



REPUBLIC OF KENYA



Africa Energy Development Corporation v Chevron Africa Limited & 2 others (Civil Appeal E042 of 2023) [2024] KEHC 9586 (KLR) (Civ) (30 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9586 (KLR)

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

CIVIL

CIVIL APPEAL E042 OF 2023

S MBUNGI, J

JULY 30, 2024

BETWEEN

AFRICA ENERGY DEVELOPMENT CORPORATION APPELLANT

AND

CHEVRON AFRICA LIMITED 1ST RESPONDENT

GLOBELEQ KENYA LIMITED 2ND RESPONDENT

MALINDI SOLA GROUP LIMITED 3RD RESPONDENT

(Being an appeal from the Judgement and Decree of the Chief Magistrate's Court of Kenya at Nairobi delivered by Honourable A.N Makau (Principal Magistrate) on 20th December, 2022, in Milimani CMCC No. E1003 of 2020)

JUDGMENT

Introduction

1. This appeal arises from the Judgement of Hon. A.N Makau- Principal Magistrate delivered on 20th December, 2022 in Milimani CMCC No. E1003 of 2023 which compelled the appellant to pay the respondent a total sum of 60,000 USD (approximately kshs.6,000,000/=) vide the finder's agreement dated 3rd February, 2015 with interest at the courts rate plus the costs of the suit.
2. The Appellant herein being dissatisfied with the judgement and decree of the Hon. A.N Makau delivered on the 20th December, 2022 filed the appeal herein seeking the following orders: -
 - i. That the appeal be allowed.



- ii. That the judgment of the Chief Magistrate court in Milimani CMCC No. 1003 of 2020 delivered by Hon. A.N Makau on the 20th of December, 2022 be set aside
 - iii. That cost of this appeal be awarded to the appellant.
3. The Appellants fourteen (14) grounds of appeal as submitted in his amended Memorandum of appeal dated 17th February, 2023 and 26th April 2023 respectively are as follows: -
- i. That the learned Magistrate erred in law and in fact by holding that the terms of finder's agreement dated 3rd February, 2015 between the appellant and the 1st respondent were that the 1st respondent was to find potential investors and initiate a financing agreement for the Malindi solar project for an initial 1,500,000 USD. The finder's agreement dated 3rd February, 2015 does not mention or refer to 1,500,00 USD or any other amounts.
 - ii. That the learned Magistrate erred in law and in fact by relying on an alleged investment agreement Idea Power Group Limited and the appellant which was not produced in court or served upon the appellant
 - iii. That the learned Magistrate erred in law and in fact by reading into the finder's agreement dated 3rd February, 2015 terms and clauses that are not in the agreement.
 - iv. That the learned magistrate erred in law and in fact by ignoring the express provisions of the finder's agreement dated 3rd February, 2015.
 - v. That the learned Magistrate erred in law and in fact by holding that the 1st respondent was entitled to 4% of 1,500,000 USD whereas the finders agreement dated 3rd February, 2015 provides that the 1st respondent was entitled to 4% of the amounts paid towards development budget and actually received by the appellant.
 - vi. That the learned Magistrate erred in law and in fact by holding that the 1st respondent was entitled to 4% of 1,500,000 USD without proof that the appellant had received the 1,500,000 USD from the investor.
 - vii. That the learned Magistrate erred in law and in fact by re-writing the finders agreement dated 3rd February, 2015 through her judgement.
 - viii. That the learned Magistrate erred in law and in fact by holding that in the eyes of the court the appellant had not made any payment to the 1st respondent despite both parties having confirmed payment of kshs.4,200,000 to the respondent.
 - ix. That the learned Magistrate erred in law and in fact by failing to acknowledge that the kshs.4,200,000 paid by the 3rd respondent to the 1st respondent was paid on behalf of the appellant, a fact which was not in contest as all parties had acknowledged it.
 - x. That the learned Magistrate erred in law and in fact by misinterpreting and misapplying the doctrine of privity of contract.
 - xi. That the learned Magistrate erred in law and in fact by holding that the appellant owes the 1st respondent a total sum of 60,000 USD as contractually obliged vide the finder's agreement dated 3rd February, 2025 despite there being no proof of the debt.
 - xii. That the learned Magistrate erred in law and in fact by ignoring the indemnity clause in the finder's agreement.



- xiii. That the learned Magistrate erred in law and in fact by not considering the appellants written submissions.
 - xiv. That the learned Magistrate misapprehended the law by reaching a conclusion that is inconsistent with the binding and persuasive authorities of the superior courts and thereby arrived at a wrong conclusion by disregarding the doctrine of state decisis.
4. The court directed parties to file their written submissions. Both parties complied.

