

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL SUIT NO. E009 OF 2025**

**REGAL EQUIPMENT LIMITED.....PLAINTIFF**

**VERSUS**

**MAHMOOD KASSAM MIYANJI LIMITED.....DEFENDANT**

**JUDGMENT**

1. The basis of the claim herein is a Complaint dated 29<sup>th</sup> January 2025. The Plaintiff averred that on various dates in 2020 and 2021, the parties entered into agreements for the sale and supply of machinery, equipment, and parts to the Defendant. The Plaintiff issued invoices, account statements, and demand notices detailing the items supplied and the amounts due. However, after receiving the machinery and equipment, the Defendant allegedly failed, neglected, and/or refused to pay the total purchase price despite several invoices and demand notices issued by the Plaintiff.
2. The Plaintiff averred that as a result of the Defendant's failure to settle the debt, interest has accrued as provided in the sale agreement, and the Plaintiff's business

has allegedly been negatively affected due to lack of finances and accumulating bad debts. The Plaintiff alleges breach of contract by the Defendant through failure to pay the outstanding sum of Kshs. 57,555,198.24, failure to honour the invoices issued for the supplied machinery and parts, and failure to settle the debt despite demand letters and a notice of intention to sue. The Plaintiff claims special damages of Kshs. 57,555,198.24, being the outstanding amount owed for the machinery and equipment supplied.

3. The Plaintiff prayed for judgment against the Defendant for the following: -

*a) Special damages as proven;*

*b) General damages for breach of contract;*

*c) Interest on (a) and (b) above at prevailing court rates;*

*d) Costs of this suit; and*

*e) Any other relief that this Honourable Court may deem fit to grant.*

4. The Defendants having been duly served failed to enter appearance or file statement of defence. The matter then proceeded for formal proof hearing where the Plaintiff tendered their evidence in court.

5. This court has considered the pleadings on record and evidence. The issues for determination are: -

*(a) Whether the Plaintiff has proved the existence of a contractual relationship between the parties.*

*(b) Whether the Defendant breached the contract by failing to pay for the supplied machinery and equipment.*

*(c) Whether the Plaintiff has proved its claim for special damages.*

*(d) Whether the Plaintiff is entitled to general damages, interest and costs.*

6. It is not disputed that the Defendant did not enter appearance or file a defence despite service of summons. Nevertheless, the law is settled that even where a matter proceeds by way of formal proof, the Plaintiff bears the burden of proving its case on a balance of probabilities.

7. **Section 107** of the **Evidence Act** provides that: -

*(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

*(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.*

8. The Court of Appeal in **Karugi & Another v Kabiya & 3 Others (1987) KLR 347** held that: -

*“Neither can I agree with Mr. Waweru that the burden of proof is in any way lessened because the case is heard by way of formal proof. The burden on the plaintiff to prove his case remains the same, though it is true that,*

*where the matter is not defended, or, as here, validly defended that burden may become easier to discharge.”*

9. From the evidence adduced at the formal proof hearing, the Plaintiff produced invoices, account statements and demand notices issued to the Defendant showing the machinery and equipment supplied and the outstanding balance owed. The documents produced were not controverted by the Defendant.
10. The Court is satisfied that the Plaintiff demonstrated that goods were supplied to the Defendant pursuant to a commercial arrangement between the parties and that the Defendant failed to settle the invoiced amounts.
11. On the issue of breach of contract, the Court of Appeal in ***National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another (2001) KLR 112*** held that a court cannot rewrite a contract for the parties and that parties are bound by the terms of their agreement unless coercion, fraud or undue influence is proven.
12. In the present case, there is no evidence suggesting that the agreement between the parties was invalid. The Defendant's failure to pay for goods supplied therefore amounts to a breach of the contractual obligations.
13. With respect to special damages, the law requires that such damages must be specifically pleaded and strictly proved. This principle was restated by the Court of Appeal in ***Hahn v Singh (1985) KLR 716*** that: -

*“... special damages which must be not only claimed specially but proved strictly ...”*

14. The Plaintiff pleaded special damages of Kshs. 57,555,198.24 being the outstanding amount for machinery and equipment supplied. The Plaintiff produced documentary evidence including invoices and account statements supporting the claimed amount.
15. The Court is therefore satisfied that the Plaintiff has proved the claim for special damages to the required standard.
16. With regard to general damages for breach of contract, the law is settled that such damages are generally not awardable where the loss is quantifiable and has been pleaded as special damages.
17. In *Kenya Tourism Development Corporation v Sundowner Lodge Ltd* (2018) eKLR, the Court of Appeal held: -

*“The opposite is in fact the case: as a general rule general damages are not recoverable in cases of alleged breach of contract and that has been the settled position of law in our jurisdiction, and with good reason. In DHARAMSHI vs. KARSAN [1974] EA 41, the former Court of Appeal held that general damages are not allowable in addition to quantified damages with Mustafa J.A expressing the view that such an award would amount to duplication”*

18. This court therefore declines to award general damages.

***Determination***

19. Accordingly, judgment is entered for the Plaintiff against the Defendant as follows: -

***(a) Special damages of Kshs. 57,555,198.24 awarded.***

***(b) Interest on the said sum at court rates from the date of filing suit until payment in full.***

***(c) Costs of the suit to the Plaintiff.***

**Dated and delivered virtually at Mombasa this 19<sup>th</sup> day of March, 2026.**

.....

**HON. F. WANGARI**

**JUDGE OF THE HIGH COURT**

*In the presence of: -*

N/A by the Plaintiff

N/A by the Defendant

Ms. Gertrude, Court Assistant

***NB: Typed and signed Judgment released to the registry. Parties be notified.***