



REPUBLIC OF KENYA



KENYA LAW
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**Rusu Investment Limited v Kaisugu Limited (Civil Case 6 of 2017)
[2025] KEHC 1061 (KLR) (26 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1061 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL CASE 6 OF 2017
JK SERGON, J
FEBRUARY 26, 2025**

BETWEEN

RUSU INVESTMENT LIMITED PLAINTIFF

AND

KAISUGU LIMITED DEFENDANT

JUDGMENT

1. The plaintiff filed a plaint dated 5th July, 2017 seeking judgement against the defendant seeking the following reliefs;
 - (a) An Order that the Plaintiff Supplied firewood amounting to 4,637,490 kg of firewood to the Defendant, and was entitled to harvest one tones of poles for every 2.5 tonnes of firewood supplied.
 - (b) In alternative, an Order directing the Defendant to pay Kshs:31,899,451.20 being the value of the firewood supplied and interest.
 - c) Interest from the date of filing of suit till payment in full.
 - (d) Costs of the suit.
 - (e) Any other relief that the Honourable Court will find fit and proper to grant.
2. The background leading to the instant suit is as follows; On diverse dates between August, 2012 and September, 2013 the Plaintiff supplied to the Defendant firewood on the understanding that for every 2.5 tonnes of firewood supplied, the Defendant was to be allowed to harvest 1 tonne of blue gum wooden poles from Kiptagich Plantations. It was a further term of the agreement between the parties that for every one kilogramme of firewood supplied, the same was equivalent to Kshs. 4 in value.



3. The Plaintiff states that as at September, 2013 the Plaintiff had supplied 4,637, 490 kilogrammes of firewood to the Defendant all valued at Kshs. 18,549, 960/= and the Defendant in confirmation gave the Defendant a transaction listing for the firewood supplied between the months of August, 2012 and September, 2013.
4. The Plaintiff stated that despite several visits to the Defendant's Company with a view to know when they can harvest poles equivalent to the firewood supplied as per their agreement, The Defendant refused and/or ignored to show the Plaintiff the place to harvest thereby necessitating legal action.
5. The Plaintiff's claim against the Defendant is for an order compelling the Defendant to allow the Plaintiff to harvest poles from their Kiptagich Plantation equivalent to the firewood supplied in the ratio of 2.5 tones of firewood to 1 tones of poles.
6. The Plaintiff contends that between September 2013 to date, due to frustration from the Defendant, the amount due Kshs. 18, 549,960/= has been attracting interest at the rate of 18% per annum (commercial rates) which amount of interest stands at Kshs. 13, 349,491.20/= and for which the Plaintiff claim an equivalent harvest of poles.
7. The Plaintiff contends that if the Defendant cannot allocate an area in their Kiptagich Plantation or one of its plantations to harvest the poles, then the Plaintiff is seeking for payment of total value of the firewood supplied amounting to Kshs. 18, 549,960/= and the interest of Kshs. 13, 349,491.20/= due to date together with interest from the date of filing of the suit until payment in full.
8. The Defendant filed a statement of defence and denied the allegation of fact contained in the plaintiff more so on the allegations of entering into any agreement for the supply of firewood and harvest of blue gum wooden poles in its Kiptagich Plantation or the issuance of the transaction listing as alleged. The Defendant further alleges that the Plaintiff forged the weighbridge tickets, the Defendant's payment vouchers and schedule of transporters with intent to fraudulently obtain money from the Defendant. The Defendant states that the Plaintiff used forgery as a conduit to defraud the Defendant by making false deliveries of firewood whose source could not be ascertained.
9. The Defendant denies that the Plaintiff is entitled to the orders sought or in the alternative an amount of Kshs. 31,899.451.20/=.
10. The Defendant states that the Plaintiff's suit is frivolous or vexatious, bad in law and an abuse of the court process and therefore ought to be dismissed with costs.
11. The matter proceeded viva voce evidence. The Plaintiff called 2 witnesses in support of his case.
12. Amit P. Shah (Pw. 1) testified that between August 2012 and September 2013, he entered into a verbal agreement with Charles Kipngok, the Managing Director Kaisugu Limited where it was agreed that they would supply 2.5 tonnes of split firewood in exchange of 1 tone of poles from their plantation or Kshs 4/= per Kg of firewood supplied which translate to Kshs: 4000 per tonne.
13. He testified that they proceeded to supply firewood and that between August 2012 and September 2013 they supplied 4,637,490 Kgs, which translates to 4,637.49 tonnes and that in the eventuality that they were unable to be given the poles there was an option to pay Kshs. 4/= per Kg of firewood delivered. He testified that Alex Yegon used to deliver firewood to Kaisugu Factory using trucks and he would be given weighbridge tickets and transaction listing registers.
14. He testified that to date he has not been paid in terms of money or poles. He testified of the efforts he made to pursue payment including demand letters from the firm of Mbeche & Co Advocates which he produced as PExh.1 (a) and (b), he stated that the demand letter did not elicit any response. He



