



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL SUIT. NO. 052 OF 2017

BETWEEN

**GEOMAPS AFRICA LIMITED
PLAINTIFF**

VERSUS

**NAIROBI CITY COUNTY GOVERNMENT 1ST
DEFENDANT**

**MINISTRY OF DEVOLUTION & PLANNING 2ND
DEFENDANT**

**THE ATTORNEY GENERAL 3RD
DEFENDANT**

JUDGMENT

Introduction and Background

1. This suit arises from a Partnership Contract (the contract), dated 11th July 2005 between the Plaintiff and the City Council of Nairobi (a predecessor to the 1st Defendant), under which the Plaintiff was engaged to develop, implement, and operate a Geographical Information System (GIS) for revenue

management and service delivery in Nairobi over ten years.

- 2.** The Plaintiff contends that sometime in 2008 the 1st Defendant unlawfully adopted a new system dubbed *Local Authority Information, Finance and Operations Management Systems (LAIFOMS)*. The 1st Defendant also ceased payments and denied the Plaintiff and its staff access to the GIS infrastructure. The Plaintiff further contends that this amounted to a breach of the contract and that despite attempts to resolve the matter, the 1st Defendant terminated the contract. The Plaintiff claims that as at the date of termination, and pursuant to a subsequent settlement agreement, the 1st Defendant owed it Kshs. 618,548,873.42, which remains unpaid. The Plaintiff seeks judgment for this sum together with interest at 19% from November 2005.
- 3.** In support of its case, the Plaintiff called **Lenny Kivuti**, its Managing Director, whose testimony aligns with the pleadings and written submissions filed on the Plaintiff's behalf. The witness, PW 1, also confirmed in his testimony that the settlement

agreement was executed in which the Plaintiff waived Kshs. 1,141,024,290.93 and agreed to accept the claimed amount as the outstanding debt. PW 1 also confirmed that the Plaintiff withdrew its claim against the 2nd and 3rd Defendants on 28th March 2023.

4. In response to the Plaint, the 1st Defendant filed its Statement of Defence dated 21st March 2017. While not disputing the existence of the contract, it argued that the contract was entered into by its predecessor, the City Council of Nairobi. The 1st Defendant alleged that the Plaintiff breached the contract by failing to secure the system, excluding Council staff from access, failing to conduct training, and limiting the system to land rates revenue management. It claimed that these failures led to revenue losses through fraud.
5. The 1st Defendant further stated that the GIS was replaced with LAIFOMS pursuant to a directive from the Ministry of Local Government requiring all local authorities to implement it. It denied breaching the contract and argued that the Plaintiff had previously instituted **Miscellaneous Application**

No. 720 of 2008, which was dismissed for want of prosecution, and that the present suit amounts to re-litigation and abuse of process. The Defendant also relied on the arbitration clause in the contract, asserting that the Plaintiff ought to have pursued arbitration rather than litigation.

6. The Defendant further contended that the settlement agreement was unenforceable under the Public Authorities Limitation Act, CAP 39, and reiterated that any disputes should have been resolved through arbitration. Notably, the 1st Defendant did not call any witnesses

Analysis and Determination

7. The central issue for determination is whether the Plaintiff is entitled to payment of Kshs. 618,548,873.42. The Defendant does not deny the existence of the contract or the settlement agreement. Its defence rests on two grounds, first, that payment was conditional upon receipt of funds from the Government and other entities and second, that the settlement agreement is unenforceable.

- 8.** The 1st Defendant's argument that the dispute ought to have been subjected to arbitration is misplaced. Even if it was true that the original contract contained an arbitration clause, **Section 6 of the Arbitration Act** requires a party who wishes to take advantage of an arbitration clause to seek stay of proceedings not later than the time of entry of appearance or acknowledgment of the claim. (See **Civil Case No. 1756 of 2000 Bedouin Enterprises Ltd. V Charles Njogu Lofty and Joseph Mungai Gikonyo T/A Garam Investments**).
- 9.** In the instant suit the 1st Defendant entered appearance, filed a full statement of defence, and participated substantively in the proceedings without invoking **Section 6**. This constitutes clear acquiescence and waiver of the arbitration forum. It is now too late to resurrect the objection at judgment stage.
- 10.** On the second issue, the Plaintiff produced evidence of repeated acknowledgments of the debt by the 1st Defendant, including the settlement agreement dated 31st July 2012, duly executed by

both parties. **Clause 3** of that agreement clearly envisaged that the City Council would identify sources of financing to settle the debt. It stated that:

“The City Council of Nairobi intends to identify several sources of finances capable of financing the settlement of debts accruing in this contract. These include but are not limited to ...”

11. The 1st Defendant however relies on **Clause 18** of the agreement which provided that:

“Geomaps consents and the council warrants that payment of the agreed amount hereinabove shall be made on receipt of the funds due to the council in form of Government contribution in lieu of rates and wayleave fees due to the council by the Kenya Power Company, by Treasury as recommended and agreed upon by the Parties during a meeting agreed upon by the

Parliamentary Committee on Local Authorities and Funds Accounts Committee on 8th December 2011 at the main conference Room, county hall parliament buildings between the Committee, the Council, the Permanent Secretaries from the Ministries of Finance and Local Government, the managing Directors of Kenya Power & Lighting Company Limited and Kenya Railways and the Chairman Geomaps Africa Ltd.”

- 12.** The 1st Defendant argues that it had not received the anticipated funds and insists that the Plaintiff had failed to prove otherwise. I find this contention unpersuasive. The burden lay on the 1st Defendant to demonstrate that it had taken steps to secure the funds or at least incorporated the debt into its budgets. No such evidence was presented. It was not for the Plaintiff to disprove the 1st Defendant’s assertions, as the obligation under the settlement agreement imposed a positive duty on the 1st

Defendant to diligently pursue, secure, and allocate resources for payment.

13. Like any other legal person, the government is bound by the bargains and contracts that it enters into. The role of this Court is to construe those contracts and any implied terms, and not to rewrite them, as was affirmed by the Court of Appeal in **Pius Kimaiyo Langat V Co-operative Bank of Kenya Limited, [2017] KECA 152 (KLR)** and **Centurion Engineers & Builders Limited V Kenya Bureau of Standards, [2023] KECA 1289 (KLR)**. On the strength of these authorities, I find no difficulty in holding that the final settlement agreement was and is a binding contract between the parties. To hold otherwise would render public contracts unenforceable at whim, reducing them to “mere pieces of paper.”

14. The Defendant’s mere claim of having received no funds to settle the debt is unsustainable, as is the belated contention that the Plaintiff breached the contract. Numerous explicit and unequivocal admissions of the debt have been made by the 1st Defendant and its predecessor, consistent with the

principle established in **Choitram V Nazari, (1984) KLR 327** and sufficient to find the 1st Defendant liable for the amount.

15. On the issue of interest payable on the debt, the Plaintiffs have not justified the interest at 19% which they claim. I therefore find it just and equitable to award interest at court rates on the claim.

Disposition

16. For the reasons stated, the Plaintiff's suit is successful. I hereby enter judgement in its favour and against the 1st Defendant in the following terms:

- i. Kshs. 618,548,873.42;***
- ii. Interest on (i) above at court rates from 31st July 2012 (being the date when the settlement agreement was entered) until payment in full.***
- iii. Costs of the suit.***

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 27TH DAY OF FEBRUARY 2026.

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mr Muchiri for the plaintiff
Ms Kemunto for the defendant
Court Assistant: Lillian

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