



REPUBLIC OF KENYA



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**Transoceanic Project Development (K) Ltd v Nicholus Manthi Muumbi t/a Junic Logistics
(Civil Appeal E028 of 2024) [2025] KEHC 4021 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 4021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E028 OF 2024
F WANGARI, J
FEBRUARY 13, 2025**

BETWEEN

TRANSOCEANIC PROJECT DEVELOPMENT (K) LTD APPELLANT

AND

NICHOLUS MANTHI MUUMBI T/A JUNIC LOGISTICS RESPONDENT

*(Being an Appeal arising out of the Judgment and Decree of Hon.
E. Muchoki, Resident Magistrate in Mombasa Chief Magistrate's
Court, Civil Suit No. 338 of 2018 delivered on 8th February 2022)*

JUDGMENT

1. The Appellant, who was the Defendant in the lower court matter, being dissatisfied with the above stated judgment filed the Memorandum of Appeal dated 24/02/2022. The Appellant preferred two (2) grounds of appeal namely:
 - a. The learned magistrate erred in law and in fact by finding that the respondent proved his case on a balance of probability as required in civil cases.
 - b. The learned magistrate erred in law and in fact by entering judgment in favour of the respondent for USD 19,200 plus interest and costs.
2. Directions were taken that the appeal be disposed of by way of written submissions. Both parties duly complied and relied on various decisions in support of their rival positions, which I have duly considered.

Appellant's submissions:

3. The Appellant submitted that the respondent's claim was based on an agreement executed on 25th August 2014, one year before Junic Logistics was registered thus the Respondent as a person did not



have a claim under the contract because he was not a party. It pointed out the invoices the Respondent relied on in his claim and which had been registered in the names of Junic Logistics, which was not registered at the time. Therefore, the said invoices were fraudulent and illegal due to the non-existence of the entity and the Respondent cannot lay a claim under the said invoices in his personal capacity since they do not bear his name.

4. The Respondent is said to have failed to avail any substantiating documents to prove how the amount in the invoices was arrived at, and also as proof of the existence of the contract between them. For this it relied on the case of Hellen Wangari Wangechi vs Carumera Muthini Gathua [2005] eKLR and with all the above, the Respondent had failed to prove his case on a balance of probability. There being no way a non-existing entity could do business and issue invoices, the Respondent was not entitled to the awards in the judgment thus urged the court to allow the appeal with costs to it for both the appeal and the primary suit.

Respondent's submissions:

5. The Respondent submitted that in the primary suit, he made a claim in his own names but trading in the names of Junic Logistics hence it was inconceivable that a remedy can be denied simply because he registered a name he included in his invoices and pleadings yet the contract for transportation of goods was executed by the Respondent herein.
6. His claim for USD 19,200 materialized after the Appellant failed to comply with the demand letter dated 12/10/2017 yet by then the business had already been registered and for this he relied on the case of Barclays Bank of Kenya Limited vs Jane Wanjiku Nganga [2021] eKLR where it was held that the cause of action arose when the respondent requested for her proceeds in a demand letter dated 7/11/2016 and the appellant refused to grant the same.
7. That Respondent further submitted that he had sufficiently proved his case before the subordinate court for which he relied on the case of Juliana Mulikwa Muindi vs Board of Management Yangua Mixed Secondary School & Another [2018] eKLR. He had proved that all the invoices he had produced had been duly received by the Appellant but remained unpaid, and the Subordinate Court made the correct finding that he had proved his case to the required standard.
8. It was submitted that the court had considered the material and evidence presented before it and made its finding after careful consideration of the same hence there was no error in the said court's judgment. If there was any challenge to the invoices, the same ought to be raised within the terms of the transportation agreement. Therefore, whatever the Appellant had presented in this appeal was unmerited and urged the court to dismiss the appeal with costs being awarded to him.

Analysis and determination:

9. This Court, as the first appellate Court, is enjoined to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of *Selle & Ano. v Associated Motor Boat Co. Ltd* (1968) EA 123). This Court, nevertheless, appreciates the settled principle that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings as was held in *Mwanasokoni vs Kenya Bus Service Ltd.* (1982-88) 1 KAR 278 and *Kiruga vs Kiruga & Another* (1988) KLR 348).
10. This Court has carefully perused the pleadings and appreciates the matter and finds the following issues fall for determination:



