



REPUBLIC OF KENYA



**East African Portland Cement Company Limited v Pan African Equipment (Kenya) Limited  
(Civil Appeal E1123 of 2023) [2025] KEHC 8556 (KLR) (Civ) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8556 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1123 OF 2023**

**TW OUYA, J**

**JUNE 19, 2025**

**BETWEEN**

**EAST AFRICAN PORTLAND CEMENT COMPANY LIMITED ..... APPELLANT**

**AND**

**PAN AFRICAN EQUIPMENT (KENYA) LIMITED ..... RESPONDENT**

*(Being an appeal against the Judgment of the Chief Magistrate's court  
at Nairobi dated 29th September 2023 in Civil Suit No E743 of 2021)*

**JUDGMENT**

**Background**

1. The suit was initiated by the plaintiff (herein the appellant) against the Defendant herein the Respondent vide plaint dated 12<sup>th</sup> May 2021. The claim arose out of a trade credit facility of granted to the Defendant by the plaintiff on 23<sup>rd</sup> June 2013 which was to be repaid within 30 days. The plaintiff further provided the Defendant with motor vehicle parts on diverse dates in the year 2017 and 2018, rendered, service and repairs of machinery at the Defendant's request. The plaintiff issued invoices to the Defendant to the above effect for payment which was due in 30 days.
2. The plaintiff continued to supply the goods and services to the Defendant (demonstrated in the table below) for amount totaling 11,927,264 and the Defendant failed to pay for the invoices despite demand and notice of intention to sue.
3. The matter proceeded to full trial proceeded to full trial and the trial court found in favor of the Appellant awarding Kshs 11,927,264 and interest and costs of the suit.
4. The Defendant/Appellant being dissatisfied with the above finding filed this appeal dated 25<sup>th</sup> October 2023 citing grounds that:



- a. The Learned Magistrate erred in law and fact in holding that the Respondent herein had indeed established a valid subrogation claim.
  - b. The Learned Magistrate erred in failing to take into consideration that the Respondent herein had already received compensation in the amount of Kshs 11,927,264 from its insurer thus creating the issue of double compensation.
  - c. The Learned Magistrate erred in holding that the Appellant herein owed the Respondent herein the sum of Kshs 11,927,264 for goods and services supplied.
  - d. The Learned Magistrate failed to take into consideration that the Appellant herein had already paid the sum of Kshs. 4,473,264.18 to the Respondent herein for the goods and services provided for.
5. The appellant prays for orders that:
- a. This Appeal be allowed and the Judgement of Hon. B. Cheloti in Civil Suit No E743 of 2021 delivered on 29<sup>th</sup> September 2023 be set aside in its entirety.
  - b. There be an order dismissing the Respondent's Claim in CMCC Civil Suit No 743 of 2021 with costs to the Appellant herein.
  - c. The Costs of this Appeal be awarded to the Appellant herein.
6. The appeal was canvassed by way of written submissions. Counsel for the Appellant argued three main issues: One was on the doctrine of subrogation under the Insurance law; the second was that the trial court failed to take into account the Appellants defence thereby arriving at a wrong decision and thirdly that the trial court failed to comprehensively assess and scrutinize the entirety of the evidence presented.
7. Counsel for the respondent on the other hand based his arguments on the doctrine of subrogation and submitted that it filed suit in the lower court on behalf of his insurer, Klaption Insurance his Company Limited from which it had obtained insurance coverage to secure the appellants obligations under the Trade Credit Facility. That it was after the Appellant defaulted when the Respondent recalled the guarantee issued by the insurer and received payment of Kshs. 11,927,264. The respondent avers that this evidence was not challenged or controverted by the Appellant.
- e. The respondent cited authorities of Gahir Engineering Works Limited v Rapid Kate Services Limited & another [20181 eKLR to explain that the only qualification to the general principle of compensation of the insured by the insurer is that the indemnity must be sought in the name of the insured. This position was further buttressed in the case of Africa Merchant Assurance Company v Kenya Power & Lighting Company Limited [20181 eKLR where the Court stated:
 

The essence of the doctrine of subrogation is not in contention. It allows an insurer after compensating an insured for any loss under the insurance contract to step into the shoes of the insured. In that, the insurer is entitled to all the rights and remedies the insured might have against a third party in respect of the loss compensated... As it stands, the law in that respect is settled, that is that an insurer cannot under the doctrine of subrogation institute a suit in its own name against a third party.
8. As to the Appellant's argument on the issue of evidence, the Respondent contends that it provided evidence in the trial court showing that it offered the Appellant a Credit Facility with clear terms requiring settlement of invoiced amounts within 30 days from the invoice date. That it demonstrated that the appellant failed to meet its repayment obligations, resulting in an outstanding debt of



Kshs. 11,927,264 for goods and services delivered. The Respondent submitted copies of delivery notes, stamped by the Appellant, and invoices detailing the parts and services provided, along with a Statement of Account reflecting the owed amount.

9. Counsel for the respondent points out that the Appellant's assertion that he had made payment of Kshs 4,473,264.18 was not supported by evidence and the therefore was not considered by court. On the other hand, the respondent adduced irrefutable evidence by presenting actual invoices and a comprehensive statement of account, accounting for all the statements made by the appellant.

