Gyam Investments Company Ltd v Attorney General (Civil Suit 164 of 2015)
[2025] KEHC 16586 (KLR) (Commercial and Tax) (14 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16586 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

CIVIL SUIT 164 OF 2015

H NAMISI, J

NOVEMBER 14, 2025

BETWEEN

GYAM INVESTMENTS COMPANY LTD ..... PLAINTIFF

AND

THE HON. ATTORNEY GENERAL ..... DEFENDANT

JUDGMENT

1. The dispute herein arises from a contract for services between the Plaintiff and the Defendant, who is sued as the legal representative of the Government of Kenya. In its Amended Plaint dated 27 April 2021, the Plaintiff pleads that it entered into a written contract with the Ministry of Health on 27 February 2012 for the provision warehousing and insurance services for medical equipment under the "Rural Health Project III". The contract was for a fixed period of 2 months, from March to April 2012, at a total cost of Kshs 19,995,800/=.

2. The Plaintiff avers that while the initial contract sum was eventually paid, the Ministry continued to deliver, or cause to be delivered, additional medical equipment to the Plaintiff's warehouse well after the expiry of the contract, with such deliveries continuing until December 2012. The Plaintiff further pleads that from January 2013, the Ministry and its agents ceased collecting the goods, leaving them in the Plaintiff's custody. The Plaintiff claims that this was an extension of the contract by conduct, obligating the Plaintiff to continue providing warehousing, insurance and additional security services to safeguard the Ministry's goods. The Plaintiff asserts that the Ministry's good remained in its warehouse until the final collection on 2 March 2023.

3. As a result, the Plaintiff seeks special damages amounting to Kshs. 527,738,600.00, as at December 2020, which it claims are the accrued charges for the extended warehousing, insurance, security and handling. The Plaintiff also prays for further accrued charges from January 2021 until the date of final collection, costs of the suit and interest at the contract rate.

4. The Defendant filed an Amended Defence dated 29 April 2021, in which there was an admission of the existence of the initial 2-month contract for Kshs 19,995,800/=. The Defendant confirmed that this sum, which comprised of warehousing, insurance and handling charges, was paid in two tranches in November 2012 and May 2013. The Defendant's core defence is that the contract was for a fixed term, which lapsed by effluxion of time at the end of April 2012. The Defendant categorically denies that that contract was ever extended, either in writing or by conduct of the parties.

5. Consequently, the Defendant denies all liability for any charges claimed beyond the initial contract period, pleading that such claims are non-contractual, grossly excessive and unjustified. The Defendant further avers that it was the Plaintiff who prevented the collection of the goods by orchestrating the closure of the warehouse.

6. At the hearing, each party called one witness.

The Plaintiff's Case

7. PW1, Robert Kamau Wachira, a director of the Plaintiff company, adopted his witness statement dated 28 September 2021 and produced the Plaintiff's bundle of documents as exhibits. He testified that the contract was for 2 months, but goods from the Ministry's suppliers kept arriving for 7-8 months, up to December 2012. The goods remained in the Plaintiff's custody and were only collected by the Ministry on 2 March 2023. PW1 testified that as late as 3 August 2021, Ministry officials visited the warehouse to inspect the goods, which, in his view, demonstrated their continued interest and ownership.

8. On cross examination, PW1 confirmed that the contract was, indeed, for 2 months. He further confirmed that he had made a request for a formal extension of the contract, but the same was not granted or approved by the Ministry. He admitted that the warehouse had been lock, but sought to qualify this by stating that it was after a long time when the Ministry had not been honouring its payment obligations.

9. The Plaintiff submitted that the Defendant's conduct of continuing to deliver goods, requiring insurance and security for those goods, and leaving them in the Plaintiff's custody created an implied contract on the same terms as the original written one. The Plaintiff placed heavy reliance on the admissions by the Defendant's witness in cross examination and the contents of the Ministry's 2021 Taskforce Report. Citing Telkom Kenya Limited v Kenya Railways Corporation eKLR, he argued that where services have been rendered to and appropriated by a party, that party must pay a reasonable price for them, and the Defendant cannot be unjustly enriched.

The Defendant's Case

10. DW1, David Mwangi Waititu, testified that he was the Project Manager for the Ministry of Health's Rural Health Project III, the very project that is the subject of this suit. He adopted his witness statement and produced the Defendant's bundle of documents. DW1 confirmed the duration of the contract, and the cost, which covered warehousing, handling and insurance. He was categorical that there was no extension of contract and that the claims presented by the Plaintiff were for post-contract period.

11. On cross examination, DW1 confirmed that the Ministry's goods were not, in fact, all collected within the two-month contract period. It was his testimony that the goods were lying in the warehouse beyond 2 months. He admitted that for as long as the Ministry's goods remained in the warehouse, the Ministry required security and insurance for them. DW1 further confirmed that the Kshs 19.9 million that the Ministry paid only covered the initial 2-month period from March to April 2012. DW1 identified the

delivery notes from suppliers like Total Hospital Solutions dated June 2012 and confirmed that they were delivered on behalf of the Ministry.

