



**Kamdev Enterprises Limited v Rodex East Africa Limited (Civil Case
5 of 2023) [2024] KEHC 3820 (KLR) (22 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 5 OF 2023
PN GICHOHI, J
APRIL 22, 2024**

BETWEEN

KAMDEV ENTERPRISES LIMITED PLAINTIFF

AND

RODEX EAST AFRICA LIMITED DEFENDANT

JUDGMENT

1. Kamdev Enterprises Limited (hereafter referred to as the Plaintiff) filed this suit on 11th April 2023 against Rodex East Africa Limited (hereafter referred to as the Defendant) seeking judgment against the Defendant for:
 - a. Special Damages of Kenya Shillings Thirty- Nine Million Eight Hundred and Seventy-One, Five Hundred and Nine and Ninety-Eight Cents (Kshs 39, 871, 509.98/=)
 - b. Interest accrued on the suit sum of from June 2019 to the date of full and final settlement of the same at the rate of Three (3%) per centum per month.
 - c. Costs of this suit.
 - d. Interest on (a), (b) and (c) above at court rate; and
 - e. Any other relief that this Honourable Court may deem fit to grant.
2. The background of the Plaintiff's claim was that at all material times relevant to this suit, it was engaged in the commerce and enterprise of manufacturing, packaging, sale and distribution of various paints and paint-based products within the Republic of Kenya.
3. That on diverse dates between June 2019 and August 2020, the Defendant sought supply and procured the Plaintiff's products and the Plaintiff supplied the said products to the Defendant at cost as procured



- and requested and further according to various terms and conditions as advised upon and accepted by the Defendant.
4. It was an agreed express and/or implied condition of the agreement by and between the parties pertaining to the said transaction that:-
 - a. The Plaintiff would deliver its products to the Defendant in a timely manner;
 - b. The Plaintiff would deliver its products in good order and condition, having been checked and counted;
 - c. The Plaintiff would deliver its products accompanied by a delivery note and/or invoice which would be stamped and signed by a duly authorized representative of the Defendant;
 - d. The Defendant would make payment of the invoiced amounts within thirty (30) days of receipt of the respective invoices;
 - e. Any delay in settlement of the invoiced amounts would attract a penalty at the monthly rate of three (3%) per centum on all overdue amounts;
 - f. The Plaintiff's products would remain the property of the Plaintiff, despite delivery, until full payment and all invoiced amounts was made; and
 - g. The Plaintiff would charge and the Defendant would pay handling charges at the rate of ten (10%) per centum in respect of the value of all goods returned by the Defendant to the Plaintiff.
 5. Pursuant to that agreement, terms and conditions, the Defendant procured from the Plaintiff and the Plaintiff supplied and delivered to the Defendant its products valued at the sum of Kenya Shillings Thirty- Nine Million, Eight Hundred and Seventy-One, Five Hundred and Nine and Ninety- Eight Cents (Ksh 39, 871,509.98/=) during the period running from June, 2019 and August 2020. However, the Defendant refused, neglected, failed and/or ignored to settle the suit sum.
 6. Then on or about 31st December 2021 and further on or about 31st May 2022 the Plaintiff dispatched various correspondence to the Defendant requesting for confirmation as to the accuracy and computation of the suit sum as computed and the Defendant through its authorized representatives confirmed to be correct, accurate, properly accrued due and outstanding.
 7. Despite several demands made by the Plaintiff, more specifically on or about 30th October 2021 and 21st March 2022, that the Defendant make full and final settlement of the suit sum, the Defendant did not settle the claim.
 8. Despite being served on 19th April 2023 with Summons to enter Appearance and the Claim documents, the Defendant failed to enter Appearance or file defence.
 9. That prompted the Plaintiff's Advocates on 7th June 2023 to file a request against the Defendant, for interlocutory judgment under Order 10 Rule 4 and 10 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act* for the sum of Kenya Shillings Thirty- Nine Million Eight Hundred and Seventy-One, Five Hundred and Nine and Ninety-Eight Cents (Kshs 39, 871, 509.98/=) plus interest and costs thereon.
 10. On 7th June 2023, the Deputy Registrar entered an interlocutory judgment pending formal proof and when the matter came before the Court on 22nd November 2023, counsel for the Plaintiff informed the Court of that entry and sought a date for formal proof. The matter proceeded for formal proof on 17th January 2024 in the presence of Counsel for the Plaintiff and in the absence of counsel for the Defendant.



