



**Ramco Printing Works v Independent Electoral and Boundaries Commission (Civil Appeal E432 of 2021) [2025] KEHC 11661 (KLR) (Civ) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11661 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E432 OF 2021**

**REA OUGO, J**

**JULY 31, 2025**

**BETWEEN**

**RAMCO PRINTING WORKS ..... APPELLANT**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION ..... RESPONDENT**

*(Being an Appeal against the Judgment at the Milimani Chief Magistrate's Court in Nairobi CMCC No. 1681 of 2015 delivered by Hon. D.O. Mbeja, Principal Magistrate on 23rd June 2021)*

**JUDGMENT**

1. The Appellant in this case sued the Respondent vide a plaint dated 30<sup>th</sup> March 2015, seeking damages for breach of contract as follows:
  - a. The principal sum of Kshs. 1,620,000/=
  - b. Costs of the suit
  - c. Interest on (a) above at court rates from 3<sup>rd</sup> January 2013 until payment in full and for such period as the court may deem just and expedient.
  - d. Interests on costs of the suit
  - e. Any other equitable relief.
2. The Appellant/Plaintiff's case was that, by a Local Purchase Order dated 18th December 2012, the Defendant/Respondent ordered the supply and delivery of 342 IEBC-branded tablecloths, each costing Kshs. 480/-, amounting to Kshs. 164,160/-, and 18 boxes of heavy-duty spiral binders and spirals, each priced at Kshs. 90,000/-, totalling Kshs. 1,620,000/-. They supplied goods worth Kshs.



- 1,620,000/- between 2nd and 3rd January 2013 to the Respondent based on the Local Purchase Order (LPO) allegedly issued by the Respondents, but the said amount was never paid.
3. The Respondent entered an appearance and filed its Statement of Defence dated 16th July 2015, in which it denied the contents of the Plaint and put the Plaintiff to strict proof. They also prayed for the suit to be dismissed with costs.
  4. The matter proceeded to a full trial, resulting in a Judgment delivered by the trial court on 23rd June 2021, where it dismissed the Appellant's case due to an irregular and unlawful procurement process, holding that the court could not enforce an illegal contract.
  5. The above judgment prompted the present appeal by the plaintiff/appellant through a memorandum of appeal dated 22nd July 2021, who sought to set aside the impugned judgment and to be granted the remedies as prayed for in the plaint. The appellant raised nine (9) grounds of appeal, summarised into the issue that the evidence before the trial court was never controverted, that the trial court required them to adduce evidence to prove their case which was not in their possession, and that the goods were duly supplied and acknowledged, making the contract between the parties valid and binding.
  6. The Appeal was to canvass it by way of written submissions.

### **The Appellant's Submissions**

7. Counsel for the Appellant argued in the 1st to 4th Grounds of Appeal that the Plaintiff's evidence was never challenged before the trial court because they only filed a defence and closed their case without calling any witnesses, rendering the said Statement of Defence mere allegations. Counsel cited the case of *Linus Ng'ang'a Kiongo & 3 Others vs. Town Council of Kikuyu* (2012) eKLR and *Safarilink Aviation Limited vs. Trident Aviation Kenya Limited and Another* (2015) eKLR to support the argument that failure to rebut evidence presented by one party should lead the court to conclude that the facts presented by the other party are truthful.
8. It was submitted that a valid and binding contract was formed because the Appellant acted on the Local Purchase Order and supplied goods in consideration of it. Section 88 and 89(5) of the repealed Act permitted a procuring entity to request quotations and then issue a Purchase Order to the pre-qualified supplier. The Purchase Order, which included Tender/Quotations Reference No. IEBC/01/20/2-13, served as prima facie evidence that the Appellant was pre-qualified to supply the goods specified, having been validly selected after submitting quotations. The Appellant also duly supplied the goods, which the Respondent never denied receiving, acknowledging, or using. It was further argued that it was the Respondent's duty to ensure compliance with all procedures before issuing the LPO, and that the Respondent should not benefit from its own breach for failing to do so. The case of *Basco Products Kenya Limited vs. Machakos County Government* (2018) eKLR was cited in this regard.
9. Counsel argued that the trial court erred in placing the burden of proving that the goods were inspected on the Appellant, when that obligation also rested with the Respondent, as they held documentation regarding the tender such as the minutes of the Tender Committee. They observed that the only evidence available to the Appellant was the delivery notes, which showed that the goods were received and acknowledged, demonstrating the Respondent's satisfaction. It was contended that the court should not set a precedent whereby goods supplied to a procuring entity can be met with a refusal to pay, on the basis that the law was not followed from the outset. They urged the Court to allow the appeal.



