and the Plaintiff's delay in initiating the 2nd entry on the system.

    b. The Plaintiff is responsible for charges incurred from 26th May to 8th June, 2022, which is 13 days. During this time the Defendant was processing the application and exercising its statutory mandate as required by law.

    c. The Defendant is responsible for charges incurred from 9th June to 26th July, 2022, which is 48 days. Plaintiff spent these 48 days to acquire the importation certificate, although he did not need it for that consignment.

    d. The Plaintiff is responsible for charges incurred from 27th July to 8th September, 2022, which is 43 days. The Plaintiff took 43 days to pay and clear the consignment.

50. The Defendant's Tax invoices produced before the Court shows that the storage charges were for the period from 9th May, 2022 to 8th September, 2022, meaning that the consignment was there for 121 days in total. In mathematical terms, the Defendant's liability should be a reflection of the days it caused the delay, which was 48 days of the 121 days.

51. The Plaintiff produced four KRA tax invoices. Kshs.110,485.27/= for service 330041; Kshs.6,741.92/= for service 350032; Kshs.16,180.61/= for service 350005; and Kshs.4,558,342.59/= for services 310213 and 310275. In total, the sum of the invoices was Kshs. 4,691,750.39/=. This means that the consignment accrued 4,691,750.39/= for the 121 days it was held at the port. In mathematical terms, the Defendant should be responsible for 48/121 portion of the costs, which is Kshs.1,861,190.24/=.

52. The Plaintiff produced several invoices issues by MAERSK. The most relevant invoice was issued on 29th August, 2022, for USD 28,100. It captured charges incurred between 11th May, 2022 and 28th August, 2022, which was calculated to be 95 days. Out of these days, the Defendant was responsible for the charges incurred for 48 days, between 9th June and 26th July, 2022. The charge rates for each day were constant. In mathematical terms, the Defendant's liability is USD 14,197.895 which translates to Kshs.1,705,451.15/=. (Exchange rate at the date of payment was 120.120/= per 1 USD).

53. Therefore, the Defendant's liability under this claim for storage and demurrage charges is the sum of Kshs.1,861,190.24/= and Kshs.1,705,451.15/=, which is Kshs.3,566,641.39/=.

USD 60,266.84/= being the loss of business from increased costs (Loss)

54. The Plaintiff submitted that the prolonged storage and demurrage costs resulted in an increase in the cost per Kilogram. It stated that the quoted price to the customer was 0.88 USD per Kilogram and that the additional costs pushed the cost of production to 1.47 USD. It argued that this occasioned a loss of 0.59 USD per Kilogram (102,400 Kgs) totaling to a loss of USD 60,266.84.

55. The Plaintiff attached pro-forma invoices and Local Purchase Orders to show that it had contracts with its two clients; Chrislyne Limited & Seweco Co Limited. PW1 told the Court that they did not produce their respective contracts with the said clients. She told the Court that that the pro forma invoices and the LPOs served as contracts. I have seen the said documents.

56. The evidential value of a Local Purchase Order and a Proforma Invoice has been settled. In Lodwar Wholesalers Ltd v Commissioner of Investigation & Enforcement (Commercial Case 1 of 2020) [2023] KEHC 24768 (KLR), the Court stated the following regarding a Local Purchase Order.

> " Legally, a Local Purchase Order is not sufficient proof that supply was indeed made to the purchaser. It is not uncommon to find instances where an entity has been issued with a Local Purchase Order but the entity is incapable of making the supply/delivery for one reason or another. Local Purchase Orders are just proof of the intention to supply the items ordered for. The actual supply must however be proved. This Court holds that in order for a supplier to prove that it indeed supplied the goods ordered for, there has to be proof of issuance of invoices, delivery notes and receipts to the purchaser. This Court agrees with the Tribunal that Local Purchase Orders can only be considered as an intention to supply and nothing more."

57. Similarly, in the case of Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited [2015] eKLR the Court of Appeal stated this concerning the evidential value of a Proforma Invoice;

> " From the judgment, the respondent produced proforma invoices in support of the claims for the retained petrol station equipment. A proforma invoice is considered a commitment to purchase goods at a specified price. It is not a receipt, and as such cannot attest to the existence of or the acquisition of goods. We consider that a proforma invoice was not satisfactory proof of the respondent's loss, or the replacement value of the respondent's equipment, and the learned judge misdirected himself in finding that the proforma invoices

were sufficient proof of special damages for the respondent's equipment supposedly withheld by the appellant."