12. The Defendant submitted that the contract was a fixed term contract that lapsed in April 2012. It was argued that any alleged engagement thereafter was uncertain and lacked the fundamental elements of a contract, namely, offer, acceptance and consideration. Relying on the decision in William Muthee Muthami vs Bank of Baroda (2014) eKLR, the Defendant argued for the sanctity of the written contract, submitting that the Court cannot create a new contract for the parties. The Defendant maintained that all claims after April 2012 were extraneous and not payable.

Analysis & Determination

13. Having considered the pleadings, the evidence adduced and submissions, this Court frames the following issues for determination:

    i. Whether the contract was extended by conduct of the parties, thereby creating an implied contract for the continued provision of services;

    ii. In the alternative, whether the Plaintiff is entitled to compensation for services rendered on the principle of quantum meruit to prevent the Defendant's unjust enrichment;

    iii. Whether the Plaintiff is entitled to special damages and the interest claimed;

    iv. Who shall bear the costs of the suit?

14. On the first issue, the Defendant's entire defence rests on the argument that the written contract expired in April 2012 and was never formally extended. PW1 admitted this to be the case. If this were a simple case of a request for renewal being denied, the Defendant's position would be unassailable. However, the facts of this case are far from simple. The evidence reveals a profound disconnect between the formal contractual position and the reality on the ground, a reality created entirely by the Ministry's own actions.

15. The testimony of DW1 was fatal to the defence. DW1 admitted that the Ministry's goods remained in the warehouse, that the Ministry's own suppliers continued to add to those goods after the contract expired, and that the Ministry required those goods to be insured and secured, all of which came at a cost. These admissions establish a continuous course of conduct. The Ministry cannot, on the one hand, have its agents continue to use the Plaintiff's services, require the Plaintiff to incur costs for insurance and security, and then, on the other hand, plead "no contract" to avoid payment.

16. The authority cited by the Plaintiff, Telkom Kenya Limited vs Kenya Railways Corporation [2018] KEHC 8424 (KLR), which decision was affirmed by the Court of Appeal, is highly persuasive and directly applicable. In that case, the Court held that the state corporation was liable for services rendered in the absence of a formal contract, stating that where services are rendered and appropriated by a party, that party must pay a reasonable price. The conduct of the Ministry in this case – in continuing to deliver goods, in requiring security and insurance, in inspecting the goods in 2021, and in collecting them in 2023 – is a clear appropriation of the Plaintiff's services.

17. The most dispositive evidence before this Court is a document produced by the Plaintiff as Exhibit 54 titled "Report on Medical Equipment for ADB RH III Project". This is an internal report generated by a Taskforce appointed by the Principal Secretary of the Ministry of Health on 8 June 2021. The relevance of the report cannot be overstated. First, the Report's methodology section indicates that the Taskforce was briefed by Arch. Waititu, who was DW1 herein.

18. Second, the Report directly addresses the reason for the delay in collecting the equipment stating, "According to Arch. Waititu, 95% of the medical equipment was delivered to facilities. He further indicated that where there was a delay in delivering the medical equipment to the facilities mainly due to: delay in deliver to the warehouse by the supplier." The Report indicates that some facilities were not ready to host the equipment since they needed refurbishment. This finding is paramount. It is a direct contradiction of the Defendant's pleaded defence and oral testimony that the Plaintiff had prevented the collection of goods. The Ministry's own internal report, briefed by its own witness, confirms that the delays were entirely internal to the Ministry's operations.

19. Third, the Report contains a startling admission under the heading "Establish if there are any outstanding arrears due for the consignment." The Report states, "there are outstanding arrears to the tune of Kshs 8 billion relating storage charge at GYAM warehouse..." While this Kshs 8 billion figure is not the sum claimed by the Plaintiff and its origin is not explained, its presence in a Ministry Report serves as an unequivocal admission that the Ministry was aware of a massive, outstanding liability to the Plaintiff for storage charges, entirely separate from the initial contract sum. The Report, authored by the Ministry itself, concedes liability and recommends settlement, a position that is diametrically opposed to the defence of no liability advanced by the Defendant in this suit.

20. The Ministry's actions created an implied contract for the continued provision of warehousing and related services. In the alternative, the Ministry has been unjustly enriched by receiving over a decade of valuable services, which DW1 admitted to having a cost, for free. The doctrine of quantum meruit dictates that the Plaintiff must be compensated for the reasonable value of the services rendered. The Ministry's own report, which acknowledges outstanding arrears and recommends settling, is a clear admission that the Ministry was aware that payment was due.

21. Therefore, on both the grounds of an implied contract arising from conduct and the doctrine of quantum meruit, this Court finds that the Defendant is liable to the Plaintiff for services rendered from 1 May 2012 until the date of final collection on 2 March 2023.

Special Damages

22. Having established liability, the Court must now turn to the quantum. The Plaintiff claims special damages of Kshs 527,738,600/= as at December 2020. The law on special damages is trite: they must be specifically pleaded and strictly proved. In the case of Hahn vs Singh (1985) KLR 716, the Court of Appeal stated thus:

> "……special damages which must not only be claimed specifically but proved strictly for they are not the direct natural or probable consequences of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the act themselves"

23. In Nizar Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd the Court said:

> "It has time and again been held by the Court in Kenya that a claim for each particular type of special damage must be pleaded."

