REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

HCCOMMM NO. E264 OF 2020

ELIZABETH MARY OKELO……..…..PLAINTIFF

-VERSUS-

LONGLIQI INTERNATIONAL (KENYA) LTD.....….....1ST DEFENDANT

LONGLIQI INTERNATIONAL (NIG) LTD.....2ND DEFENDANT

LONGLIQI GLOBAL HOLDINGS (CO.) LTD…..……...….3RD DEFENDANT

JIA DIAN…….……....4TH DEFENDANT

JUDGMENT

1. The plaintiff vide a plaint dated 16th July 2020 instituted this suit seeking Judgment against the defendants jointly and severally for a declaration that the Agreements in question are null and void and/or voidable at the plaintiff's instance and incapable of execution, *restitutio ad integrum* for the sums set out under paragraph 14, of the said plaint, consequent to the declaration above, and in the alternative, an award of special damages for the amounts particularized under paragraph 14, interest on the sums in paragraph 14(i) at Barclays Bank of Kenya lending rates from 26th July 2018 until payment in full, interest on the sums in paragraph 14(ii) at the same rate from 8th October 2018 until payment in full, and costs of the suit with interest at Court rates from the date of Judgment until payment in full.

2. The plaintiff's case is that on diverse dates in 2018, the defendants, either directly or through the agency of the 4th defendant, made various representations to the plaintiff to the effect that the 3rd defendant was a Chinese manufacturer, producer, and processor of natural health and medical

supplements commonly trading under the brand name Longliqi or Longrich products, and that the 1st, 2nd & 4th defendants were duly appointed and authorized by the 3rd defendant to import and supply the said products in Uganda and Rwanda, and that they were capable of importing the products directly from China and granting exclusive supply rights for those territories.

3. The plaintiff averred that relying on these representations, she entered into two purported Agreements, both dated 19th November 2018, namely the Uganda Agreement and the Rwanda Agreement, under which the 1st & 2nd defendants purported to grant the plaintiff exclusive supply rights, referred to as *"Super Stockist,"* for the products in Uganda and Rwanda. She further averred that under the said Agreements, the 1st & 2nd defendants undertook, among other things, that they would not appoint any other *"super stockists"* or import the products into the respective territories except through the plaintiff. That they also undertook to open offices in each territory at their own cost, and agreed that the plaintiff would be entitled to commissions of 10% & 4% on product point values from sales within and outside its network. Further, that any price changes would only be made after notification to the plaintiff, and that in the event of breach, the defendants would refund all monies paid by the plaintiff together with compensation for damages within thirty (30) days of written notice.

4. The plaintiff stated that it was an implied term of the said Agreements that the defendants would provide true and accurate statements of account detailing the specifications, quantities, prices, importation dates and values of all products imported under the Agreements. She contended that acting on the said representations and the purported Agreements, she remitted to the 3rd defendant the sum of USD 115,198.25 on 26th July 2018 for the Uganda Agreement and

USD 125,541.87 on 8th October 2018 for the Rwanda Agreement. She however asserted that the said representations and Agreements were fraudulent and false in material particulars and that the defendants fraudulently employed them to obtain money from her under false pretences. She claimed that there is no evidence that the 3rd defendant was the manufacturer or producer of the products. She contended that the defendants were not authorized to import or distribute the products in Uganda and Rwanda, that they lacked the capacity to grant exclusive franchise rights, and that they made the representations without any intention of performing their undertakings.

5. In the alternative to the foregoing, the plaintiff averred that if any valid contracts existed, they became impossible to perform owing to a total failure of consideration or performance by the defendants. She claimed that the subject Agreements are void, voidable, or incapable of execution, and the plaintiff is entitled to *restitutio ad integrum*. She further averred that the defendants' failure to supply the products as agreed constitutes a fundamental breach or total failure of performance, entitling her to a refund of the sums paid. The plaintiff also claimed that the defendants breached the terms of the subject Agreements by failing to import the products as stipulated, remit commissions, provide true statements of account and fraudulently permitting other stockists to import and sell the products Uganda and Rwanda, thereby defeating the exclusivity clause. The plaintiff claims to have suffered loss and damage amounting to USD 240,740.12, being the total remittances made under the two Agreements, as a result of the breaches and misrepresentations.