11. The formal proof proceeded on 17th January 2024 where Miteshkumar Arundbhai Patel (PW1) testified as the director of the Plaintiff company. He adopted his recorded statement dated 22nd March 2023 as his evidence in chief. He basically captured the claim as per the plaint and also relied on the twenty-six documents in the bundle of documents listed as No. 1-26.
12. The Plaintiff therefore closed its case and while relying on that evidence, Counsel for the Plaintiff sought a date for judgment.

Determination

13. This Court has considered the material on record and the fact that the Defendant never entered appearance nor filed a defence to this claim. There is no doubt about the various correspondences exchanged between the Plaintiff and the Defendant over the Defendant's non-payment of the suit sum and which sum was not in dispute.
14. Indeed, when the firm of Mahida and Maina Advocates for the Plaintiff sent a demand dated 8th December 2022 to the Defendant for settlement of the outstanding claim Kenya Shillings Thirty- Nine Million Eight Hundred and Seventy-One, Five Hundred and Nine and Ninety-Eight Cents (Kshs 39, 871, 509.98/=), the Defendant wrote vide a letter dated 27th January, 2023 wrote:-

“We are writing to acknowledge the amount referred to above for goods supplied to Rodex East Africa Limited on various dates as seen by invoices recorded by Kadev Enterprises Limited’

In acknowledgment of the said amount totalling to Kenya Shillings Thirty- Nine Million Eight Hundred and Seventy-One, Five Hundred and Nine and Ninety-Eight Cents (Kshs 39, 871, 509.98), we hereby request for a meeting at your convenience for purposes of agreeing on a workable payment plan.

Our intention is to have an amicable out of court settlement considering the long business relationship we have had over the years.

We look forward to hearing from you on a proposal of a convenient date for the said meeting.”

15. That meeting did not materialise, hence this suit. It is clear from that response that this was a liquidated claim, specific, ascertained, not requiring any calculation and also undisputed. Order 10 Rule 4 of the Civil Procedure Rules provide that:-

4.

- (1) Where the plaintiff makes a liquidated demand only and the defendant fails to appear on or before the day fixed in the summons or all the defendants fail so to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against the defendant or defendants for any sum not exceeding the liquidated demand together with interest thereon from the filing of the suit, at such rate as the court thinks reasonable, to the date of the judgment, and costs.
- (2) Where the plaintiff makes a liquidated demand together with some other claim, and the defendant fails, or all the defendants fail, to appear as aforesaid, the Court shall, on request in Form No. 13 of Appendix A, enter judgment for the liquidated demand and interest thereon as provided by sub-rule (1) but the award of costs shall await judgment upon such other claim.



16. Order 10 Rule 10 of the Civil Procedure Rules provides that:

The provisions of rules 4 to 9 inclusive shall apply with any necessary modification where any defendant has failed to file a defence.”

17. In this case, there was no other claim. The Defendant not only failed to appear but also failed to file defence. In the circumstances it was not necessary to enter an interlocutory judgment and proceed for formal proof.

18. Such a scenario was in Coach Safaris Limited v Gusii Deluxe Limited [1997] eKLR where Coach Safaris limited (Appellant) and the Plaintiff before High Court, had claimed and particularised pleaded a liquidated sum of Kshs. 1,357,100/= being special damages it alleged to have sustained when its bus registration No. KAA 410 S collided with another bus registration No. KAA 225C belonging to Gusii Deluxe Limited (Respondent) which was the Defendant, at Kericho on 14th October 1992. The Defendant entered appearance but did not file any defence. Court of Appeal held:-

“The plaintiff then applied for judgment in default of defence under order 9A rule 3 as read with rule 9 of the civil procedure Rules. On 5th May 1995, the Deputy Registrar purported to enter “interlocutory” judgment in default of defence but in actual fact it should have been a final judgement in terms of rule 3 above this being a liquidated demand. That being the case there was no necessity for formal proof...So whatever followed thereafter by way of formal proof was a nullity and a complete waste of judicial time...For the avoidance of doubt we wish to state that the judgement which was entered on 5th May, 1995 is still in place.”

19. In the circumstances, this Court finds that the interlocutory judgment ought to have been final and as prayed for in the plaint.

20. In conclusion therefore, this Court enters judgment in favour of the Plaintiff against the Defendant for :-

1. Special Damages of Kshs 39, 871, 509.98.
2. Interest accrued on the said sum of from June, 2019 to the date of full and final settlement of the same at the rate of 3% per month.
3. Costs of this suit.
4. Interest on (1), (2) and (3) above at court rate.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND DAY OF APRIL, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Kibore for Mr. Mwenda for Plaintiff

N/A for Defendant

Ruto - Court Assistant

