

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL CASE NO. E011 OF 2025

VISIONGATE EYECARE CONSULTANTS.....1ST PLAINTIFF
WESTSIDE HEALTHCARE MALABA.....2ND PLAINTIFF
ST, JAMES INFIRMARY BUSIA LIMITED.....3RD PLAINTIFF
PESI MEDICAL CENTRE.....4TH PLAINTIFF
KHALABA MEDICAL SERVICES.....5TH PLAINTIFF
BRIMAXA HOSPITAL LIMITED.....6TH PLAINTIFF
STIRLING HEALTHCARE CONSULTANTS.....7TH PLAINTIFF

VERSUS

TRIDENT INSURANCE COMPANY LIMITED.....DEFENDANT

JUDGMENT

1. The plaintiffs herein are health care providers. They were contracted by the defendant, who was in the business of providing medical cover, to treat its customers, under covers that it had underwritten. Their case was that they did, on diverse dates, provide the medical care service to the customers of the defendant, as contracted. However, in breach of the contracts, that the defendant had with them, the defendant did not pay for the services that they had rendered to the customers of the defendant, under the medical covers. The plaintiffs' claims, against the defendant, aggregated to Kshs. 68,067,893.00. The plaintiffs also sought general damages, for breach of contract.
2. The defendant was duly served with the relevant court process. An affidavit of service was filed, sworn on 21st November 2025. The defendant, despite service, neither entered appearance, nor filed defence. On that default, the plaintiffs requested for judgement, vide a request for

judgement, dated 8th December 2025. Judgement was entered on 3rd February 2026, on the liquidated claims, and the matter was allocated a date for formal proof, of the unliquidated claim for general damages, for breach of contract.

3. The proceedings, on the formal proof, were conducted on 26th February 2026. Evidence was taken from 6 witnesses for the plaintiffs.
4. PW1, Vincent Ogutu, was a director of the 1st plaintiff. He testified that the 1st plaintiff had a contract with the defendant, contained in pages 2 to 6, of the plaintiffs' bundle, which he asserted was performed by the 1st plaintiff, by way of offering services to persons who held medical cover with the defendant, but the 1st plaintiff was not paid for the services it had offered. He stated that the debt owing to the 1st plaintiff, by the defendant, stood at Kshs. 5,294,180.00, as tabulated in the material at pages 7 to 11 of the plaintiffs bundle of evidence. He explained that the defendant issued to the 1st plaintiff a number of cheques, some of which were returned unpaid, upon presentation to the bank.
5. On general damages, he detailed the inconvenience that the 1st plaintiff was exposed to, for it had put in resources, to serve the defendant, to a level that the 1st plaintiff was unable to serve its other patients, because the resources, that would have been utilised to serve them, had been dented while giving service to the defendant. He also testified that there were suppliers to be honoured. The default of payment, by the defendant, meant that the 1st plaintiff was unable to meet its obligations to the suppliers. That forced the directors to dip into their pockets, to finance the 1st plaintiff, to enable it move forward. It made it extremely difficult for the 1st plaintiff to remain afloat. The financial strain, imposed by that, on the

directors, affected their personal finances, and their obligations to their families, some members of whom were in school and university.