6. In opposition to the suit herein, the 1st & 2nd defendants filed a statement of defence dated 18th December 2020, denying all the averments contained in the plaintiff's plaint. They averred that the Agreements dated 19th November 2018

were merely *"Exclusive Distribution Agreements"*, granting the plaintiff distribution rights over the 3rd defendant's products in Uganda and Rwanda only. They further averred that the plaintiff failed to produce any evidence to demonstrate breach of the said Agreements or to establish any valid cause of action against them. The 1st & 2nd defendants sought orders for dismissal of the plaintiff's suit with costs.

7. The 3rd & 4th defendants also filed a statement of defence dated 18th December 2020 in opposition to this suit. In their defence, they denied all the averments contained in the plaintiff's plaint and averred that the plaintiff made payments amounting to USD 115,198.25 & USD 125,541.87. They further averred that the plaintiff has failed to prove any fraudulent conduct on their part. They stated that the plaintiff entered into Exclusive Distribution Agreements with the 1st & 2nd defendants to become a *"Super Stockist"* of Longrich products within Uganda and Rwanda. That pursuant to the terms of those Agreements, the plaintiff made the requisite payments directly to the 3rd defendant as per invoices issued to her and subsequently sought assistance from the 1st defendant to facilitate the importation of goods from China.

8. The 3rd & 4th defendants claimed that the 1st defendant, acting on behalf of the plaintiff, placed orders which were duly processed and the goods were shipped, arriving at the Mombasa Port on 28th May 2019, cleared at the Ugandan border (Malaba) on 30th May 2019, and delivered to Longrich International Uganda, C/O Senana Hypermarket, Kampala, on 5th June 2019, where Gloria Anori received them on behalf of the plaintiff. The 3rd & 4th defendants contend that the plaintiff received her first consignment and continued to make subsequent purchase orders, which were successfully delivered to both Uganda and

Rwanda up to June 2020. They maintain that no complaint was ever received from the plaintiff regarding the non-delivery of goods.

9. In addition to the foregoing, the 3rd & 4th defendants claimed that the plaintiff received weekly system bonuses, stockist commissions, and promotional awards paid by the 3rd defendant through the 1st defendant company between August 2018 and March 2020. The 3rd & 4th defendants asserted that the exclusivity contracts entered into between the plaintiff and the 1st & 2nd defendants have since lapsed by effluxion of time and maintained that any allegations of fraud must be specifically pleaded and strictly proved, which the plaintiff has failed to do. The 3rd & 4th defendants sought orders dismissing the plaintiff's suit with costs.

10. This matter proceeded to hearing where the plaintiff called one witness in support of her case. This Court however notes that despite service, the defendants neither called any witnesses to ventilate their cases nor cross-examined the plaintiff's witness.

PLAINTIFF'S CASE.

11. Ms Elizabeth Mary Okelo testified as PW1. She adopted her witness statements dated 16th July 2020 & 20th February 2022 and produced the documents in her list of documents dated 16th July 2020 as plaintiff exhibits Nos. 1 to 29. She testified that around August 2018, she was introduced by a long-time business acquaintance, Mr. Charles Muhindi, to a Chinese national, Mr. Jia Dian, the 4th defendant, who represented himself as a representative of a multinational organization dealing in natural health supplements manufactured and promoted through a multi-level marketing model. She stated that the 4th defendant informed her that the multinational entity was incorporated in China under the name Longliqi Global Holdings (Co.) Limited, the 3rd defendant herein, and that

for its African operations, the 3rd defendant had incorporated Longliqi International (NIG) Limited, the 2nd defendant herein in Nigeria, and Longliqi International (Kenya) Limited, the 1st defendant herein in Kenya.

12. PW1 testified that the 4th defendant further represented that he and one Mr. Xu Zhiwei, the Group Chairman of the mother company, were Directors and shareholders in all three entities and explained that an investor could join the business either as a *"normal stockist"* or as a *"super stockist"* also known as an *"exclusive distributor"*. She explained that he told her that in order to qualify as a *"super stockist"*, one was required to invest a minimum of USD 100,00.00 in exchange for which they would receive an equivalent value of products directly from China and enjoy exclusive distribution rights within a specified country. She stated that she was informed that a *"super stockist"* would also earn a 10% commission on total product sales within their country and a 4% commission on sales made by other stockists in the same territory.

