



**Republic v Magistrates Court, Mombasa; Absin Synergy Limited (Interested Party)  
(Judicial Review E033 of 2021) [2022] KEHC 10 (KLR) (24 January 2022) (Judgment)**

Neutral citation: [2022] KEHC 10 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
JUDICIAL REVIEW E033 OF 2021  
JM MATIVO, J  
JANUARY 24, 2022**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MAGISTRATES COURT, MOMBASA ..... RESPONDENT**

**AND**

**ABSIN SYNEGY LIMITED ..... INTERESTED PARTY**

**JUDGMENT**

1. The factual matrix which triggered these proceedings is essentially common ground or uncontroverted. It is common ground that on or about the 19<sup>th</sup> January 2019, the Interested Party’s motor vehicle Registration number KBZ 892 W and trailer Registration number ZC 8785 were allegedly crushed by the applicant’s Motor Vehicle KBQ 998 R and trailer number ZD 9158 at Butisema in the Republic of Uganda as a consequence of which the Interested Party’s vehicle is alleged to have been damaged.
2. Vide a Complaint dated 20<sup>th</sup> September 2019, the Interested Party sued the applicant at the Chief Magistrates court at Mombasa in CMCC No. 1680 of 2019, Kyoga Hauliers Ltd v Absin Synergy Ltd seeking recovery of special damages allegedly arising from the said accident plus costs of the suit and interests. However, on 9<sup>th</sup> December 2019, the applicant herein filed a Notice of a Preliminary Objection objecting to the lower court’s jurisdiction to entertain the case on grounds that the cause of action arose in the Republic of Uganda, outside the court’s jurisdiction, and urging that should the court find it has jurisdiction, the court was the convenient place to sue under what the applicant described as “the doctrine of forum non conveniens.”



3. Vide a ruling rendered dated 4<sup>th</sup> June 2021, the trial Magistrate dismissed the Preliminary Objection arguing that under section 14 of the *Civil Procedure Act*<sup>1</sup>(the CPA), the Plaintiff may opt to bring his suit either in the court within whose local limits the cause of action arose or the court within whose jurisdiction the defendant resides or carries on business. The learned Magistrate stated that there was no dispute that the defendant (now the applicant in this suit) resides or carries on business within the jurisdiction of the lower court and held that the lower court was vested with jurisdiction.

#### **The instant application**

4. Aggrieved by the said decision, the applicant pursuant to this court's leave granted on 14<sup>th</sup> July 2021 seeks an order of certiorari to quash the said ruling. It also prays for costs of this application. In support of the application, the applicant states that the learned Magistrate failed to appreciate that the import of section 14 of the CPA and the fact that the court cannot have jurisdiction where the cause of action arises in a foreign country. It argues that the court illegally assumed of jurisdiction in breach of Articles 1 & 2 of the Constitution and section 14 of the CPA, and that it will suffer prejudice if the lower court hears the case.

#### **The Respondent**

5. The Respondent did not file any response or submissions nor did it participate in these proceedings despite being served.

#### **The Interested Party's Response**

6. Before briefly highlighting the Interested Party's response, it is important to mention that it is not clear how the Interested Party joined these proceedings. A reading of the pleadings filed shows that the Interested Party was not sued or formally enjoined in these proceedings. However, without formally applying for joinder, the Interested Party through its advocates filed a Notice of Appointment of advocates and thereafter the proceedings continued as if its status had been regularized. Interestingly, the parties never noticed this grave anomaly. It's not clear how this incongruity escaped the attention of the ordinary hawk-eyed lawyers.
7. However, I must underscore the principle that a person or a body becomes a necessary party in court proceedings if he is entitled in law to defend the orders sought. The term "entitled to defend" confers an inherent right to a person if he or she is affected or is likely to be affected by an order to be passed by any legal forum, for there would be violation of natural justice, if the person to be affected is not heard. No doubt, the Interested Party is a necessary Party in these proceedings. I decline to hoist procedural technicalities over substance. I will treat the Interested Party as having been properly joined in these proceedings and proceed on that basis.
8. The Interested Party vide the Replying affidavit of a one Samson Dola, its insurance officer dated 4<sup>th</sup> October 2021 opposed the application. The key points to note are: - (a) the applicant is a company incorporated in Kenya having its offices at Mombasa which is in line with section 14 of the CPA; (b) that both parties are Kenyans; (c) that the law does not permit filing suits in a foreign country; (d) that since the applicant contends that the trial court misapprehended the law, its remedy lies in an appeal against the said decision.

#### **The applicant's further affidavit**

<sup>1</sup> Cap 21, Laws of Kenya.