- furnished the court with the weighbridge tickets as PExh.2 and transaction listing registers as PExh. 3 with the summary of firewood supplied to Kaisugu LTD between August, 2013 and September, 2013. He stated that with regards to the amended defence citing fraud, he stated that he has not been summoned to any police station to write a statement and that the defence had not availed any documents controverting the documents he had filed in court.
15. On cross examination, Pw. 1 confirmed that the engagement was based on a verbal agreement and that the terms of the agreement were not reduced into writing. He confirmed that he supplied firewood for about 1 year and there was no local purchasing order. He confirmed that the weighbridge tickets and transaction listing did not have any signatures, they were computer generated and the transporters were independent service providers.
 16. Alex Yegon (Pw. 2) , a businessman, testified that he was privy to the facts of this case, that between August, 2012 and September, 2013 he witnessed the agreement between Rusu LTD and Kaisugu LTD, the agreement was initially on a ration basis exchange 21/2 tonnes of firewood in exchange for 1 ton of poles in the alternative payment of Kshs. 4/= per kilo of firewood supplied. He testified that he was incharge of all the firewood supply for Rusu LTD and that he sourced firewood from small scale farmers. He further confirmed that one Fancy, a Factory Manager would supervise the offloading during delivery and several employees who were working at the weighbridge, were privy to the supply. He extensively explained the relationship between the weighbridge tickets given and the transactions listing registers. He confirmed that he supplied 4,637,490 kgs to Kaisugu LTD.
 17. On cross examination Pw. 2 confirmed that he was privy to the fact of this case that one Charles Kipngok who was the Managing Director of Kaisugu Ltd entered into a verbal agreement with the Plaintiff's Company's Director one Amit Shah. He confirmed he was a firewood supplier and that the firewood was sourced from private farms.
 18. John Kirui (Pw. 3), a forester by profession, stated that he wrote a statement dated 8.2.2022 and wished to adopt it as his evidence in chief. He stated that he would take poles from the Mau Tea Factory and supply firewood. He stated that he was informed that Kipngok wanted firewood.
 19. On cross examination, Pw. 3 confirmed that a meeting was held over the transaction in issue and those who attended were; one Kipngok, the Director, Kaisugu Ltd, Mr. Amit Shah, the Director, Rusu Investment, one Alex Yegon and himself. He confirmed that the transaction was premised on a verbal agreement and the parties agreed on the supply of firewood.
 20. The Plaintiff closed its case and the Defendant called 4 witnesses in support of his case..
 21. Gilbert Kiprotich Too (Dw. 1) an employee of Kaisugu LTD testified for the Defendant and stated that he wrote a statement on 5.3.2018 and adopted the statement as his evidence in chief. He stated that whenever one wishes to supply goods he must express interest and the company will issue them with a local purchasing order and thereafter the supplier can supply the goods and further that the supplier has to give a delivery note and an invoicing note generated. He stated that no invoice was issued to Rusu Investments Limited and that at the material time they were relying on the government to supply firewood, he produced sale agreements as DExh. 1 and 2 and official receipts from Kenya Forest Service as DExh. 3 (a) - (d). He stated that they contracted private transporters to transport goods and they issued receipts and petty cash vouchers and produced the same as DExh. 4 (a) - (m). He stated that had a schedule of transporters and produced it as DExh. 5 and Rusu Investments was not on the schedule of transporters. He stated that during delivery a weighbridge ticket is generated and not a transaction listing and that the weighbridge tickets in question were not rubber stamped to acknowledge receipt. On cross examination, he conceded that the agreement between the parties was verbal and that he was not present at the material time.