13. Ms Okelo testified that the 4th defendant expressed interest in expanding the business into Uganda and Rwanda, and informed her and that he, together with the 1st & 2nd defendants, had been authorized by the 3rd defendant to appoint *"exclusive distributors"* for those territories. It was her evidence that after considering the proposal, she decided to invest in both countries, and thereafter, she was issued with two purported Exclusive Distribution Agreements dated 19th November 2018, one for Uganda and another one for Rwanda, which she executed and returned to the 4th defendant for completion. She further testified that under the said Agreements, the defendants were to deliver the products to designated addresses within the two territories, refrain from appointing other distributors, open offices at their own cost, remit agreed commissions, and refund all monies paid in case of breach. She stated that acting on these

representations, she received two invoices, one for USD 115,198.29 for Uganda and another for KES 12,742,500.00 for Rwanda and transferred a total of USD 240,740.12 to the 3rd defendant's account in China.

14. It was PW1's testimony that the 1st & 4th defendants assured her bankers, Barclays Bank of Kenya Limited, that upon importation, they would provide the necessary shipping documents in compliance with anti–money laundering regulations. She stated that while the 1st & 4th defendants attempted to comply with this undertaking, they submitted forged importation documents. She further testified that despite more than a year elapsing after the transfers, she never received the products nor the promised commissions. Her evidence was that she later received reports from her agents in Uganda and Rwanda that other distributors were importing and selling the same products in those territories with the defendants' knowledge and participation, in violation of her alleged exclusive rights. She stated that she came to the conclusion that the defendants' representations were part of a fraudulent scheme designed to defraud her of her investment and that the purported Agreements were a façade.

15. Ms Okelo questioned the credibility of the 4th defendant's claim that the first consignment arrived in Kampala nearly a year after payment, terming the unexplained delay a clear breach of contract. She observed that the goods allegedly cleared through Mombasa were described as "*table, kitchen or household articles of iron or steel,*" which bore no relation to the health products covered under the Agreements. She also dismissed the allegation that she continued to place orders in June 2020, noting that both Agreements had lapsed in November 2019 and that by March 2020, she was already demanding a refund of her money. PW1 testified that any commissions and bonuses she received from the defendants were tied to her separate registration as a regional

stockist for the Nyanza region of Kenya, under registration number KE01007067, and not to the Ugandan or Rwandan distributorships, registered under UGA1001 and RAW1001, respectively. It was her evidence that upon reconciliation, she established that payments under her Ugandan account totalled only Kshs.133,973.10, a negligible amount compared to the sum claimed.

16. At the close of the plaintiff's case, the Court also closed the defendants' cases and directed parties to file written submissions. On perusal of the Case Tracking System and the Court record, the defendants neither filed written submissions nor made oral submissions in Court in opposition to the plaintiff's case, respectively. The plaintiff's submissions were filed by the law firm of Otieno & Amisi Advocates on 8th May 2025.

17. Mr. Oduor, learned Counsel for the plaintiff relied on Section 107 of the Evidence Act and submitted that the plaintiff had successfully discharged her burden of proof by proving that the Agreements entered into with the defendants were tainted with fraud, misrepresentation and false pretences, rendering them void or voidable. In the alternative, he stated that the said Agreements had been frustrated by the defendants' non-performance, warranting restitution of the sums paid. He referred to the case of **Nzilu v Ngungua** (Civil Appeal 570 of 2019) [2023] KEHC 24193 (KLR), and argued that the orders being sought herein are in the nature of rescission, which is available where a contract is affected by vitiating factors such as misrepresentation or fraud, as is the case herein.

18. Mr. Oduor cited the **Black's Law Dictionary (18th Ed.)** definition of *"fraudulent misrepresentation"* and the case of **Derry v Peek** [1889] 14 App Cas 337 cited by the Court in **Sing'oei v Busienei** (Civil Appeal 26 of 2019)

[2024] KEHC 402 (KLR), and submitted that the plaintiff herein acted upon the representations made by the 4th defendant to invest in the defendants' business, and paid substantial sums as evidenced by invoices and SWIFT transfer documents, but the defendants failed to perform their obligations. He argued that the only reasonable inference that can be made from the foregoing is that the 4th defendant's representations were false and intended to defraud the plaintiff.

