



**Brand Limited v Parbat Siyani Construction Limited (Commercial Civil Suit E982 of 2021)
[2025] KEHC 9191 (KLR) (Commercial and Tax) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CIVIL SUIT E982 OF 2021**

BM MUSYOKI, J

JUNE 27, 2025

BETWEEN

BRAND LIMITED PLAINTIFF

AND

PARBAT SIYANI CONSTRUCTION LIMITED DEFENDANT

JUDGMENT

1. This judgment is in respect of issue of interest and costs only. The plaintiff had sued the defendant for recovery of Kshs 15,311,162.75 being the costs of cement supplied to the defendant between June 2019 and July 2021 at its request. In addition to the said amount, the plaintiff had prayed for interest at 3 per cent per month and costs of the suit. The court on an application of the plaintiff issued the following orders on 12th March 2024;
 - a. Judgment is entered on admission for the plaintiff against the defendant for the principal sum of Kshs 15,311,162.75.
 - b. The parties are referred to mediation to determine the outstanding issue relating to the applicable rate of interest.
 - c. Mention before the DR Mediation on 25th March, 2024.
 - d. Costs of the application shall be borne by the defendant.
2. The process of mediation fell through and the matter was referred back to this court for trial. During the trial, each party called one witness. The witnesses were agreeable that all the invoices and delivery notes for supplies were issued to the defendant.



3. The plaintiff called one Mr. Dipak Valji who in summary told the court that, the term for payment of interest was contained in the invoices which were sent to the defendant. He admitted that there was no written agreement on charging of interest on late payment but maintained that, the fact that the invoices contained a notice that interest would be charged for invoices not paid beyond thirty days and that the defendant did not protest the same or raise an objection or reject or return the goods, meant that it had accepted that notice as a term of the contract. The witness produced a bundle of the delivery notes, invoices, the defendant's email and letter dated 19-10-2021, plaintiff's letter dated 3-11-2021 and demand letter dated 3-11-2021.
4. The defendant's witness one Mukesh Halai told the court that he was one of the defendant's directors. He stated that the parties have been in business since 2007 and this was the first dispute. He acknowledged that the payments were delayed due to delays of payments from the defendant's customers. He stated that there were delays in the past but no interest was charged and no interest was agreed.
5. The question to be answered in disposing the issue of interest is whether the term for payment of interest at 3 per cent per month was part of the contract. There is no dispute that the goods would be ordered orally and through WhatsApp and emails. No order, email or WhatsApp communication was produced in court and the court cannot tell what was contained in the said orders but from what I heard from the witnesses, the said communication did not have a term or discussion on interest on delayed payments. Other than in the invoices, the issue of interest comes first in the plaintiff's letter dated 3-11-2021 which was in response to the defendant's email and letter dated 19-10-2021. The defendant did not reply to the said plaintiff's letter or the demand letter which also contained the demand for interest.
6. Where there is no formally written contract, the terms of engagement of the parties can be construed from the correspondences they exchange, their conduct or oral discussions. None of the communications between the parties show that they agreed on the term of charging of interest on late payment.
7. It is trite that for a contract to be formed, there must be an offer, acceptance, consideration and intention to be bound. In my opinion, the offer in this case was the orders made by the defendant and as I have stated above, I believe that the issue of interest was not included in the orders. When an offer is made, the same must be accepted without conditions because if the recipient introduces other conditions, that constitutes a counter-offer and not acceptance. In *Fidelity Commercial Bank Limited v Kenya Grange Vehicle Industries Limited* [2017] eKLR, the Court of Appeal held as follows in regards to acceptance of offers;

‘It is elementary learning that for there to be a contract, there has to be an acceptance of an offer on the same terms of the offer and such acceptance must be unconditional, unequivocal and absolute, accompanied by consideration.’
8. The acceptance came with the plaintiff agreeing to supply the goods which is demonstrated by the delivery notes. The delivery notes produced did not have the term of payment of interest. Once the plaintiff accepted to supply the goods at the agreed consideration, there was no room for changing the terms. Inclusion of the term of interest in the acceptance would have constituted a counter offer which in itself needed acceptance by the defendant.
9. The plaintiff claims that the defendant accepted the condition of the interest when it accepted the goods and received the invoices. This in my view, is not the correct position in law. An invoice is a document that comes at the end of the transaction. It is a document that calls or demands for payments



for the goods or services supplied on terms which have already been agreed. An invoice cannot alter the terms of engagement or contract between the parties as the party receiving it does not have the opportunity to negotiate. The defendant could not be expected to reject the goods when the contract had been completed unless the same were not in an acceptable quality. I therefore hold that the notice of chargeable interest did not form a term of the contract.

10. The defendant did not however pay the principal amount when the same was demanded. Even after judgment on admission was entered, the defendant failed to pay claiming that it could not pay because the plaintiff raised legal issues. I find this argument unreasonable as nothing stopped the defendant from paying the principal sum and wait for the plaintiff to litigate on the contentious issue of interest.
11. The defendant has held the plaintiff's money, thus keeping it from enjoying the use of the same. The plaintiff is therefore entitled to be compensated for denial of its right to enjoy profits and benefits of money from its business but not at the rate and for the period proposed in the plaint. I will exercise my discretion and grant interest at court rates from the time of filing the suit.
12. The defendant was issued and served with a demand letter but failed to pay the uncontested amount. A prudent and sincere debtor would pay what it considers as the correct and due debt once the same is demanded or at least before the creditor files a case in court. The plaintiff has succeeded in the matter and since costs follow the event, it is entitled to costs.
13. In conclusion, this court makes an order that the defendant shall pay interest on the principal sum awarded in the ruling dated 12th March 2024 at court rates from the date of filing the suit until payment in full. The plaintiff shall also have costs of the suit.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Ludenyo for the plaintiff and Mr. Miss Mogeni for the appellant.