Appellant's Submissions

5. The Appellant isolated the following issues in its submissions dated 18th March 2024 for determination: -
- a. Whether the learned Magistrate read into the finder's agreement dated 3rd February, 2015 terms and clauses that were not there.
 - b. Whether the Magistrate misinterpreted and misapplied the doctrine of privity of contract.
 - c. Whether the 1st Respondent proved its case in the trial court to the required standard.
 - d. Whether the suit was properly before the trial court given that there is an indemnity clause in the finder's agreement dated 3rd February, 2015.

A. Whether the learned Magistrate read into the finder's agreement dated 3rd February, 2015 terms and clauses that were not there.

6. The appellant submitted that the entire case in CMCC No. 1003 of 2020 was anchored on the agreement dated 3rd February, 2025 executed between the appellant and the 1st respondent herein referred to as "the finder's agreement."
7. The appellant submitted that the learned magistrate read into the finder's agreement term and clauses which were not there and thus the whole judgment was flawed.
8. The appellant submits agreement found at pages 21-27 of the record of appeal.
9. The appellant submitted that the magistrate in her judgment which is annexed at pages 160-165 of the record of appeal correctly held that
- "A court cannot read into a contract a different intent and meaning other than what is plainly disclosed by the express terms of the contract."
- See paragraph 5 on page 163 of the record of appeal.
10. The appellant submitted that immediately after the above holding, the learned magistrate went ahead and did the opposite by reading into the finder's agreement terms that were not in the agreement.
11. He submits that the learned Magistrate held that
- "The agreement clearly stipulates that the finder (plaintiff) is entitled to 4% of the initial project budget set at 1,500,000 USD. Those terms are rather straightforward and direct to this court and the defendants" assertion that the initial project budget was directly paid to third parties is unsubstantiated and uncorroborated hence the court cannot place reliance upon the same."



12. The appellant submitted that the finder's agreement only states that the 1st respondent would be entitled to 4% of the actual cumulative gross amount paid by all potential investors and actually received by the appellant for the purchase of securities of the company.
13. In his submission the appellant stated that the 1st respondent was entitled to 4% of the actual cumulative gross amount paid by all potential investors and actually received by the appellant for the purchase of securities of the company, he relied on the case of National Bank Ltd V Pipe plastic Samkolit (K) Ltd and another (2001) eKLR where the court of appeal held that: "a court of law cannot rewrite a contract between parties, the parties are bound by the term of their contract, unless coercion, fraud or undue influence are pleaded and proved."

B. Whether the Magistrate misinterpreted and misapplied the doctrine of privity of contract.

14. In his submissions, he submitted that the pleadings filed by both the appellant and the 1st respondent before the trial court, the common position was that the appellant had paid to the 1st respondent a total sum of Kshs. 4,200,000/=
15. He submitted that the amounts were paid by the 3rd respondent on behalf of the appellant. The 1st respondent in its pleadings indeed acknowledged receipt of these funds.
16. The appellant submitted that in the judgment the learned magistrate held that the payment of Kshs. 4,200,000 having been made by the 3rd respondent is not recognized. This is because the 3rd respondent was not a party to finder's agreement executed between the appellant and the 1st respondent.
17. He submitted that the magistrate held that the appellant was in breach since in the eyes of the court, they had not made any payment to the 1st respondent. See the last paragraph on page 164 of the record of appeal.
18. He submitted that the magistrate went ahead to direct that these monies be paid afresh by the appellant to the 1st respondent.
19. He submitted that the finding by the learned magistrate is problematic. The kshs 4,200,000/= was paid by the 3rd respondent on behalf of the appellant and in fulfillment of the appellant's obligations under the finder's agreement.
20. The appellant submitted that the fact was not in contest as the 1st respondent acknowledges receipt of these monies and in its pleadings, it only sought the alleged balance.
21. He submitted that it is a common practice for parties in contractual relationship to ask third parties to pay money on their behalf. For instance, advocates are never party to sale agreement but effect payments on behalf of their clients all the time.
22. He submitted and held that the monies paid by a third party was not recognized despite there being consensus between the contracting parties is setting a very dangerous precedence in business relationship.
23. The appellant submits that the holding further encourages unjust enrichment which was frowned upon by the law and the Honourable courts. At page 166 of the record of appeal is the decree extracted by the 1st respondent in which they now seek payment of a cumulative sum of kshs.7,471,661.5 which includes the kshs.4,200,000/= which they had already been paid.
24. He submitted that it was a settled principle that parties are bound by their pleadings and so is the court.