19. Counsel submitted that PW1's testimony remained unchallenged and no evidence was tendered by the defendants to rebut her claims, and as such, the plaintiff's evidence stood uncontroverted. He cited Section 112 of the Evidence Act and argued that since the facts surrounding the defendants' alleged performance were within their exclusive knowledge, the burden of disproving the plaintiff's claims lay upon them. To buttress these submissions, Counsel relied on the case of **Matiangi v Kisii Bottlers Limited & another** [2021] KEHC 13708 (KLR). Mr. Oduor asserted that the plaintiff had proved fraudulent misrepresentation, thus the subject Agreements were void *ab initio* or at the very least voidable at her instance. In the alternative, he urged this Court to find that the Agreements had been frustrated by the defendants' failure to perform, hence under the principle of restitution, the defendants ought to refund all sums received together with interest.

ANALYSIS AND DETERMINATION.

20. I have considered and analyzed the evidence adduced by the plaintiff in line with the pleadings filed, together with the written submissions by Counsel for the plaintiff. The issues that arise for determination are: -

i) **Whether the subject Agreements were procured through fraudulent misrepresentation or false pretences on the part of the defendants and/or if the defendants breached the subject Agreements; and**

ii) **Whether the plaintiff is entitled to a refund of the sums paid amounting to USD 240,740.12.**

21. Before delving into the merits and demerits of the identified issues, this Court must first address whether it shall consider the contents of the defendants' statements of defence and witness statements. It is evident that save for filing their respective pleadings and witness statements, the defendants did not call any witness to ventilate their case, rebut, or controvert the plaintiff's testimony and evidence. In addition, the plaintiff's witness was not cross-examined either by the defendants in person or through Counsel, as none of them attended Court on the date the case was heard.

22. Filing of a statement of defence and witness statements without calling any witness to testify renders those pleadings mere averments which do not constitute evidence. This position was stated in the case of **Janet Kaphine Ouma & another v Marie Stopes International (Kenya)** Kisumu HCCC No. 68 of 2007, cited with approval in **Nduku v Mbithi** [2025] KEHC 14336 (KLR), where the Court held that -

> ***In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the plaintiff and that of the witness remain uncontroverted and the statement in the defence remains mere allegations...Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support by way of evidence***

23. Further, it is well settled that failure to subject the plaintiff's testimony to cross-examination or to call any witness to controvert it means that the plaintiff's evidence remains unchallenged and uncontroverted. The fact that evidence is unchallenged does not however absolve the plaintiff of the legal burden of proof. This position was succinctly stated by the Court in the case of **Kenya Power and Lighting Company Limited v Nathan Karanja Gachoka & another** [2016] KEHC 1362 (KLR), where the Court held that -

> ***I am of the considered view that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.***

24. This Court shall now proceed to determine the issues earlier identified for determination.

Whether the subject Agreements were procured through fraudulent misrepresentation or false pretences on the part of the defendants and/or if the defendants breached the subject Agreements.

25. The plaintiff and the 1st & 2nd defendants entered into Super Stockist Agreements for Uganda and Rwanda, both dated 19th November 2018, granting the plaintiff exclusive distributorship rights over the 3rd defendant's products within the said territories, as exhibited in plaintiff exhibits No. 1 & 2.

26. The plaintiff's case is that the defendants, through the 4th defendant, falsely represented that the 3rd defendant was a manufacturer of Longrich products and that the 1st & 2nd defendants were duly authorized to appoint exclusive distributors for Uganda and Rwanda. The plaintiff contended that she relied on

those representations to remit USD 240,740.12 to the 3rd defendant's account in China.