22. Andrew Kiplangat Birir (Dw. 2) an employee of Kaisugu LTD since 2009 stated that he wrote a statement on 29.3.2022 and adopted the statement as his evidence in chief. He stated that between 2009 and 2013 he was not incharge of firewood felling and suppliers. He said that he did not know Rusu Investments and also denied knowing Peter Kirui. He also said that he was not involved in any written or oral agreement. He further said that his duties were to supervise tea production. He also said that he does not know anything to do with payments. On cross examination, he stated that he knew Mr. Kipngok the Managing Director of Kaisugu LTD who was his boss at the time.
23. Caroline Chepngetich (Dw. 3) stated that she wrote a statement on 4.10.2021 and adopted the statement as her evidence in chief. She stated that knew Kaisugu LTD and did transport business, she stated that between 2012 and 2013 using her lorry KBJ 746R, she would collect firewood from Londiani to Kaisugu LTD and upon delivery she was paid. She stated that she did not know Rusu Investments. Dw. 3 was unable to prove ownership of motor vehicle KBJ 746R which she subsequently sold.
24. Chelangat Kerich (Dw. 4) stated that she wrote a statement and adopted the statement as her evidence in chief. She stated that she was a transporter for Kaisugu Limited and did not know Rusu Investments LTD. On cross examination, she confirmed to court that as a transporter there was no written contract signed, most of the transactions were based on oral agreements and for the work done, they were paid.
25. Philip Kiptonui Biyegon (Dw. 5) the current Managing Director of the Defendant Company. He adopted his statement as his evidence in chief. He said that he took over as the Managing Director in the year 2017 and that at the time he started settling in his position as the Managing Director, he was informed of a case on-going involving the Plaintiff and the Defendant. He stated that he was informed that there was a verbal agreement between the previous Managing director and a Director of the Plaintiff Company on the supply of firewood and claim of Kshs. 31,899,451/=. On cross examination, Pw. 5 confirmed that the said transaction is said to have been the result of a verbal agreement and that the Managing Director alleged to have made the oral agreement had passed away. The witness further confirmed that no written agreement was done with other suppliers and basically most of the agreements on transportation were done verbally.
26. The court directed the parties to file written submissions
27. It was submitted on behalf of the Plaintiff that based on the evidence of both the Plaintiff's witnesses and Defendant's witnesses, most transactions with the Defendant were done on mutual trust. It was further submitted that from the evidence tendered, the Plaintiff was able to prove that it supplied 4,637,490 kg of firewood to the Defendant and that the Plaintiff was not allowed to take poles in exchange for the firewood, therefore, the Defendant breached its part of the contract and they should therefore be compelled to pay the Plaintiff for the supplies received.
28. The Plaintiff contended that it filed a Notice to Produce requiring the Defendant to produce and show to court, original transaction listings for account Number 1516 for the period 2012 and 2013 but they failed to produce the same. That despite a request through a Notice to Produce, none of the documents sought were available and there was no objection filed/presented to the Notice to Produce and therefore the Defendant was precluded from attaching such documents. In support of their case.
29. It was submitted that the Plaintiff gave credible evidence in the form of; a transaction register produced by the defendant, receipts and invoices issued by the Defendant in support of the oral agreement. They cited Civil Appeal 119 of 2019 Total Kenya Ltd v D. Pasacon General Construction & Electrical Services (KECA 593 (KLR) Justice Majanja held thus "An agreement for such works is not required in law to be in writing but rather, a contract may be oral or may be inferred from the circumstances".



The Court of Appeal found that the reasoning of Justice Majanja was reasonably correct and did not see the reason to disturb it. Paragraph 12 of the cited authority, the judges looked at Section 119 of the evidence Act which provides thus; "The Court may presume the existence of any fact which it thinks likely to have happened, regard being to the common course of Natural events, human conduct, and private and Public business, in relation to the facts of the particular case". The circumstances in this particular case suggest that Charles Kipngok, the former MD, by virtue of his position was able to enter into a contract for the supply of firewood with the Plaintiff herein.

