Kenya National Highways Authority v Amir Investments Limited (Civil Appeal E033 of 2024) [2025] KEHC 8516 (KLR) (17 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8516 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

CIVIL APPEAL E033 OF 2024

WM MUSYOKA, J

JUNE 17, 2025

BETWEEN

KENYA NATIONAL HIGHWAYS AUTHORITY .... APPELLANT

AND

AMIR INVESTMENTS LIMITED .... RESPONDENT

(Appeal from the judgement and decree by Hon. Kassim Akida, Resident Magistrate, RM, in Busia CMCCC No. E281 of 2023)

JUDGMENT

1. The suit, at the primary court, was at the instance of the respondent, against the appellant. The respondent sought an order for recovery of a quantity of impounded milk; loss of profit and recovery of money lost from a parked lorry. In the alternative, the respondent sought to recover USD 13,860.00, or its equivalent in Kenya Shillings, being Kshs. 1,500,000.00, confiscated by the officers of the appellant, and loss of profits, calculated at Kshs. 400,000.00. There was also a claim for general damages for malicious and improper impoundment of its milk, costs and interests.

2. The appellant, in defence, denied liability. It averred that the motor vehicle, transporting the respondent's goods, was overloaded, hence the impoundment. An overload fee was charged, which the respondent did not pay.

3. In a reply to the defence, the respondent asserted that it was not the owner of the vehicle, for it had merely contracted the service to transport the goods to its shop, and for that reason it was not obliged to pay for the overload fee. It was further pleaded that the driver of the vehicle was never informed to re-distribute the weight as required by the East African Community Vehicle Load Control Act, 2016.

4. A trial was conducted, viva voce. Three witnesses testified for the respondent, and four for the appellant. Judgement was delivered, on 27th June 2024, allowing the claim for USD 13,860.00, being the cost of the milk, with costs and interests. The appellant was directed to furnish the transporter

or his agent with a weight ticket, and it was further directed that if the transporter failed to claim its vehicle in sixty days, the appellant shall have a right to auction the vehicle.

5. The appellant was aggrieved by that outcome, hence the instant appeal. The grounds, in the memorandum of appeal, dated 8th July 2024, revolve around the verdict being against the weight of the evidence and the law; the appellant's case being disregarded; the remedies granted not being anchored on the East African Community Vehicle Load Control Act, 2016; wrongly finding that the appellant failed to furnish the weight ticket to persons specified under the provisions of the East African Community Vehicle Load Control Act, 2016; wrongly finding that the property of the respondent was at risk of being confiscated and was confiscated without being allowed to respond to the charges; reliance on a decision that was distinguishable and inapplicable; evidence tending to establish that the respondent had been authorised by the owner of the vehicle to carry the alleged consignment; and erring in finding that the respondent had complied with the terms of the exemption permit No. AP-0234458.

6. Directions were given on 10th February 2025, for filing of written submissions. Both sides have complied. I have read through the said written submissions, and noted the arguments made.

7. It is common ground that the dispute herein centres largely on vehicle overload, contrary to provisions of the East African Community Vehicle Load Control Act. The law on this is in Section 6(1)(2)(4) and 8(1) of the East African Community Vehicle Load Control Act. Section 6(1) prohibits the driving, using, or permitting to be driven or used any vehicle on the regional trunk road network while overloaded. Section 6(2) provides for an overloading fee for anyone who drives, uses, causes or permits to be driven or used any vehicle on such a road while overloaded. Section 8(1) provides that a transporter operating a gross vehicle weight of 3,500 kilogrammes or more to present such a vehicle to be weighed at any weighing station that is situated along the regional trunk road network traversed by such vehicle or that is designated for that purpose.

8. Several issues arise from the above provisions. The first is that they target a transporter and a driver. It is common ground that the respondent was not the transporter. It did not own the vehicle in question. Its interest was in the consignment. DW1 said as much, that the respondent was not the driver of the subject vehicle nor the owner thereof. It also emerged, from both the appellant and the respondent, that the vehicle was parked at a shop, when the agents of the appellant stormed and drove it away to the weighbridge. PW1, a director of the respondent, testified that the company had imported the milk, which the lorry in question had delivered at the premises of the respondent at night, for offloading the next day.