## The Respondent's Submissions

10. The Respondent's counsel addressed two issues: whether the procurement process was illegal and what orders the court should grant. Regarding the first issue, it was argued that the dealings between the parties were regulated by the repealed Public Procurement and Disposal Act No. 3 of 2015, as these occurred between 2012 and 2013. The Appellant neither provided evidence to demonstrate that they were prequalified suppliers of the Respondents in accordance with Section 32 of the said Act, nor did they produce procurement records as required by the Civil Procedure Rules at the pre-trial conference. Counsel also asserted that the Appellant, as a supplier, had the obligation to comply with procurement laws under Section 27(4) of the Act and failed to meet the burden of proof as required by Sections 107-109 of the *Evidence Act*. It was further argued that the Appellant ought to have issued a Notice to Produce to the Respondent to obtain the necessary documents to support their case, and since the Respondent was a public entity, they could not settle payments for an LPO that involved illegalities and irregularities.
11. On the irregular LPO, counsel argued that its origins could not be determined, noting that it was a handwritten document that neither bore the Respondent's stamp nor the names of the officers who signed it. They also highlighted the absence of Tender Committee Minutes approving the procurement or inspection and approval of the alleged boxes delivered to the Respondent's premises. It was contended that only the Accounting Officer could enter into contracts on behalf of the Respondent, and that the Appellant obtained the LPO unlawfully and was not a prequalified supplier. Counsel cited the case of *Royal Media Services v. IEBC and 3 Others* (2019) eKLR, where the importance of compliance with Section 27 (4) of the repealed Act was emphasised, and stated that enforcement of the LPO was impossible for the reasons given above.
12. Counsel also submitted that the fact that the Respondent did not call a witness to tender viva voce evidence did not mean that the Court should automatically find in favour of the Appellant and reiterated that the burden of proof lay on the Appellant as the claimant. The case of *Evans Nyakwana vs. Cleophas Bwana Ongaro* (2015) eKLR was cited for the proposition that whoever claims or invokes the aid of the law and substantially asserts the affirmative of the issue bears the burden of proof. It was further submitted that the Appellant had knowingly participated in an illegal procurement process and therefore had no cause of action and should not seek to profit from its illegal conduct. The Court of Appeal decision in *Standard Chartered Bank Kenya Ltd. vs. Intercom Services & 4 Others* (2014) eKLR was cited in this regard. They urged the Court to dismiss the Appeal.

## Analysis and Determination.

13. As this is a first Appellate court, I am aware of the duty of the court to review the evidence in order to determine the matter, bearing in mind that it did not see or hear the witnesses.
14. I have considered the grounds of appeal, the trial record and the rival submissions of the parties against the law. The issues for my determination are whether there existed a validly executed contract for the supply of goods between the parties and whether the Appellant was entitled to the principal sum of Kshs. 1,620,000/=.



15. Since a formally written contract did not govern the transaction between the parties in this case, it is necessary to consider the definition of a Local Purchase Order (LPO). *Black's Law Dictionary* defines a Local Purchase Order as: -

“A document that has been generated by the buyer in order to purchase products or property. This document allows a transaction to occur, and when accepted by the seller, becomes a legally binding contract of sale.”

16. From the above definition, it is evident that the LPO between the parties dated 18th December 2012 constituted a binding contract. On that basis alone, both the Appellant and the Respondent were obliged to adhere to the terms specified therein.

17. The Respondent in this case submitted that the Appellant was not a prequalified supplier, that they did not prove their case to the required standard for failing to adduce evidence such as the Tender Committee Minutes and inspection and approval of the delivered goods. They also challenged the validity of the said document and alluded to the fact that it may have been obtained fraudulently because it was handwritten and its origins could not be ascertained.

18. This Court is of the view that when a party challenges a document relied upon by another on the grounds that its creation was irregular or involved illegal actions such as fraud, such claims must be specifically detailed and proven to a higher standard than mere balance of probabilities. The Court of Appeal in the case of *Urmila w/o Mahendra Shah vs. Barclays Bank International Ltd & another* [1979] eKLR cited the case of *Ratilal Gordhanbhai Patel vs. Lalji Makanji* [1957] EA 314, 317, where it was held thus:-

“There is one preliminary observation which we must take on the learned judge’s treatment of this evidence: he does not anywhere... expressly direct himself on the burden of proof or on the standard of proof required. Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required. There is no specific indication that the learned judge had this in mind: there are some indications which suggest he had not.”

