



WHEN IS A “PRELIMINARY” COMMERCIAL ARRANGEMENT ACTUALLY BINDING: LESSONS FROM BOLLORE TRANSPORT & LOGISTICS KENYA LIMITED V LC WAIKIKI RETAIL KE LIMITED

Introduction

In fast-moving sectors like logistics and retail, businesses often engage in complex negotiations before signing formal contracts. But what happens when one party pulls out at the last minute?

The High Court of Kenya in *Bollore Transport & Logistics Kenya Limited v LC Waikiki Retail KE Limited* [2026] KEHC 1060 (KLR) has provided important guidance on pre-contractual liability, legitimate expectation, and contract formation by conduct.

Background

Following a Request for Quotation (RFQ) LC Waikiki nominated Bollore as its logistics partner in Nairobi.

In anticipation of a Go-live date, Bollore:

- Secured warehouse space
- Procured equipment
- Hired staff
- Integrated IT systems

However, on the agreed Go-live date of 15 June 2021, LC Waikiki terminated the arrangement, arguing that no binding contract existed because no formal agreement had been executed.

Bollore filed a claim seeking reimbursement of Kshs 15,534,784.69 for costs incurred, relying on doctrines of contract by conduct, pre-contractual liability, legitimate expectation and promissory estoppel.

Key Issues

The High Court examined several crucial issues:

1. Existence of a binding contract. Could a commercial contract arise from parties' conduct and correspondence, even in the absence of a formally executed agreement?
2. Legitimate expectation. Did LC Waikiki's conduct induce a reasonable expectation that Bollore's engagement would proceed?

3. Pre-contractual liability. Can a party be held responsible for losses incurred by another party during pre-contractual negotiations?
4. Promissory estoppel. Did LC Waikiki make clear representations that Bollore reasonably relied upon to its detriment?

Courts Findings

The Court found that a binding contract arose by conduct, notwithstanding the absence of a formally executed written agreement. It held that the parties' post-nomination actions including implementation planning, system integration, operational alignment and the setting of a Go-live date demonstrated an intention to create legal relations. The Court emphasized that industry practice may allow formal contracts to be executed after operational commencement and parties cannot evade liability by characterizing advanced negotiations as merely "conditional" where their conduct indicates commitment.

The Court further held that the plaintiff had a legitimate expectation that the engagement would proceed. This expectation was reasonable given the defendant's active participation in planning and encouragement of preparatory investments. The defendant's conduct induced reliance, making it foreseeable that the plaintiff would incur substantial costs.

On pre-contractual liability and promissory estoppel, the Court determined that the defendant's representations and conduct caused measurable detriment to the plaintiff. Estoppel applied despite the absence of a signed contract, as it would be inequitable to permit the defendant to withdraw after inducing reliance.

Consequently, the Court awarded the plaintiff Kshs. 15,534,784.69 as special damages, representing pre-contractual expenditures directly attributable to the defendant's conduct.

Conclusion

The High Court's decision in *Bollore v LC Waikiki* underscores the importance of clarity and good faith in pre-contractual negotiations. For businesses operating in Kenya, it demonstrates that even informal agreements or conduct can give rise to enforceable obligations and that parties inducing reliance may be liable for pre-contractual costs.

For businesses, the practical takeaway is simple:

- Clarify when negotiations are binding and when they are not.
- Avoid conduct that signals commitment unless you are ready to proceed.
- Document conditions precedent clearly.
- Manage reliance risk during implementation planning.

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