25. The appellant submits that the learned magistrate overstepped her mandate by addressing herself on issues that were not before court and reaching a finding that had not been prayed for in the 1st respondent's pleadings. In the pleadings the 1st respondent sought for KShs.1,800,000 but was awarded KShs 6,000,000/= after the court failed to recognize the KShs 4,200,000/= paid by the 3rd respondent on behalf of the appellant despite there being no contention between the parties.
26. The appellant cited the case of *Boniface Kevin Ooko Ganda V Philip Onditi & Another* (2019) eKLR where the court expressed itself on this issue as follows

“It is trite law that parties and the court are bound by their pleadings. See the decision of the Malawi supreme court of appeal in *Malawi Railways Ltd vs Nyasulu* (1998) MWSC 3, in which the learned judges quoted with approval from an article by Sir Jack Jacob entitled “the present importance of pleadings.” The same was published in (1960) *Current Legal Problems*, at p174 whereof the author had stated;

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleading...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice...

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”

I am also of the view that the appellant knew the case that he wanted the court to adjudicate upon through his pleadings. The appellant even had an opportunity to amend his pleadings. The trial court was also bound by the pleadings of the parties which they presented before the court. I also agree with the observation above by the learned judges that it is not part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Even if the court is itching to go outside the pleadings, this would be occasioning injustice which calls for an appeal and revision of such orders.”

27. The appellant humbly submitted that the Honourable court find that the KSh.4,200,000/= paid by the 3rd respondent to the 1st respondent on behalf of the appellant is duly recognized as monies paid towards meeting of the appellants obligations under the finder's agreement and that the judgment entered by the learned magistrate was therefore improper.



C. Whether the 1st Respondent proved its case in the trial court to the required standard.

28. The appellant submitted that the 1st respondent did not prove its case to the required standard of balance of probability at the trial court.
29. The appellant submitted that it was the 1st respondent's contention during the trial that investor paid to the appellant a sum of 1.5 million US dollars from which the 1st respondent is entitled to 4%.
30. The appellant submitted that the 1st respondent at paragraph 9 of its plaint and paragraph 3 of its witness statement (found at page 5-12 of the record of appeal) states that it initiated and introduced an investor known as Idea Power Group Limited to fund the development of Malindi solar power project for the initial budget of 1.5 million US dollars.
31. The appellant submits that during trial and as can be ascertained from the trial record the 1st respondent did not provide any proof or evidence to substantiate his allegation. There was no proof that the investor had agreed to fund the project at 1.5 million USD.
32. He submitted that under clause 3 of the finder's agreement, the 1st respondent was entitled to 4% of the amounts invested toward the development budget in actual cumulative gross amount paid by the potential investor and actually received by the company "appellant"
33. He submits that the 1st respondent did not produce before the trial court proof that the appellant had received 1.5 million USD or any other amounts whatsoever from the investor. He relied on section 107 of the *evidence act* which provides that;
- “(1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
34. Section 109 of the *evidence act* proves as follows: -
- “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”
35. The appellant submits that the 1st respondent did not discharge its burden of proof. The 1st respondent made allegations to the court but failed to prove the said allegations.
36. The appellants referred the court to the case of Wareham t/a A.F Wareham & 2 Others Kenya Post Office Savings Bank (2004) 2 (KLR 91 as cited in Michael Kinyua v Apa Insurance Company Limited (2022) eKLR the court of appeal.

D. Whether the suit was properly before the trial court given that there was an indemnity clause in the finder's agreement dated 3rd February, 2015.

37. The appellant submitted that the 1st respondent's case was not properly before the trial court as per the binding terms of clause 7 of the finders agreement dated 3rd February, 2015, which provides as follows:
- “Indemnification. Each party to this agreement and its parents, affiliates, successors and assigns will indemnify and hold harmless the other party and its



officers,directors,employees,attorneys,consultants,agents,servants,parents,affiliates,successors and assigns jointly and severally(collectively, indemnitee)from and against any and all losses, claims damages, liabilities, awards, costs and expenses, including but not limited to reasonable attorneys' fees to which Indemnitee may become subject by virtue of, in connection with, resulting from, its activities related to this agreement(hereinafter collectively claim or claims).Without limitation-but in illustration of the foregoing, claim shall include reasonable legal and other expenses, including the cost of any investigation and preparation, incurred by indemnitee in connection with any pending or threatened claim by any person or entity, whether or not it results in a loss, damages, liability or awards. Indemnity shall be indemnified and held harmless for any and all claims whether they arise under contract; foreign, federal, state or local law or ordinance; common law; or otherwise. This section shall survive the term of this agreement.”