19. I have considered the Respondent’s argument regarding the validity of the LPO and find that it was not sufficient for the Respondent to merely deny the existence and reject the validity of the said LPO, while expecting the Court to infer fraud from its assertions without providing clear evidence that the LPO was obtained through fraudulent means. Therefore, I dismiss this assertion and reaffirm that a valid LPO existed, which created a binding contract between the parties. I also find that the Appellant, acting upon the strength of the said LPO supplied the goods, which the Respondent duly received and acknowledged as goods of merchantable quality.

20. Regarding the second issue of whether the Appellant was entitled to the payments demanded in the Complaint, I find that because the Respondent accepted the goods, as evidenced by the two delivery notes dated 2nd and 3rd January 2013, and because throughout the trial they did not produce any evidence challenging the actual delivery of the said goods to their premises or receipt by their agents, they are estopped from withdrawing from their payment obligations which were outlined in the LPO. I find that they initiated the contract first by issuing the said LPO for the purchase of goods, and secondly, by receiving the said goods for an expected consideration which they had not yet provided. I rely on



the case of *Brodgen vs. Metropolitan Railway Company* [1876-77] L.R. 2App Cas 666 where it was held that:-

“The acceptance took place by performing the contract without any objection as to the terms.”

21. The fact that the Respondent received goods despite claiming that the transaction was governed by a purportedly fraudulent, illegal, or improper LPO indicates that, through their own actions, they ignored the alleged irregularity or illegality and benefited from the contract. Otherwise, they should have refused to accept the goods. By their conduct, they made the contract binding upon themselves and were thus obliged to make payment. Kemei J. in *Stanathi Water Services Board vs. Pasha Enterprises Ltd* [2020] eKLR cited the case of Brogden (supra) in explaining the issue of a contract being completed on the part of the offeror through their conduct. He held as follows:

“23. ... In *Brodgen v Metropolitan Railway Company* [1876-77] L.R. 2 App Cas 666, it was proposed that a contract can be accepted by the conduct of parties. This means that where the offer is accepted, and the offeror, by conduct does any act to imply the acceptance is complete, then the offeror, is bound to honour the contractual terms and will be estopped from denying that there was no valid contract between the parties.”

22. I find that the burden of proving an improper tendering process in this case was on the Procuring Entity, namely the Respondent, since they possessed all the documentation related to the tendering and procurement of the goods in question but failed to call any witness or produce the said documents as evidence.
23. As I have already established, there was no material presented as evidence by the Respondents to discredit the LPO or to support the claims of its illegality and fraud. It would therefore be against the interests of justice for the Court to ignore the fact that a valid contract existed, that goods were supplied under this contract/LPO, and that those goods were never paid for, simply because the Respondent now challenged the legality of its own LPO.
24. To buttress this position, I am guided by the case of *National Bank of Kenya Ltd vs. Pipe Plastic Samkolit (K) Ltd and Another* 2002) EA 503 where the court of Appeal stated:-

“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the clause. As was stated by Shah JA in the case of *Fina Bank Ltd v Spares and Industries Ltd* (2000) 1 EA 52:

“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity function to allow a party to escape from a bad bargain.”

25. It is well-established law that he who alleges must prove (See Sections 107-109 of the *Evidence Act*). I find that the Appellant proved their case on a balance of probabilities and that their claim for the contract price was indeed valid, while the Respondent, on the other hand, failed to prove the illegality of the LPO and the procurement process as a whole, which led to the said LPO.
26. I therefore find merit in the appeal and allow it in the following terms: -



- a. The Judgment dated and delivered on 23<sup>rd</sup> June 2021 is hereby set aside.
- b. Judgment is entered in favour of the Appellant as prayed for in the Plaint dated 30<sup>th</sup> March 2015.
- c. The Appellant shall have the costs of the suit in the trial court and in this Appeal.
- d. Interests are also awarded at court rates on (c) above until payment in full.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**R.E. OUGO**

**JUDGE**

In the presence of:

Appellant - Absent

Respondent – Absent

Wilkister C/A