9. Mr. Ousa Okello, the applicant’s counsel filed an undated affidavit on 1<sup>st</sup> November 2021 annexing a handwritten copy of the impugned ruling and decrying that despite requesting for typed proceedings, they have not been supplied.

#### **The applicant’s advocates submissions**

10. The application was canvassed by way of written submissions. The applicant’s advocate submitted that section 14 of the CPA provides that where the cause of action does not arise within the jurisdiction of a court, then the court cannot claim to have jurisdiction. He cited *Owners of the Motor Vessel “Lillian S” v Caltex Oil (K) Ltd*<sup>2</sup> in support of the proposition that jurisdiction is everything and without it, a court has no power to make even one step and where a court has no jurisdiction, there is no basis for the proceedings to continue.
11. Counsel submitted that the Respondent is a creature of a statute and it can only exercise the powers specifically conferred on it by the statute. He submitted that the republic of Uganda does not lie within the local limits of the Respondent’s jurisdiction and to the extent that the cause of action arose in Uganda, then, the Respondent is divested of jurisdiction to entertain the case. To buttress his arguments, he cited *Kenya National Examination Council v The Republic ex parte Geoffrey Gathenji Njoroge and 9 others*<sup>3</sup> which held that certiorari will issue if the decision is made without or in excess of jurisdiction and relied on *Republic v National Land Commission and another ex parte Farmers Choice Limited*<sup>4</sup> in support of the same proposition.
12. Lastly, responding to the argument that the applicant ought to have appealed, he submitted that there are no limits to the grant of the writ of certiorari provided that the inferior court had acted without jurisdiction.

#### **The Interested Party’s advocates submissions**

13. The Interested Party’s counsel cited *Republic v Public Procurement Administrative Review Board & 2 others ex parte Rongo University*<sup>5</sup> which succinctly laid down the scope of judicial which is not an appeal but rather it deals with the decision-making process not merits of a decision. He argued that the applicant faults the impugned decision citing the Respondent’s misapprehension of the law which is a ground of appeal. Additionally, counsel argued that the question where the accident occurred are matters of evidence to be determined by the trial court. He submitted that this court cannot delve into merit issues. Citing *Republic v Senior Resident Magistrate (Milimani Chief Magistrates Court) & 6 others*<sup>6</sup> counsel argued that the applicant ought to appeal.
14. Additionally, counsel argued that both the Plaintiff and the defendant are local companies domiciled in Mombasa in conformity section 14 of the CPA, so, the Interested Party was at liberty to institute the suit at Mombasa. He cited *Allan Fwamba Malilo v Tai Construction Company Limited*.<sup>7</sup>

#### **The applicant’s advocates submissions in reply**

<sup>2</sup> {1989} 1.

<sup>3</sup> {1997} e KLR.

<sup>4</sup> {2020} e KLR.

<sup>5</sup> {2018} e KLR.

<sup>6</sup> {2019} e KLR.

<sup>7</sup> {2016} e KLR.



15. In his submissions in reply, the applicant’s counsel distinguished the decisions in Republic v Public Procurement Administrative Review Board and 2 others ex parte Rongo Univerisity and Republic v Senior Resident Magistrates Court, Milimani and 5 others cited by the Respondent arguing that the said decision are not applicable in the circumstances of this case. He reiterated the requirement in section 14 of the CPA that the wrong must have occurred within the local limits of the jurisdiction of one court and the defendant resides or carries on business or works for gain with the local limits of the jurisdiction.

### **Determination**

16. A useful starting point in addressing the core issue raised in this case is to define the word “Jurisdiction.” The *Civil Procedure Act*<sup>8</sup> and the Civil Procedure Rules, 2010, do not define the term jurisdiction. In common parlance, the term jurisdiction means the power of the courts to decide and try a case or issue. “Jurisdiction may be defined to be the power of the court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it. Jurisdiction means the power conferred by law upon the court to try and hear the cases and give appropriate judgements.
17. By jurisdiction is meant the authority, which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The statute, charter, or commission under which the court is constituted imposes the limit of this authority. The authority may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited.
18. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.<sup>9</sup> A court’s jurisdiction flows from either the Constitution, legislation or both or by principles laid out in judicial precedent.<sup>10</sup> The locus classicus decision in Kenya on jurisdiction is the celebrated case of *Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd*<sup>11</sup> (*Supra*). A court has no inherent jurisdiction to decline to entertain a matter within its jurisdiction.
19. It is important to point out that jurisdiction is determined on the basis of pleadings and not the substantive merits of the case. As was appreciated by the South African Constitutional Court: -<sup>12</sup>

“Jurisdiction is determined on the basis of the pleadings,<sup>13</sup> ... and not the substantive merits of the case... In the event of the court’s jurisdiction being challenged at the outset (in

<sup>8</sup> Cap 21, Laws of Kenya.