30. It was further submitted that the Plaintiff having been able to prove its case on a balance of probabilities, judgment be entered for the sum of Kshs: 18,549,960= as the principal sum as at the time of default and Kshs: 13,349,491.20 being interest from the date of default till the time of filing of the suit making the full amount being 31,899,451.20.
31. At the time of writing this judgement the defendant had not uploaded submissions on the Case Tracking System.
32. I have considered the application and submissions by the parties and find that the following issue (s) are ripe for determination; whether there were terms agreed for the supply of firewood between the parties and whether 4,637, 490 kilograms of firewood worth Kshs. 18,549,960/= were supplied to the Defendant.
33. On the issue as to whether there were terms agreed for the supply of firewood between the parties. It is the Plaintiff's case that between August 2012 and September 2013, he entered into a verbal agreement with Charles Kipngok, the Managing Director Kaisugu Limited where it was agreed that they would supply 2.5 tonnes of split firewood in exchange of 1 tonne of poles from their plantation or Kshs. 4/= per Kg of firewood supplied which translate to Kshs. 4000/= per tonne. The Plaintiff asserted that most transactions with the Defendant were done on mutual trust. It is the Defendant case that they were not were not privy to the terms of the oral agreement between the parties and that the terms of the agreement were never reduced to writing. Dw. 5 the current Managing Director of the Defendant Company testified in chief that when he took over management from Charles Kipngok, he was informed that there was a verbal agreement between the previous Managing Director and a Director of the Plaintiff Company on the supply of firewood and claim of Kshs. 31,899.451/=, however, he was not privy to the terms of the said agreement as the same was not reduced to writing. In the case of Patrick Njuguna Kimondo v Geoffrey Vamba Mbuti [2019] eKLR the court proceeded to uphold the terms of an oral contract and discussed the enforceability of oral contracts as follows; "Section 3(1) Law of Contract Act does not make all contracts void and unenforceable if they are not reduced into writing.

I am of the opinion that oral agreements supported by credible evidence can be and are enforceable. All that the law requires is that certain contracts be in writing – Section (3) (3); Short of that, it would be a travesty of justice as most people either knowingly or otherwise transact their businesses upon oral agreements." The failure of the parties to reduce the agreement into writing, notwithstanding, this court will proceed to consider whether the plaintiff tendered credible evidence in support of his case.

34. On the issue as to whether 4,637, 490 kilograms of firewood worth Kshs. 18,549,960/= were supplied to the Defendant. It is the Plaintiff's case that they supplied 4,637,490 kg of firewood to the Defendant between August, 2012 and 2013 and that contrary to the parties' agreement the Plaintiff was not allowed to take poles in exchange for the firewood, therefore, the Defendant breached its part of the contract and they should therefore be compelled to pay the Plaintiff for the supplies received. The Plaintiff maintains that to date they have not been paid in terms of money or poles. The Plaintiff relied on weighbridge tickets and transaction listing registers marked as PExh.2 and PExh. 3 respectively with



the summary of firewood supplied to Kaisugu LTD between August, 2013 and September, 2013. It is the Defendant's case that they had laid down an elaborate procedure for supply of goods such as issue of LPO, delivery notes and system generated invoices which would confirm whether goods were supplied and that at the material time they were relying on the government to supply firewood, he produced sale agreements as DExh. 1 and 2 and official receipts from Kenya Forest Service as DExh. 3 (a) - (d). The Defendants contracted private transporters to transport the firewood and they issued receipts and petty cash vouchers and produced the same as DExh. 4 (a) - (m). This court having carefully considered the documentary evidence by the parties finds that documents produced by the Plaintiff in support of its case were not recognized by the Defendant as the same were computer generated and they were not signed or stamped by the Defendant.

35. Having considered the pleadings, evidence and submissions by the parties, it is the finding of this Court that the Plaintiff has not proven its case against the Defendant, consequently, the suit is dismissed with costs to the Defendant.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Okok for the Defendant

No Appearance for the Plaintiff

