



**Kobo 360 Limited v Cheson Logistics Limited (Civil Suit E232 of 2023)
[2025] KEHC 5882 (KLR) (Commercial and Tax) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E232 OF 2023**

PM MULWA, J

MAY 8, 2025

BETWEEN

KOBO 360 LIMITED PLAINTIFF

AND

CHESON LOGISTICS LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff's claim against the Defendant as per the plaint dated 12th May 2023 is for the sum of Kshs. 40,951,025.59 and USD 34,052.50 plus costs and interests being the amount allegedly due and owing from the Defendant to the Plaintiff in respect of the freight, haulage and logistics services rendered to the Defendant and in breach of the agreement dated 1st October 2020. The Plaintiff's case is that between 12th October 2020 and 9th March 2021, it offered freight, haulage and logistics services and invoiced the Defendant; however, the Defendant failed to honour its payment obligations.
2. In its defence dated 15th June 2023, the Defendant denied executing a contract with the Plaintiff and denied any services offered by the Plaintiff.

The evidence

3. The Plaintiff's case is anchored on the testimony of Elizabeth Wakonyu (Pw1), who described herself as the Collections Manager of the Plaintiff company. She adopted her witness statement dated 12th May 2023, together with the Plaintiff's list and bundle of documents, as her evidence-in-chief. Her testimony largely reiterates the averments contained in the Plaint.
4. Upon cross-examination by learned counsel for the Defendant, Pw1 testified that an agreement existed between the Plaintiff and the Defendant, Cheson Logistics Limited, which was allegedly executed by representatives of both parties. However, she conceded that the said agreement did not bear a company



seal or rubber stamp. She further admitted that the Plaintiff had not provided witness statements from the individuals who signed the contract to verify its execution.

5. Pw1 stated that the invoice at page 5 of the Plaintiff's list of documents is a summary of the services rendered to the Defendant during the period between 29th October 2020 and 24th October 2022. She testified that the first entry on the invoice related to motor vehicle registration number KCM 700W, which purportedly transported goods from Mombasa to Tororo. She also acknowledged that one of the invoices dated 1st August 2020 preceded the date of the purported contract. Moreover, she conceded that there were discrepancies in the invoices, including an instance where a single vehicle was allegedly recorded as having made five trips in one day between Mombasa and Kampala - an improbable feat. Pw1 maintained that the Defendant was at all material times aware that the Plaintiff had subcontracted certain transport services.
6. The Defendant's case rests on the evidence of Edwin Songoroh (Dw1), a director of Cheson Logistics Limited. He adopted his witness statement dated 18th September 2023 as his evidence-in-chief. Dw1 denied the existence of any business relationship between the Plaintiff, Kobo360, and the Defendant, Cheson Logistics Limited. He maintained that the suit is defective on the ground that the Plaintiff lacks the requisite authority to act on behalf of the company.
7. Dw1 testified that the Plaintiff had initially expressed an intention to finance the Defendant's business operations, but such financing did not materialize. He further asserted that there was no proof of delivery of goods or services, noting that the delivery documentation referenced an individual named Edson as the transporter. The Defendant categorically denied ever engaging in business with Edson.
8. Regarding documentary evidence, Dw1 challenged the authenticity of an email dated 23rd November 2021 found at page 330 of the Plaintiff's bundle, describing it as fabricated. Nonetheless, he conceded that there existed email correspondence between one Edwin Chesoni and Edson. He acknowledged that some delivery notes bore the names of Chesoni, Edson and Kobo360. Dw1 clarified that the email at page 330 merely communicated the amount of money paid to Edson and did not constitute confirmation of the transportation of goods. He confirmed that the email address esongoroh@gmail.com belonged to him.
9. At the close of the hearing, both parties filed written submissions, which the Court has duly considered in rendering this decision.

Analysis and determination

10. Having carefully read and understood the contents of the Plaintiff's pleadings, the Defence, the witness statements, the evidence adduced and the written submissions and the authorities cited by both parties, I shall deal with this matter under the following heads:
 - a. Whether there existed a valid and enforceable contract between the Plaintiff and the Defendant;
 - b. Whether the Plaintiff rendered services to the Defendant as alleged;
 - c. Whether the Defendant is liable to pay the claimed sums; and
 - d. Who bears the costs of the suit?



11. As to the first issue, Black’s Law Dictionary defines a contract as:

“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”
12. It is trite law that a contract may be written, oral or implied by conduct. Regardless of the form, a party seeking to establish the existence of a contract must demonstrate the essential elements of offer, acceptance and consideration. In cases involving implied contracts, the conduct of the parties takes a heightened significance. The courts are enjoined to adopt an objective approach in determining whether a contract exists. The Court of Appeal in the case of *William Muthee Muthami v Bank of Baroda* (2014) eKLR observed that:

“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.”
13. Similarly, in *Rose and Frank Co. vs. J R Crompton & Bros Ltd* (1923) 2 KB 293, Atkin, LJ stated that:

“To create a contract there must be a common intention of the parties to enter into legal obligations, mutually communicated expressly or impliedly.”
14. It is a cardinal principle of law that he who asserts must prove. The burden of proving the existence and terms of a contract lies with the party alleging its existence. This is codified under Sections 107 and 108 of the *Evidence Act*, Cap 80, Laws of Kenya. Accordingly, the Plaintiff bore the burden to establish, on a balance of probabilities, the existence of a valid contract and that services were rendered pursuant thereto.
15. The Plaintiff’s claim is grounded on an alleged agreement dated 1st October 2020. However, the evidence indicates that the contract lacks a company seal and there are no witness signatures, raising doubts as to its formal validity. Under Kenyan law, especially in commercial transactions, formalities such as proper signatures and seals are considered essential for establishing enforceability.
16. Nevertheless, the Court is mindful that contracts may also arise from conduct and documentary evidence. In the present case, the series of invoices, delivery notes and correspondence suggests an ongoing business relationship between the parties.
17. On the totality of the evidence, I find that although the formal agreement is of doubtful validity, a contractual relationship may be inferred from the conduct of the parties and the documentation presented. I therefore find that a valid and enforceable contract did exist between the Plaintiff and the Defendant.
18. Turning to the second issue, the Plaintiff asserts that it rendered freight and logistics services to the Defendant over a period spanning from October 2020 to October 2022. To support this claim, it produced a series of invoices, delivery notes and related correspondence. The documents were tendered through the testimony of Pw1, who also provided narrative details concerning the alleged transport operations.
19. Upon close examination of the invoices, however, several inconsistencies emerged. Notably, some invoices predate the alleged agreement, including one dated 1st August 2020. More significantly, the data in certain invoices appears implausible, such as the entry indicating that a single vehicle made



five round trips in one day between Mombasa and Kampala, a logistical improbability given the considerable distance and time involved.

20. Pw1 conceded to some of these anomalies under cross-examination. Moreover, there was no documentary proof that the services detailed in the invoices were expressly authorized by the Defendant. The delivery notes do not bear any confirmation signatures from representatives of the Defendant, and the Plaintiff did not produce written instructions originating from the Defendant requesting the said services.
21. On the other hand, Dw1 denied any contractual or commercial relationship with the Plaintiff. He further disclaimed knowledge of the transporter named Edson, whose name appears on several delivery documents. Nonetheless, he confirmed that his official email address—esongoroh@gmail.com—was used in certain communications. He also acknowledged that some delivery documentation referenced Cheson Logistics, Edson and the Plaintiff. This lends limited but relevant support to the Plaintiff's assertion that some level of engagement did occur.
22. The Court is persuaded that some services may have been rendered by the Plaintiff or its subcontractors. However, the absence of signed delivery confirmations, the inconsistencies in the invoices, and the lack of unequivocal documentary evidence showing that the Defendant requested or accepted the services renders the Plaintiff's case deficient on this issue.
23. I therefore find that while there is a probability that the Plaintiff rendered certain services, the Plaintiff has failed to prove, on a balance of probabilities, that the said services were specifically authorized by the Defendant or were rendered pursuant to a duly acknowledged agreement.
24. The next issue is whether the Defendant is liable to pay the claimed sums to the Plaintiff. The Plaintiff's claim is for a liquidated sum of Kshs. 40,951,025.59 and USD 34,052.50, being the alleged cost of freight and logistics services rendered to the Defendant. It is settled law that in claims for liquidated sums, the Plaintiff must specifically plead and strictly prove the amount claimed. Mere assertion or general reference to business dealings is insufficient.
25. In support of its claim, the Plaintiff produced a bundle of invoices, one of which was highlighted as a summary of services allegedly rendered between 29th October 2020 and 24th October 2022. However, the reliability of these invoices was undermined by internal discrepancies, including implausible delivery patterns and the appearance of services allegedly performed before the date of the purported agreement.
26. Critically, the Plaintiff did not produce delivery notes signed by the Defendant confirming receipt of services, nor did it provide written instructions or acknowledgements from the Defendant specifying the quantum of services requested or performed, created a significant evidentiary gap.
27. While there was some limited corroboration of a business relationship, as evidenced by Dw1's acknowledgement of email correspondence and the reference to Edson and Cheson in delivery documents, this was insufficient to establish the specific liability for the amounts claimed. The Plaintiff failed to connect the services allegedly rendered with payments due under an enforceable contract or authorization from the Defendant.
28. Consequently, I find that the Plaintiff has not discharged the burden of proving that the sum of Kshs. 40,951,025.59 and USD 34,052.50 is owed by the Defendant. The figures remain unsupported by verifiable evidence.
29. The upshot is that the Plaintiff's claim is hereby dismissed.



30. On the question of costs, the general rule as embodied under Section 27 of the *Civil Procedure Act* is that costs follow the event, unless the Court, for good reason, directs otherwise. I find no justification to depart from the general principle. The Plaintiff shall bear the costs of the suit.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Mary Munjogu b/b for Ms. Kendi for Plaintiff

Mr. Brian Khaemba for Defendant

Court Assistant: *Carlos*

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