<sup>9</sup> John Beecroft, *Words and Phrases Legally Defined*, Volume 3:1-N, at Page 113.

<sup>10</sup> The Supreme Court in the matter of the *Interim Independent Electoral Commission, Constitutional Application No. 2 of 2011* (unreported).

<sup>11</sup> {1989} KLR 1.

<sup>12</sup> *In the matter between Vuyile Jackson Gcaba vs Minister for Safety and Security First & Others* Case CCT 64/08 [2009] ZACC 26.

<sup>13</sup> *Fraser vS ABSA Bank Ltd* {2006} ZACC 24; 2007 (3) BCLR 219 (CC); 2007 (3) SA 484 (CC) at para 40.



limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognizable only in another court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim ..., one that is to be determined exclusively by... {another court}, the High Court would lack jurisdiction..."

20. Consistent with the above jurisprudence, in determining the lower court's jurisdiction, the pleadings filed in the lower court are useful. It's not for cosmetic purposes that every Plaintiff must contain an averment that the cause of action arose within the jurisdiction of the court. A trial court is required to have its antennae hoisted high any time it reads an averment pleading that the court has jurisdiction. This is because if a court exercises jurisdiction which it does not possess, the proceedings will be a nullity.
21. The term jurisdiction has been demarcated in three categories, namely; (a) subject matter jurisdiction, i.e whether the particular court in question has the jurisdiction to deal with the subject matter in question; (b) territorial jurisdiction, i.e whether the court can decide upon matters within the territory or area where the cause of action arose; and, (c) pecuniary jurisdiction i.e whether the court can hear a suit of the value of the suit in question. These three categories of jurisdiction are prerequisite to the assumption of a court's jurisdiction, a sine qua non. The absence of any of these three is sufficient to extinguish a courts jurisdiction or invalidate the proceedings.
22. I must mention that the jurisdiction of the court is not whether the court is entitled to pass a decree or order in a suit. It is whether the court has the right to hear the case. The court shall have jurisdictions to try all suits of civil nature excepting suits of which their cognizance is expressly or impliedly barred. There is no definition of a civil suit in any act, the suit in which the principal question relates to civil right is a civil suit.
23. Closely related to my argument in paragraph 21 above is the fact that the jurisdiction of a civil court depends upon the variety of factors which determines which court shall have the power to try the issue. These factors include: - (a) Subject matter of the suit; (b) Cause of action; (c) Where the plaintiff resides or where there are more than one plaintiff, then in any one of the place where the plaintiff resides; (d) Where the defendant resides or where there are more than one defendants then in any of the place where the defendants resides.
24. Section 5 of the CPA deals with the aspect of jurisdiction of civil courts in Kenya. It provides that any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred. As the Supreme Court of India stated in *Ganga Bai v. Vijai Kumar*:<sup>14</sup>

“There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.”

<sup>14</sup> *Ganga Bai v. Vijai Kumar*, AIR 1974 SC 1126 para 15.



25. Thus, from the above excerpt, it can be concluded that the civil court has jurisdiction to try a suit if the following two conditions are fulfilled: –(a) The suit must be of civil nature; (ii) The cognizance of such a suit should not be barred expressly or impliedly. Hence, the correct position regarding the jurisdiction of Civil Courts is that the courts have inherent jurisdiction to hear civil matters unless the jurisdiction is expressly or impliedly excluded by a statute.<sup>15</sup> A suit is said to be expressly barred when it is barred by any enactment for the time being in force<sup>16</sup> or by general principles of law. Ousting of jurisdiction cannot be readily inferred. If the matter is of civil nature and if ouster of the jurisdiction is not implied or expressed then the jurisdiction of civil court cannot be questioned.
26. Back to the three factors which affect court’s jurisdiction discussed above, First, pecuniary literally means ‘related to money.’ Pecuniary jurisdiction sets the pecuniary limits on the jurisdiction of a court. Every court is deemed to have a certain monetary limit of which it can entertain cases and decide. Second, Territorial jurisdiction is the territorial limit in which the law is applicable or the court has power to decide upon. Third, Subject Matter Jurisdiction refers to the nature of the claim or controversy. This means that certain courts are precluded from entertaining suits of particular nature. When the court has no jurisdiction over the subject matter of the suit it cannot decide any question on merits. It can simply decide the question of jurisdiction and if it concludes that it has no jurisdiction over the matter it downs its tools.
27. Strictly, a suit is only effective if the court has jurisdiction to adjudicate the issues raised in the suit. The jurisdiction of the court to adjudicate those issues depends on a number of elements including: - whether the suit discloses a cause of action which that court has jurisdiction to determine (eg breach of contract, negligence etc; whether the court has jurisdiction over the defendant; whether the court has jurisdiction to grant the remedy sought. Importantly, and highly relevant to this case, jurisdiction of the court does not extend into a foreign country. It refers to the local area upon which its jurisdiction extends within the Republic of Kenya.
28. With the foregoing exposition of the law in mind, I now turn to the instant application. Fundamentally, this application stands or falls on the provisions of section 14 of the CPA which provides:
- Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts.
29. The key words in the above provision are- “if the wrong was done within the local limits of the jurisdiction of one court.” It is elementary logic that Uganda is not within the local limits of the Magistrates court in Mombasa or any court in the Republic of Kenya. The learned Magistrate grossly misdirected himself/herself in law in failing to appreciate the correct import and meaning of the above provision and assuming a jurisdiction not conferred upon its court by the law. Additionally, the learned Magistrate misconstrued the provisions of section 15 of the CPA which must be read together with section 14. The opening words of section 15 are- “Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-”