38. The appellant submitted that the parties to the agreement indemnified each other against all claims legal or otherwise and that the trial magistrate did not address the indemnity clause in her judgment despite the appellants submission on the same.
39. The appellants further submitted that the 1st respondent willingly entered into the agreement without undue influence or coercion, hence entirely bound by Clause 7 of the Finder's agreement. they relied on the court of Appeal decision in the case of National Bank of Kenya Ltd V Pipeplastic Samkolit(K)Ltd & Another (2001) Eklr.

E. Whether the appellant herein is entitled to the relief sought.

The appellants submitted that it has proved its case to the required standard of balance of probabilities and the same ought to be allowed with costs to the appellant and the judgment in the lower court set aside.

Respondent's Submissions

40. The respondent's submissions overly supported the trial court's judgment.
41. On the issue of whether the magistrate read into the finder's agreement dated 3rd February,2015 terms and clauses which were not there, submitted that the Appellant entered into an investment agreement between itself and Idea Power Group Limited to fund the development of Malindi Solar Project at the initial budget of 1,500,000USD.did not There the trial court did not read into this clause of the agreement as alleged by the appellant and thus the trial court did rewrite the contract between the parties.
42. On the issue of whether the trial court misinterpreted and misapplied the doctrine of privity of contract, the respondent submitted that the trial court did not, it was clear the finder's contract was between the appellant and the 1st respondent and the court took that position because throughout the trial the Appellant denied the 3rd respondent had a role in the project. This was evident when the 2nd and 3rd respondent filed applications seeking to be removed from the proceedings.
43. The 1st respondent maintained that he had discharged both its legal and evidential burden of proof as required by Section 107 and 109 of the *Evidence Act*, for he introduced an investor known as Idea Power Group Limited to fund the development of Malindi Solar Power Project with the initial budget of 1,500,000/- million dollars, it is not in dispute that he was entitled to 4% .
44. The respondent did not submit on the issue of whether the matter was properly before the court by virtue of the Indemnity clause in the Finder's agreement dated 3rd February, 2015.Nevertheless this court addressed the issue in its determination.



45. This being a first appellate court, it was held in *Selle –vs- Associated Motor Boat Co.* [1968] EA 123 that:

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect, in particular the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

46. I have considered the submissions of the parties, the pleadings, the proceedings of the lower court and the judgment of the lower court.

47. From the above analysis I find the salient issues for determination can be condensed to three;

- i. Whether the suit was properly before the trial court by virtue of the Indemnity Clause
- ii. Whether the trial court rewrote the contract between the appellant and the 1st respondent by reading in terms and clauses that were not part of the agreement.
- iii. Whether the 1st respondent proved on a balance of probabilities that he was entitled to be paid Kshs.6,000,000/- as finder’s fee.

Determination

Issue one (1)

48. I have read clause 7 of the Finder’s agreement dated 3rd February, 2015 (the clause is produced elsewhere in this judgment)

49. The concept of indemnity in contractual relationships, it is a contractual obligation of one party to compensate the loss incurred by another party due to the relevant acts of the indemnitor or any other party. The duty to indemnify is usually, but not always coextensive with contractual duty to ‘hold harmless’ or ‘save harmless’(Wikipedia).

50. To me the quote above means a party to a contract is obligated to cushion the other party in the contract if either party suffers loss from an act of the other party or a party not in the contract so long as the loss is as a result of acts done in execution of the contract. Further, to me this does not exonerate any party in the contract from performing its part of the bargain.

51. Therefore, any party who feels aggrieved for non- performance of the contract by the other party retains his right to enforce the contract thus the 1st respondent was right to sue the appellant; therefore, the suit was properly before the trial court.

I will tackle issue two and three simultaneously because the question revolves around the amount invested by Idea Power Group Limited.

52. In the lower court proceedings, it was the first respondent case that the appellant received 1,500,000/- USD from Idea Power Group Limited. Therefore, his finder’s fee was 6,000,000/- this being the agreed 4%of the invested money brought in by an investor he was to find.