### **Analysis**

10. Having carefully considered the grounds of appeal, the record of appeal and the parties rival written submissions together with all the authorities cited, I find that the issues arising for my determination revolve around; Whether the appellant owed the respondent the sum of kshs.11,927,264 for goods and services supplied, and whether the subrogation claim by the respondent was valid.
11. This being a first appeal, the court has a duty to consider and re-evaluate the entire evidence as adduced in the trial court in line with the finding in *Selle & Another v Associated Motor Boat Co Ltd & Others* (1968) EA 123 that an appellate court is bound to reconsider and evaluate the evidence and to draw its own conclusion.
12. The respondent's claim against the appellant was specifically stated in the plaint to have arisen from a default in payment by the appellant for goods and services rendered by the respondent the under a trade credit facility in the sum of kshs. 11,927,264. The respondent further prayed for interest and costs of the suit. The respondent supported his claim with evidence comprising of Application and approval for credit facility, demand letter Defendant's statement of account and invoices and service report all of which were not controverted by the appellant.
13. The respondent also confirmed that he was compensated by Klampton Insurance Company Limited from which it had obtained insurance coverage to secure the appellant's obligations under the Trade Credit Facility. The respondent was categorical that the suit was filed on behalf of his insurer who had already compensated it but could not bring a suit in its own name against the appellant.
14. The Appellants defence was hinged on complaints that the respondent had not delivered the correct machinery and/or parts as requested by the appellant and that the parts supplied had been of substandard quality and broke down severally, that the respondent had refused to replace the substandard parts and that the invoices issued by the respondent were inflated and/or exaggerated contrary to the agreed prices. It was the appellant's contention that the plaintiff/Respondent had been compensated by the insurer and did not therefore have the authority to file the claim on behalf of the insurer.
15. Whereas the appellant has raised as a ground of appeal that the trial court did not consider that it had made payments amounting to kshs. 4,473,264.18, the same was not pleaded in the defence neither was it raised as a counterclaim. The same was adduced as statements in the defendant's list of documents. However, it did not in any way controvert or displace the respondent's claim that as at the time of filing the suit, the claimed amount of kshs. 11,927,264 was outstanding beyond the agreed period and was compensated by the insurer.
16. This brings us to the issue of the validity of the subrogation claim by the respondent. The two issues to be determined is whether Klampton Insurance Company Limited was entitled to claim for subrogation for the compensation that it made to the respondent as its insured and whether it was in order for the Respondent to file suit on its behalf.



17. The doctrine of subrogation in the case of Top Steel Kenya Limited V Ruiru Feeds Limited (Civil Appeal E029 of 2022) [2023] KEHC 23717 (KLR) the court stated;
18. In Discussing the doctrine of subrogation, Ogola J in Speedag Interfreight [K] Limited v Lacheke Lubricants Limited & Another [2021] eKLR expressed as follows:
  - “ 8. .The principle of subrogation applies where there is a contract of insurance. If the “insured risk” takes effect and the insurer settles the insured’s claim, then the insurer is entitled to diminish the loss suffered by its insured by seeking compensation from the party who caused the loss. The assumption is that the loss would have accrued due to the acts of a third party. By the principle of subrogation, the insurer is put in the position of the insured and is entitled to claim compensation from the 3rd party tortfeasor. The extent of the compensation is not more than what has been paid to the insured.”
19. In the case of Egypt Air Corporation v Suffish International Food Processors (U) Ltd and another [1999] 1 EA 69 the Court defined the subrogation doctrine as follows:
  - “The whole basis of subrogation doctrine is founded on a binding and operative contract of indemnity and it derives its life from the original contract of indemnity and gains its operative force from payment under that contract; the essence of the matter is that subrogation springs not from payment only but from actual payment conjointly with the fact that it is made pursuant to the basic and original contract of indemnity. If there is no contract of indemnity then there is no juristic scope for the operation of the principle of subrogation.”
20. In “General Principles of Law” 6th edition (E.R. Hardy Ivamy”, the author states as follows at page 493:
  - “In the case of all policies of insurance which are contracts of indemnity the insurers, on payment of the loss, by virtue of the doctrine of “subrogation’ are entitled to be placed in the position of the assured, and succeed to all his rights and remedies against third parties in respect of the subject-matter of insurance.
21. Flowing from the above, this court finds that there was a valid insurance contract for indemnity between the respondent and the Insurer which was promptly honored. The matter before the trial court was a suit under the doctrine of subrogation which could only be filed in the respondent’s name.
22. Instances when an appellate court can interfere with trial court’s discretion were enunciated in Attorney General of Kenya v Anyang’ Nyong’o & 10 others (2010) RC 1 (KLR), the court stated, that the presiding judge;
  - i. Took into accounts some irrelevant factor(s)
  - ii. Failed to take into account some irrelevant factor(s)
  - iii. Did not apply a correct principle to the issue (such as misdirection on a point of law, or misappropriation of facts)
  - iv. Taking into account all the circumstances of the case, the judge’s decision is plainly wrong



23. Similarly, in Mohammed Eltaff & 3 others, Vs Dream Camp Kenya limited (2005) Eklr, it was observed that the appellate court has mandate to interfere where a trial court has left certain issues unresolved.
24. Do far, the appellant has not laid any basis of error or omission warranting interference by this court. I find that the trial court arrived at a sound determination having taken into account the relevant facts and law.

**Determination**

25. This court therefore determines that the appeal herein lacks merit and is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 19<sup>TH</sup> JUNE, 2025.**

**HON. T. W. OUYA**

**JUDGE**