<sup>15</sup> *Dhirendra Nath v. Sudhir Chandra*, AIR 1964 SC 1300.

<sup>16</sup> *Umrao Singh v. Bhagwati Singh*, AIR 1956 SC 15: 1956 SCR 62.



30. Parliament in its wisdom deployed the nomenclature “Subject to the limitations aforesaid” referring to the limitations in section 14. The learned Magistrate failed to read the link between the two provisions, and as a consequence over looked the clear limitations in section 14. Additionally, I am acute aware that I am not sitting on an appeal. However, I must point out that the learned Magistrate fell into a grave error by failing to appreciate the holistic cannon of statutory interpretation and by evidently placing emphasis on section 15 and ignoring section 14 as a consequence of which she/he assumed jurisdiction he/she does not possess.
31. Its important to mention that the Constitution requires a purposive approach to statutory interpretation.<sup>17</sup> The purpose of a statute plays an important role in establishing a context that clarifies the scope and intended effect of a law.<sup>18</sup> The often-quoted dissenting judgment of Schreiner JA, eloquently articulates the importance of context in statutory interpretation:

“Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that ‘the context’, as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and within limits, its background.”<sup>19</sup>

32. The Supreme Court of Appeal of South Africa in *Natal Joint Municipal Pension Funds v Endumeni Municipality*<sup>20</sup> acknowledged the interpretation that gives regard to the manifest purpose and contextual approach as the proper and modern approach to statutory interpretation. Wallis JA pointed out that “in resolving a problem, where the language of a statute leads to ambiguity the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation.”<sup>21</sup> Lord Greene MR in *re Birdie v General Accident Fire and Life Assurance Corporation Ltd*<sup>22</sup> stated the following on the contextual approach to statutory construction: -

“The real question to be decided is, what does the word mean in the context in which we here find it, both in the immediate context of the sub-section in which the word occurs and in the general context of the Act, having regard to the declared intention of the Act and the obvious evil that it is designed to remedy.”

<sup>17</sup> For examples of a purposive approach to statutory interpretation, see *African Christian Democratic Party v Electoral Commission and Others* {2006} ZACC 1; 2006 (3) SA 305 (CC); 2006 (5) BCLR 579 (CC); at paras 21, 25, 28 and 31; *Daniels v Campbell NO and Others* {2004} ZACC 14; 2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC) at paras 22-3; *Stopforth v Minister of Justice and Others; Veenendaal v Minister of Justice and Others* {1999} ZASCA 72; 2000 (1) SA 113 (SCA) at para 21.

<sup>18</sup> Thornton Legislative Drafting 4ed (1996) at 155 cited in JR de Ville *Constitutional and Statutory Interpretation* (Interdoc Consultants, Cape Town 2000) at 244-50.

<sup>19</sup> *Jaga v Dönges NO and Another; Bhana v Dönges NO and Another* 1950 (4) SA 653 (A) at 662-3.

<sup>20</sup> 2012 4 SA 593 (SCA).

<sup>21</sup> *Ibid*, at (610B–C).

<sup>22</sup> 1949 Ch D 121 130.