53. I have seen several correspondences between the appellant and the 1st respondent. See record of appeal page 7,8,9,10,11,12,13,14.
54. The appellant despite persistent demands by the 1st respondent to produce financial statements or accounts showing the received amount from Idea Power Group Limited, refused/declined to, saying that auditing was not complete.
55. The appellant through his witness Zohrab Mawani testified that Mr. Lomosi for the 1st respondent introduced Idea Power Group Limited in 2015 and they entered into an agreement where Idea Power Group Limited agreed to invest up to USD 1,500,000/- million. However, the project budget in the agreement was USD 1,375,000/- million and Idea Power Limited would pay 3rd parties directly and secondly, they never received the USD 1,500,000/-
56. I have perused the record of appeal, I have not seen any contract document between Idea Power Group Limited and the Appellant, therefore the court cannot tell with certainty whether the appellant received the USD 1,500,000/- or not.
57. The contract document between the Idea Power Group Limited and the appellant were ordinarily in the custody of either parties.
58. Similarly, any correspondence between Idea Power Group Limited and the appellant were expected to be in their custody. There is no evidence that the 1st respondent could or had access to the contract document or any document/correspondence relevant pertaining to transactions pursuant/relating to the contract between Idea Power Group Limited and the appellant.
59. Since Idea Power Group Limited had agreed to invest USD 1,500,000/- an amount admitted by the appellant in the witness statement of Zohran Mawani, the 1st respondent was right to base the calculation of his finder's fee on that amount, in absence of evidence showing the actual amount cumulatively received by the appellant from Idea Power Group Limited and it is only the appellant and Idea Power Group Limited who had the custody of that evidence.

The elementary principle of law is that he who alleges must prove the allegations. This is stipulated in Section 107(1)(2) of the [Evidence Act](#) that provides thus:

- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

60. That being so, to me the 1st respondent discharged his legal burden at that point and the evidential burden shifted to the appellant as per section 112 of the [Evidence Act](#).

Section 112 of the [Evidence Act](#) provides thus:

“In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

61. Evidential burden shifts to a party which is likely to lose if that party does not adduce evidence to rebut. In the case of *Alice Wanjiru Ruhiu Vs Messaic Assembly of Yahweh* [2021] eKLR the court had the opportunity to assert the principles by holding that; “The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions



which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus, a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues. The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence"

62. Further the court is entitled to make an adverse inference against a party which refuses/declines to produce evidence in its custody, that if such evidence was actually produced will be adverse to the party or will be in support to the case of the party requesting.

In Kenya Akiba Micro Financing Limited Vs Ezekiel Chebii & 14 Others the court stated as follows;

“Where a party has custody or is in control of evidence which that party fails or refuses to tender or produce, the court is entitled to make adverse inference that if such evidence was produced, it would be adverse to such a party”

63. The above analysis therefore shows that the trial magistrate in the lower court was not wrong in finding that the invested amount was USD 1,500,000/-. The only problem was the words she used ‘initial project budget’ instead of using ‘Cumulative Development Cash Investment’. Thus, she did not read in and rewrite the contract.
64. The 1st respondent admits receiving Kshs. 4,200,000/- as part payment of his finder’s fees remaining a balance of Kshs. 1,800,000/- The trial court was wrong to find that the appellant was supposed to pay the 1st respondent Kshs.6,000,000/-. It is normal for a party not part of a contract to enter into arrangements separately with a party in a contract to assist in meeting the terms of the contract. So, it was not abnormal practice for the 3rd Respondent to make payment to the 1st respondent on behalf of the appellant.
65. I have looked at the prayers sort by the 1st respondent in the plaint dated 19th February, 2020 since there is no evidence to show when the appellant received the cumulative development cash from Idea Power Group Limited, the court has no basis to award the same. Similarly, there is no evidence adduced to prove prayer d).
66. The upshot of the above is that, I find that the appeal partially succeeds and the lower court judgment is set aside and judgment is entered in favour of the 1st respondent (the plaintiff) in that the appellant (the 1st defendant) is to pay the 1st respondent Kshs.1,800,000/- plus interest from the day he was paid Kshs. 4,200,000/- the court assumes for lack of evidence it is the 15th day upon receipt of the cumulative development investment cash by the appellant from the investor brought by the 1st respondent as per the finder’s agreement.
67. The 1st respondent shall have the cost of the appeal and the cost in the lower court for the appellant was clearly in breach of the contract.

Right of appeal 30 days explained.

SIGNED, DATED AND DELIVERED AT KAKAMEGA ON THIS 30TH DAY OF JULY 2024.



HON. JUSTICE S. MBUNGI

JUDGE

In The Presence Of:

The Appellant- Absent

1st Respondent- Absent

2nd Respondent- Absent

3rd Respondent- Absent

Court assistant – Elizabeth Angong’a