- a. Whether a binding contract existed between the appellant and the respondent.
 - b. Whether the appellant was in breach of the contract?
11. From the pleadings, there is no doubt that a transport contract existed between the parties herein and this fact is not only admitted by both parties but the same was well demonstrated. Contracts may be in writing be derived from the conduct of the parties.
 12. In this case, it cannot be gainsaid that on 25/08/2014 the parties herein executed the transport contract whereby the Respondent was to transport container loads for the Appellant from Mombasa Port to East and Central Africa, and could also be requested to deliver cargo to other destinations in East and Central Africa which were not listed therein, though in such cases the Respondent would be contacted earlier so as to give the rates in advance for approval in writing before commencement of the service.
 13. The transport contract further stated at Clause 6(h) that the Respondent being the transporter was to charge destination truck delay at USD 150 per day per truck after a grace period of 48 hours. Clause 8 went on to state the loses the Respondent was going to incur and the exclusions therein, but when it came to payment for the services rendered, the same was to be done 30 days after presentation of invoice as provided for under Clause 10.
 14. The clause10 further stated;

“ All payments will be made against a duly signed invoice by transporters authorized staff.’
 15. This was therefore contradictory to the appellant’s witness evidence before the trial court when he testified as follows:

“..... The invoices are not for the services rendered. These are simply documents, consignment note, custom note interchange. The plaintiff raised invoices and they paid as per the defendants list of documents. The invoices at paragraph 9 do not have the supply documents..... The invoices do not show the person receiving the goods. [It does not show the person receiving the goods. There is no acknowledgment of a receipt of the goods. We are not responsible for the delay. The transporter is responsible for the delay. The invoices claimed are not for services rendered to us.’
 16. As earlier stated, a contract can be implied by conduct of parties so that a contract is not only determined by the execution of a document. However, where parties have a meeting of the minds and the constituent elements of a contract can be ascertained, a court will not depart from finding that a contract subsists between the parties in a dispute. Section 3(1) of the Law of Contract validates such a contract as enforceable.
 17. In *Ali Abid Mohammed vs Kenya Shell & Company Limited* (2017) eKLR, the Court of Appeal emphasized that a contract between parties in the absence of words reduced into writing can still be inferred from the conduct of the parties. The Court held that:

“.... It therefore follows that a contract can exist where no words have been used but where it can be inferred from the conduct of the parties that a contract has been concluded. See *Timoney and King vs King* 1920 AD 133 at 141. In the circumstances of the instant case, there existed an enforceable contract between the parties by reason of conduct. Indeed, it was not disputed by the respondent that it supplied petroleum products to the appellant at a specific amount per liter and for a certain period of time.....”



18. In determining what constitutes a contract, the Court of Appeal in *William Muthee Muthami v Bank of Baroda* (2014) eKLR stated as follows;

“... In the Law of Contract, the aggrieved party to an agreement must, in addition, prove that there was offer, acceptance and consideration. It is only when those three elements are available that an innocent party can bring a claim against the party in breach....”

19. The question that arises is whether or not the three elements of a contract exist in this case. There is no doubt the transport agreement not only had an offer by the Respondent to be transporting the Appellant’s cargo from the Port of Mombasa to East and Central Africa for a period of one year; the rates of transportation is as per Clause 5(d) of the said transport contract and which was not going to increase during the period of the contract though the Appellant reserved the right to negotiate a decrease of the rate if the market conditions changed; and the parties accepted the clauses/conditions set in the contract by executing the contract by each of the parties representative who also affixed their respective stamps.

20. The above evidence together with the highlighted evidence of appellant’s witness’s evidence proves that their transport contract did not start on 24/08/2014 but from the year 2013 when no such written contract existed thus proving they had an implied contract and they knew they were dealing with Junic Logistics through Nicholas or Nicholus Manthi who they used to negotiate with.

21. Despite the Appellant vehemently denying the existence of the transport contract between the parties herein, for the appellant to be absolved, it ought to demonstrate that indeed the said transport services were not offered to it despite the invoices having its receiving stamp. The invoices produced by the Appellant are not different in any way from the ones produced by the Respondent.

22. Deriving from the foregoing, it is this Court’s finding that it was the Appellant that failed to pay for the transport services offered to it by the respondent as per their transport contract hence in breach of their transport contract. From the above evidence and the parties conduct, this Court finds and holds that all the elements of contract were proved in this case and that there existed a binding transport contract between the Appellant and the Respondent.

23. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others* [2013] eKLR. The Respondent is entitled to enjoy the fruits of his judgment. He is awarded costs of this appeal.

24. Following the foregone discourse, the upshot is that the following orders do hereby issue;

- a. The appeal lacks merit and hereby dismissed.
- b. Costs to the Respondent.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 13TH DAY OF FEBRUARY, 2025.

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F. WANGARI

JUDGE

In the presence of;



Mr. Oluga Advocate for the Appellant
Mr. Mokaya Advocate for the Respondent
M/S Salwa, Court Assistant