6. PW2, Evans Majune Omonya, was a director of the 2nd plaintiff. He stated that the 2nd plaintiff had a contract with the defendant, which was exhibited at pages 127 to 134 of the plaintiffs' bundle. He testified that the 2nd plaintiff served the defendant for 1½ years, and there was a bill of Kshs. 2,902,291.30, which was not paid by the defendant. He said that the only payment the defendant made was of Kshs. 900,000.00. He said that the documents to support the indebtedness to the 2nd plaintiff were at pages 135 to 153 of the bundle. He also stated that the defendant gave them a number of cheques in settlement of the debt, and most of them, totalling Kshs. 600,000.00, bounced. He said that the 2nd plaintiff was a small enterprise, which could not thrive, if entities, such as the defendant, did not meet their contractual obligations to it.
7. He pointed out that the 2nd plaintiff had faced suits from its vendors, over bills it could not pay, on account of the moneys owed to it by the defendant. He mentioned a claim at the Small Claims Court, of Kshs. 175,000.00, by one of the suppliers of the 2nd plaintiff. He stated that the 2nd plaintiff was no longer able to settle its debts, because of the large amount of money owed to it by the defendant. He mentioned that even its employees intended to take legal action to recover unpaid salaries. He asserted that the conduct by the defendant had put them in an embarrassing situation.
8. PW3, Cecilia Nabwire, was from the 3rd plaintiff. She stated that the contract papers, on the agreement between the 3rd plaintiff and the defendant, were at pages 82 to 89 of the plaintiffs'

bundle. She stated that the defendant owed the 3rd plaintiff a sum of Kshs. 2,766,016.00, details of which were at pages 90 to 107 of the plaintiffs' bundle. On general damages, she echoed the testimonies of PW1 and PW2.

9. PW4, Valentine Kinyangi, was a credit controller with the 4th plaintiff. He stated that the contract with the defendant was at pages 22 to 30 of the plaintiffs' bundle, and the 4th plaintiff was owed Kshs. 6,500,000.00 by the defendant, as evidenced by the documents at pages 31 to 81 of the plaintiffs' bundle. On the general damages, he urged the court to consider the testimonies given by PW1 and PW2.
10. PW5, Dr. Isaac Obore Omeri, was a doctor with the 5th plaintiff, and he was also the Chief Executive Officer of that entity. He testified that the 5th plaintiff too had a contract with the defendant, as evidenced by the documents at pages 108 to 111 of the plaintiffs' bundle. He stated that the defendant owed the 5th plaintiff Kshs. 1,437,940.00, as evidenced by documents appearing at pages 112 to 118 of the plaintiffs' bundle. On general damages, he said that there was an expectation of value for money. He stated that they had incurred risks while travelling back and forth between Busia and Nairobi, in following up on their payments. He said that court action was a last resort.
11. PW6, Bruce Munyala Musungu, was an administrator with the 7th plaintiff. He stated that the contract between the 7th plaintiff and the defendant was at pages 119 and 126 of the plaintiffs' bundle. He testified that what was owed to the 7th plaintiff was Kshs. 7,100,000.00. He said that he agreed with the statements made by his colleagues, on general damages.

12. The 6th plaintiff did not participate at the oral hearing for formal proof.
13. From the material, that the 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs filed, it is evident that there was a binding contractual engagement between them and the defendant. There is also evidence that the said plaintiffs discharged or performed their end of the obligations under the contracts with the defendant. However, the defendant fell short. It did not settle their bills, which remain outstanding. It also emerged, from the evidence, that the defendant issued cheques, but some of them were returned unpaid. Issuance of stale or bad cheques is an offence in this jurisdiction.
14. The 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs testified that they were owed, by the defendant, a sum of Kshs. 26,000,427.30, in aggregate, broken down to Kshs. 5,294,180.00 owed to the 1st plaintiff; Kshs. 2,902,291.30 owed to the 2nd plaintiff; Kshs. 2,766,016.00 owed to the 3rd plaintiff; Kshs. 6,500,000.00 owed to the 4th plaintiff; Kshs. 1,437,940.00 owed to the 5th plaintiff and Kshs. 7,100,000.00 owed to the 7th plaintiff. However, despite claiming to have been owed Kshs. 2,902,291.30, the 2nd plaintiff only pleaded Kshs. 1,973,713.00. Similarly, despite claiming Kshs. 2,766,016.00, the 3rd plaintiff had pleaded only 1,200,000.00. The 5th plaintiff pleaded 1,000,000.00, despite claiming Kshs. 1,437,940.00 at the oral hearing.
15. It is trite, that parties are bound by their pleadings, and the court cannot award to them an amount higher than what they have claimed in their pleadings. The amount that should be awarded, in the circumstances, should be the figure established in the pleading and the material placed on record. I am satisfied that the parties have established indebtedness to them by the defendant of Kshs. 23,067,893.00, in aggregate,