33. A contextual or purposive reading of a statute must of course remain faithful to the actual wording of the statute. A contextual interpretation of a statute, therefore, must be sufficiently clear to accord with the rule of law.<sup>23</sup> In *Stopforth v Minister of Justice and Others; Veenendaal v Minister of Justice and Others*<sup>24</sup> Stopforth Olivier JA provided useful guidelines for the factors to be considered when conducting a purposive interpretation of a statutory provision: -

“In giving effect to this approach, one should, at least, (i) look at the preamble of the Act or at the other express indications in the Act as to the object that has to be achieved; (ii) study the various sections wherein the purpose may be found; (iii) look at what led to the enactment (not to show the meaning, but also to show the mischief the enactment was intended to deal with); (iv) draw logical inferences from the context of the enactment.”

34. I now address the question whether the learned Magistrate assumed jurisdiction he/she does not possess is ground for this court to exercise its judicial review jurisdiction or supervisory jurisdiction to remedy the situation. The Respondent’s argument as I understood it is that the applicant’s grounds are essentially grounds of appeal and therefore the applicant ought to have appealed against the decision. The said argument is attractive. However, the said argument ignores the fact that there is a clear distinction between the “supervisory jurisdiction” and “judicial review jurisdiction.” Supervisory jurisdiction refers to the power of superior courts of general superintendence over all subordinate courts. Through supervisory jurisdiction, superior courts aim to keep subordinate courts within their prescribed sphere, and prevent usurpation. In order to exercise such control, the power is conferred on superior courts to issue the necessary and appropriate writs.<sup>25</sup>

35. This power of superintendence conferred by Article 165 (6) of the Constitution, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. v Sukumar Mukherjee*<sup>26</sup> is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with an unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. As the Supreme Court of India stated unless there is a grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Article 165 (6) of the Constitution to interfere.<sup>27</sup>

36. The grounds disclosed in this application show that the learned Magistrate assumed a jurisdiction not conferred upon the court by the law. He/she acted outside the limits of his/her jurisdiction. The court misconstrued the nature and scope of the jurisdiction conferred upon it by the law or its duties in

<sup>23</sup> *Dawood and Another v Minister for Home Affairs and Others; Shalabi and Another v Minister for Home Affairs and Others; Thomas and Another v Minister for Home Affairs and Others* {2000} ZACC 8; 2000 (3) SA 936 (CC) ; 2000 (8) BCLR 837 (CC) at para 47.

<sup>24</sup> {1999} ZASCA 72; 2000 (1) SA 113 (SCA) at para 21.

<sup>25</sup> *Gallagher v. Gallagher*, 212 So. 2d 281, 283 (La. Ct. App. 1968).

<sup>26</sup> AIR 1951 Cal. 193.

<sup>27</sup> See *D. N. Banerji v. P. R. Mukherjee* 1953 SC 58.



connection therewith. In the process it acted in absence of jurisdiction. The ensuing proceedings and decision are a nullity.

37. The power conferred to this court under Article 165 (6) of the Constitution is used sparingly only when the lower court or tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction which is the case here. However, the High Court under the guise of Article 165 (6) cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. For it to interfere, there must be a case of flagrant abuse of fundamental principles of law or it can interfere where the order has resulted in grave injustice. The fact that the learned Magistrate assumed jurisdiction not expressly conferred upon him by the law and in a blatant breach of section 14 of the CPA is itself a proper case for this court to exercise its supervisory jurisdiction to prevent grave injustice and abuse of the law.
38. Judicial review is the review by a judge of the High Court of a decision; proposed decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction - reflecting the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised. The role of the court in judicial review is supervisory. It is not an appeal and the court should not attempt to adopt the forbidden appellate approach. In the instant case, the impugned decision is a judicial function, arrived at outside the confines of the jurisdiction conferred to the court by the law, which to me is amenable to both judicial review and supervisory jurisdiction.

### **Conclusion**

39. The applicant prays for an order of certiorari. It is common ground that certiorari issues to quash an illegal decision. A decision arrived at without jurisdiction is manifestly illegal. It has no basis in law. It cannot be allowed to stand.
40. I find and hold that that the applicant's application dated 3<sup>rd</sup> August 2021 is merited. I allow the said application and issue an order of certiorari quashing the decision/order made on 4<sup>th</sup> June 2021 by Respondent in Mombasa in CMCC No. 1680 of 2019, Kyoga Hauliers Ltd v Absin Synergy Ltd and all the consequential orders. I also issue an order of prohibition prohibiting the Respondent or any other court in the Republic of Kenya from proceeding with the said case, ie. Mombasa Chief Magistrates CMCC No. 1680 of 2019, Kyoga Hauliers Ltd v Absin Synergy Ltd or any other suit arising from the same cause of action. Lastly, the Respondent shall pay the applicant the costs of this application.

Right of appeal

**SIGNED, DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 24<sup>TH</sup> DAY OF JANUARY 2022.**

**JOHN M. MATIVO**

**JUDGE**