27. It is trite law that he who alleges must prove. This maxim is founded on the provisions of Sections 107, 108 & 109 of the Evidence Act. This therefore means that the plaintiff bears the legal burden of proving her allegations of fraud and misrepresentation against the defendants. It is further trite that such allegations, being of a serious nature, must be specifically pleaded and strictly proved. This was the holding by the Court of Appeal in the case of **Vijay Morjaria v Nansingh Madhusingh Darbar & another** [2000] KECA 223 (KLR), where the Court stated as follows -

> ***It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts. See Davy v Garrett (1878) 7 Ch. D 473 at 489. In my view the complaint by the appellant is well-merited since the plaint and the re-amended plaint were defective on their faces. The ground of appeal grounded on failure to specifically plead fraud must succeed.***

28. This Court has already found that the plaintiff entered into two Super Stockist Agreements with the 1st & 2nd defendants, both dated 19th November 2018, granting the plaintiff exclusive rights to distribute the 3rd defendant's products in the Uganda and Rwanda regions. The plaintiff produced invoices and requests for swift customer transfers dated 26th July 2018 and 8th October 2018 as proof that she transferred the invoiced amounts to the 3rd defendant's account

in China. She then testified that the defendants failed to import the products as agreed, and permitted other stockists to import similar products into the territories, thereby undermining the exclusivity of her distributorships.

29. Although the plaintiff alleged that the defendants permitted other stockists to operate within her exclusive territories, she did not adduce direct evidence to substantiate those allegations. I am therefore not persuaded that the plaintiff proved her allegations of fraud and misrepresentation against the defendants to the standard required in law, which is higher than on a balance of probabilities but lower than beyond reasonable doubt.

30. Nevertheless, I am persuaded that having undertaken to import the Longrich products, the 1st & 2nd defendants bore the burden of rebutting the plaintiff's testimony and evidence by demonstrating that they indeed imported and delivered the said products to the designated territories and remitted commissions to the plaintiff as agreed, which burden they did not discharge as they neither rebutted nor controverted the plaintiff's testimony by availing witnesses to testify under oath in Court on their behalf. The plaintiff's evidence therefore remains unrebutted.

31. This Court finds therefore that the 1st & 2nd defendants failed to perform their contractual obligations, amounting to a fundamental breach of contract.

Whether the plaintiff is entitled to a refund of the sums paid amounting to USD 240,740.12.

32. The remedy for breach of contract under common law is an award of damages, whose purpose is compensatory rather than punitive. As stated in the English case of **Robinson v Harman** [1848] 1 Exch 850 as cited by the Court in **Mabeya t/a Gynocare Women and Fistula Hospital v Kenya Power and**

Lighting Company [2023] KEHC 18902 (KLR), the guiding principle is that the injured party should be restored, as far as money can do, to the position they would have been in, had the contract been properly performed. In the circumstances, having found that the 1st & 2nd defendants are in breach of the subject Agreements, I am persuaded that the plaintiff is entitled to an award of damages for breach of Contract.

33. The plaintiff produced Requests for Swift Customer Transfers dated 26th July 2018 and 8th October 2018 as plaintiff exhibits No. 3 & 4, confirming transfer of USD 240,740.12 to the 3rd defendant's account in China. The Court has already found that the 1st & 2nd defendants neither imported nor delivered the said products as agreed, nor remitted any commissions to the plaintiff.

34. I am satisfied that the plaintiff suffered loss equivalent to the sums paid to the 3rd defendant and is entitled to a refund of USD 240,740.12, together with interest thereon from the 1st & 2nd defendants who are in breach of the subject Agreements and the 3rd defendant in whose accounts the aforesaid sums were transferred to. I also find the 4th defendant liable due to the representations he made to the plaintiff, by making various representations to her which she relied on, leading her to sign the two Agreements in issue.

35. This Court however finds no basis for awarding interest at Barclays Bank of Kenya's lending rates and shall instead apply Court rates. In the end, this Court finds that the plaintiff's suit against the defendants is successful.

36. Section 27 of the Civil Procedure Act provides that costs follow the event. Costs of this suit shall be borne by the defendants.

37. In the sum, I hereby enter Judgment for the plaintiff against the 1st, 2nd, 3rd and 4th defendants jointly and severally for -

i) The sum of USD 115,198.25 with interest at Court rates from 26th July 2018 until payment in full for the Ugandan Agreement;

ii) The sum of the sum of USD 125,541.87 with interest at Court rates from 8th October 2018 until payment in full for the Rwandan Agreement; and

iii) Costs of this suit plus interest thereon at Court rates from the date of Judgment until payment in full.

It is so ordered.

DELIVERED, DATED and **SIGNED** at **NAIROBI** on this **14th** day of **November 2025. Judgment delivered through Microsoft Teams Online Platform.**

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Odour for the plaintiff

No appearance for the defendants

Ms B. Wokabi – Court Assistant.