58. Based on these authorities, a proforma invoice can be evidence of a party's commitment to purchase goods at a specified price, while an LPO can be used to show a party's intention to supply the items ordered for. I shall now look at the said Proforma invoices and Local Purchase orders to see whether they have sufficient evidentiary weight to support the Plaintiff's claim. The first issue to determine is the price at which the Plaintiff sold the commodity. This issue is important because the Plaintiff gave contradictory statements regarding the price at which the commodity was sold.

59. The Plaintiff stated that it had quoted price to the customer as 0.88 USD per Kilo. I have seen a Proforma invoice issued by the Plaintiff to Seweco Paints Ltd. dated 14th February, 2022. In the document, it stated that it was willing to supply the client with the commodity at the rate of USD 880 PMT (which translates to USD 0.88 per Kilo). The Plaintiff issued 3 invoices to Seweco on 14th October, 21st October, and 26th November, 2022 in which it quoted the price at 0.88 USD per Kilo. Seweco also issued an LPO on 16th January, 2023, in which it stated that it was to purchase the commodity from the Plaintiff at the rate of 0.88 per unit.

60. I have also seen several LPOs issued by Chrislyne Coatings Ltd, in which it stated that it was to purchase the commodity at the price of 0.88 USD per unit. They were issued on the following dates; 22nd September, 2022; 26th September, 2022; 11th October, 2022; 18th October, 2022; 26th October, 2022; 10th November, 2022; and 9th January, 2023. The Plaintiff also issued Chrislyne with 5 invoices, in which it quoted the price at 0.88 USD per Kilogram; on 15th November, 14th October, 30th September, 15th September, and 2nd September, 2022.

61. In addition, there was evidence that the Plaintiff delivered the commodity to the two client companies, as evidenced by several delivery notes issued by the companies. Based on this evidence, I find that the Plaintiff sold the consignment at the rate of 0.88 USD per Kilogram.

62. The Plaintiff produced a Stock Costing & Evaluation in which it gave figures on how it arrived at the stated amount- USD 60,266.84/=. The document states that the cost per Kilogram was 1.47 USD and it sold the commodity at 0.88 USD per Kilo, indicating it made a loss of 0.59 USD per Kilogram. In arriving at the cost of production, the Plaintiff listed one of the costs as storage and demurrage charges of 70,459 USD.

63. However, the Court has already held that the Defendant is only responsible for a part of the said demurrages, which is Kshs.3,566,641.39/=. The Court has also already awarded the Plaintiff this amount under the previous category. In my view, it would not be appropriate for the Plaintiff, having been so awarded, to go ahead and seek compensation for the ultimate loss suffered. This is because the issue of the additional costs (demurrages) was a component in the determination of the loss incurred. Thus, issuing compensation under this category would most likely amount to double compensation for the same item.

USD 69,262/= being loss of business from the loss of use of money (Loss of Profits)

64. The Plaintiff submitted that the delay in the clearance of the goods made it lose its clients who were to purchase the commodity in June 2022 and it had to sell the same at a lower price of 0.804 USD per Kilogram. It argued that it suffered a loss of USD 69,262/=, that would have been the profits gained had the Defendants released the consignment within reasonable time to allow its clients to make the requisite payments which monies would have been re-invested back into the business.

65. I shall analyze the evidence on this issue to determine whether the Plaintiff has substantiated its claim that it would have made a profit of USD 69,262/=. One of the key issues for determination here is to determine the price, at which the Plaintiff sold the commodity.

66. The Plaintiff claimed that it sold the consignment at a loss and a lower price of 0.804 USD per Kilogram. PW2 told the Court that they ended up selling the consignment at 0.804 USD per Kilogram. He said the selling price was 0.804 USD per Kilo. Other than his oral testimony, there was no other documentary evidence to show that the Plaintiff sold the commodity at the price of 0.804 USD per Kilo. Notably, this part of PW2's testimony contradicts documentary evidence provided in Court.

67. In my view, this piece of oral evidence has no evidential value because it contradicts most of the Plaintiff's documentary evidence which showed that the Commodity was sold at 0.88 USD per Kilo. Importantly, this Court has already found in the previous paragraphs that the Plaintiff sold the consignment at the rate of 0.88 USD per Kilogram, as it has initially agreed with the clients before ordering the shipment. Thus, there was no evidence that it sold it at a lower price of 0.804 USD per Kilogram as claimed.