24. In the Amended Plaint, the Plaintiff pleaded its claim in meticulous detail. The basis for the quantum is the rates established in the original contract. This is, in the Court's view, the most reasonable and justifiable measure for the services rendered under quantum meruit. The Defendant's witness did not dispute the rates themselves, only their applicability after the contract expired.

25. The warehousing claim is based on the contractual rate of Kshs 1,784,300/= per month. The Plaintiff produced invoices submitted to the Ministry as well as the Plaintiff's Audited Accounts for the period 2012 to 2020, showing the warehousing as a significant recurring annual expense. The Plaintiff's audited financial provide prima facie proof that these costs were incurred.

26. The insurance claim is based on the contractual rate of Kshs 6,435,000/= per month. DW1 admitted that this was a requirement for the Ministry. On its part, the Plaintiff produced the actual insurance policies and schedules and demonstrated the expense in its audited books.

27. With respect to handling charges, the Plaintiff's claim is for Kshs 1,778,600/- per instance, for the period March 2012 to January 2013 and December 2018. The oral testimony herein was that the collection stopped in January 2013 and there was a partial collection in December 2018. It is my considered view that the claim for handling corresponds to the periods of outward movement of goods and that this claim is substantiated by the invoices issued.

28. The Defendant submitted that the charges were unjustified as the volume of goods must have decreased over time. While this argument is logical in theory, it is a bare assertion. The Defendant, who was in charge of collection, failed to failed to provide any evidence, such as collection schedules or "outward movement" records, to support this assertion or to allow the Court to pro-rate the charges. The Defendant failed to discharge its evidentiary burden to counter the Plaintiff's meticulously documented claim.

29. On a balance of probabilities, the Plaintiff has met the high standard of strictly proving its special damages. The pleaded sum of Kshs 527,738,600/= as at 31 December 2020 is, therefore, found to be due and owing. Furthermore, the Plaintiff's prayer for further accrued charges from January 2021 until the final collection on 2 March 2023, is justified, since the evidence confirms that the goods remained in the warehouse during this period.

Interest Rates

30. At the hearing, the Plaintiff's counsel moved to amend prayer (d) of the Amended Plaint to substitute the words "court rates' with "contract rate". The Plaintiff's witness statement and the contract itself specify the contract rate as 20% per quarter. That is equivalent to 80% per annum when compounded. The Court must, therefore, determine whether this clause is an enforceable provision for interest or an unconscionable penalty clause.

31. This Court is acutely aware of the long-standing principle of sanctity of contract. The Court of Appeal in National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd (2001) eKLR famously held that "A court of law cannot rewrite a contract between parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded or proved." The Defendant did not plead fraud or coercion.

32. However, this principle is not a shield for all contractual terms, no matter how oppressive. Equity retains the jurisdiction to intervene where a clause is not a genuine pre-estimate of loss, but rather a punitive measure intended to secure performance in terrorem.

33. The Court of Appeal has provided more recent and direct guidance on this very issue. In the case of Dhiman vs Shah [2025] KECA 1264 (KLR), the Court of Appeal was faced with an interest rate of 36% per annum compounded quarterly, which had caused a small loan to balloon into a liability of Kshs 69 billion. The Court held that the enforcement of such a liability would be grossly oppressive and unjust, and shock the judicial conscience. The Court struck down the interest clause as unconscionable.

34. Applying that binding precedent to the facts herein, the rate of 20% per quarter, or 80% per annum, is facially unconscionable. It is, by any objective commercial standard, a penalty. It is not a genuine pre-estimate of the Plaintiff's loss; it is a punitive clog on the Ministry's ability to pay. To enforce it would be to allow the Plaintiff a windfall so grossly oppressive as to be contrary to public policy. This Court, therefore, finds that the contractual interest clause of 20% per quarter is an unconscionable penalty and is unenforceable. The Court strikes down this clause in its entirety.

35. The Plaintiff is not, however, left without a remedy for interest. In the absence of an enforceable contractual rate, the claim for interest reverts to the statutory default, which is interest at court rates, as provided under the *Civil Procedure Act*. This is a fair and just outcome that compensates the Plaintiff for the time value of its money without punishing the Defendant – and by extension, the public purse – with a punitive and unconscionable sum.

36. For the foregoing reasons, this Court finds that the Plaintiff has proved its case on a balance of probabilities. Judgement is hereby entered for the Plaintiff against the Defendant in the following terms:

    a. the sum of Kshs 527,738,600/=, being special damages for the period up to 31 December 2020;

    b. The Plaintiff shall compute the accrued warehousing, insurance, and security charges from 1 January 2021 to 2 March 2023 at the rates established in the contract and shall file and serve a schedule of the said computation within 14 days from the date hereof;

    c. Interest on (a) and (b) at court rates from the date of filing this suit until payment in full;

    d. Costs of the suit.

DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF NOVEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Plaintiff: Ms. Nakeel h/b Ochieng

For the Defendant: N/A

Court Assistant: Lucy Mwangi