broken into Kshs. 5,294,180.00 owed to the 1st plaintiff; Kshs. 1,973,713.00 owed to the 2nd plaintiff; Kshs. 1,200,000.00 owed to the 3rd plaintiff; Kshs. 6,500,000.00 owed to the 4th plaintiff; 1,000,000.00 owed to the 5th plaintiff and Kshs. 7,100,000.00 owed to the 7th plaintiff.

16. I, accordingly, hereby enter judgement, in favour of the 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs, in the aggregated sum of Kshs. 23,067,893.00. That amount shall attract interest, at court rates, from the date of the filing of the suit, till payment in full.
17. The 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs have also claimed for damages for breach of contract. Conventionally, general damages are not awarded for breach of contract, so long as the innocent party is able to compute a liquidated amount of what is claimed to be the consequence of the breach. In this case, there is a liquidated amount, being the moneys owed for the services rendered. It would appear to be adequate compensation, so long as the defaulter makes good. However, breach often exposes the innocent party to consequential losses, beyond what is capable of computation in monetary terms, such as the claim herein for fees and costs for services rendered and not paid for. Some losses are not tangible, in terms of computation in financial terms, for such general damages would be the only means of compensation.
18. The 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs led evidence, to support their claim for general damages for the breach of contract, arising from the non-payment for services that they had rendered under the contracts. PW1 and PW2 adduced that evidence. Much of it would be the sheer inconvenience that comes with not being paid for services rendered. There would always be the expectation that once services are rendered,

there would be payment. The default to pay has a ripple effect. The person not paid, often has his own financial obligations to others, intended to be settled from the funds withheld. Without the money, from the work that he had done, he would be unable to meet his obligations. There are employees, who do the work or service, or who provide support. He would be unable to pay them. The rendering of the services would require supplies, of drugs, water, equipment, surgical material, etc, often by third parties, most of the time supplied on credit. He would be unable to purchase such. Failure to pay for the services would expose the innocent party to lawsuits, and to a characterisation as a debtor, or as someone who is unable to pay debts. Generally, exposure to embarrassment.

19. PW1 and PW2 brought out that situation vividly. That was a loss suffered, on account of the default on the part of the defendant, for which the 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs should be entitled to compensation.
20. On the quantum of compensation for that loss, by way of general damages, the court has to assess it, and come up with a figure. Such loss cannot always be adequately remedied or compensated in monetary form, but whatever figure is awarded by the court is intended to restore the claimant to the place he was at before the loss, so far as money can do it. The 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs did not submit on the matter, to guide me in assessment of the compensation suitable for that loss. I shall have to exercise discretion. I believe an award of Kshs. 800,000.00, to each of the 6 plaintiffs, would adequately compensate them for the loss and damage that they suffered on account of the breach by the defendant.
21. In view of everything said above, I will, as I hereby do, dispose of the matter herein as follows:

- (a) That I enter judgement for Kshs. 23,067,893.00, in aggregate, as broken down in paragraph 15 of the judgement, to the 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs, as against the defendant, being the moneys outstanding on the bills unpaid for services rendered under the contracts;
- (b) That the award, in (a) above, shall attract interest, at court rates, from the date of the filing of the suit until payment in full;
- (c) That I award general damages of Kshs. 800,000.00, to the 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs, each, as against the defendant, for breach of contract, which award shall attract interest at court rates, from the date of this judgement till payment in full; and
- (d) That the 1st, 2nd, 3rd, 4th, 5th and 7th plaintiffs shall have the costs of the suit, against the defendant.

22. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
MILIMANI, NAIROBI, ON THIS 10TH DAY OF APRIL 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

**Mr. Juma, instructed by JV Juma & Company, Advocates for the
plaintiffs.**

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