68. For these reasons, the claim under this category is disallowed.

USD 28,948/= as penalty interests incurred by the Plaintiff on its loan facility.

69. The Plaintiff claimed that it had obtained 90-day pre-import financing from Stanbic Bank Ltd to finance the purchase and importation of the Denatured Methanol. It argued that as a direct consequence of the delay in clearance and the subsequent loss of business, it did not pay the facilities when due and has had to pay an additional penalty estimated at USD 28,948/= which is calculated on a reducing balance basis. It further claimed that the late repayment further led to the denial of further refinancing facilities for its business in March, 2023 causing further loss of business.

70. The Plaintiff claimed that the facility required it to pay off the loan within 90 days from the invoiced date. It stated that, due to the delays at the Port, the facility amounts could not be paid off in good time as the clients did not pay for the consignment within the 90-day period. I have seen the said facility document. It shows that the loan would be established fir tenures not exceeding 90 days from the invoice date acknowledged by the debtor.

71. In addition, the Plaintiff claimed that it had an agreement with its clients that they would pay for the goods upon delivery. It attached a Proforma invoice it had issued to Seweco dated 14th February, 2022. One of the terms was that the client would pay 100% on arrival of the consignment at the Port. Based on the rule established in Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited [2015] eKLR, I observe that the terms of the proforma invoice are sufficient evidence that the Client had committed to pay for the goods as agreed.

72. However, the Plaintiff did not explain how it arrived at the figure it now claims under this category- USD 28,948. On the one hand, the Facility Letter issued by Stanbic Bank describes itself as an overdraft facility with a limit of USD 500,000. On the other hand, the commercial invoice issued by the seller of the commodity in the United States (PRS Square LLC) indicates that the purchase price was USD 71,680. The Plaintiff did not show what portion of the Overdraft facility went into the purchase of the commodity, because there is a possibility it did not utilize the entire facility for this particular business venture.

73. The evidence shows that the Loan facility was approved on 30th May, 2022. However, by this time, the consignment had already arrived at the Port on 9th May, 2022, almost three weeks earlier. The Commerce Invoice from PRS Square LLC outlined how payment for the commodity was to be made.

20% Advance and balance of 80% against Copy Documents. This means that the Plaintiff had already paid for the consignment by the time it arrived at the Port on 9th May, 2022. PW2 confirmed this position when he told the Court that the 20% was paid in advance and the rest was paid before the shipment.

74. Based on this evidence, it is more likely that the Plaintiff did not use the proceeds of the facility to pay PRS Square LLC for the purchase price of the commodity. This is because it paid before it could negotiate and acquire the facility at the Bank. Having failed to disclose the portion of the overdraft facility amount that went into this venture, the Court finds real difficulties in ascertaining the claim under this category. For these reasons, this particular claim fails for want of substantiation.

Whether the Plaintiff is entitled to General Damages

75. The Court has already found that the Plaintiff should not have been subjected to the extraneous demands for the Importation Certificate. The Defendant wrote an email to the Plaintiff on 8th June, 2022, in which it asked the Plaintiff to supply certain documents for the processing of the Importation Certificate. The Plaintiff stated that it did not have most of the documents and that it had to acquire them. The evidence before the Court shows that the Plaintiff was still furnishing the documents as late at 13th July, 2022.

76. This Court finds no difficulties in observing that the Defendant's demand for an Importation Certificate had a direct impact on the clearance process. It presumes that the clearance process would have been faster and shorter were it not for the Defendant's demand for an Importation Certificate. It's logical that the Plaintiff needed time to gather the requirements for obtaining the Certificate, for it did not anticipate that such a requirement would be needed. For these reasons, I find that the Plaintiff is entitled to compensation by way of general damages for having been subjected to an unnecessary process.

77. In the circumstances of the case, I find that an award of Kshs.2,500,000/= is a reasonable compensation to the Plaintiff for being subjected to an unnecessary process.

Disposition

78. The Plaintiff's Claim partially succeeds. These are the final orders of the Court;

    a. The Plaintiff is awarded Kshs.3,566,641.39/= as compensation for demurrage and storage costs incurred.

    b. The Plaintiff is awarded Kshs.2,500,000/= as general damages for being subjected to an unnecessary process.

    c. The other prayers are dismissed.

    d. Interest on (a) and (b) at Court rates from the date of filing the suit until payment in full.

    e. Costs of the suit are awarded to the Plaintiff.

79. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 15TH DAY OF OCTOBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Waweru Advocate for the Plaintiff

No attendance for Defendant

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