9. With regard to the transportation, the totality of the evidence was that the respondent was not a transporter, but the owner of the consignment. Therefore, sections 6 and 8 did not refer or apply to it. It was not responsible for the driving, or use, or the permitting of the vehicle to be driven or used. It did not own the vehicle, and, therefore, it could not cause it to be driven or used in the manner contemplated in section 6. DW1 recognised that, hence he testified that he took action against the driver, and not the owner of the consignment.

10. Secondly, the overload fee is tied, according to section 6 (2), to the transporter, the person responsible for driving or using the vehicle or causing it to be driven or used. DW1, an officer of the appellant, conceded that the respondent did not own the vehicle, and did not drive it. He also conceded that he did not take any action against it for that reason, and that he took action on the driver instead. It, therefore, follows that the respondent was not liable to pay for the overload fee charged by the appellant, as that could only be directed at the transporter.

11. The other issue is about the vehicle being driven or used on a regional trunk road network, or being permitted to be so used or driven, while overloaded. That is the language of section 8. The plain and obvious meaning of that should be that the vehicle ought to be on the road, being driven or used, at the time of its being allegedly overloaded. It must be on transit. It must be on the road. It must be moving. In motion.

12. It is quite evident, from the record, that the vehicle in question was not on transit, when the issue of it bearing an overload arose. It was not in motion. It was not being driven. It was not moving. It was parked near a shop, which was said to belong to the respondent. To the extent that the vehicle was parked off the regional trunk road network, outside the shop, where it was to deliver its consignment, it cannot be said to have been being driven or used, or permitted to be driven or used. Section 6 did not apply to it at all. It cannot be said that there was any contravention of section 6.

13. Section 6 ought to be read together with section 8. Section 8 requires that a transporter or owner of a vehicle of a certain weight ought to present such a vehicle at any weighing station that is situated along the regional trunk road network traversed by that vehicle or that is designated for that purpose. That presupposes a vehicle on transit. The word used is "traversed." The vehicle ought to be presented at every weighing station along its route. The vehicle herein was no longer on transit. It was no longer transversing the regional trunk road network when the appellant pounced on it. At the point it was driven away by the agents of the appellant, from the shop belonging to the respondent, it was not subject to section 8. It had already terminated its journey, by the time the agents of the appellant came into the picture.

14. It is also common ground that the vehicle was found parked at a spot somewhere between the border point and the weighing station. It had not gone past or beyond the weighing station. It had not gone round the weighing station, using a panya route. It had not reached the weighing station. Its destination was at a spot before it got to the weighing station. It was not obliged to go to the weighing station, so long as its journey terminated before it got to the weighing station.

15. Overloading is not dealt with through criminalisation. The East African Community Vehicle Load Control Act, 2016 provides civil remedies. There is payment of overload fees. There is adjustment of the overload. In two ways. Re-distribute the load over the various axles, each bearing the permissible weight, if that works. If that cannot work, offload the excess weight, and proceed with the journey with the permissible weight. That is the gist of section 17 of the East African Community Vehicle Load Control Act, 2016.

16. The vehicle in question had terminated its journey. The objective of weighing the vehicles at the weighing station is to ensure compliance with the axle load requirements. The movement of a vehicle between weighing stations, depending on the nature or state of the road, or the manner of the driving, can cause weight to shift from one axle to the other, creating imbalance, which could be detrimental to the road. There would be need to have the load weighed at each station for that purpose, so as to assess whether it would be necessary to adjust the load. The vehicle in question was no longer on transit. There was no need to assess whether it was overloaded, or the weight was so imbalanced as to require weight adjustment of the load.

17. The appellant was clearly overzealous, in having the vehicle subjected to weighing at the weighing station, when it was no longer traversing the regional trunk road network, as it had already terminated its journey. That conduct was improper, and it set in motion events that ultimately exposed the respondent to a loss, that could have been avoided, were it not for the unnecessary overzealousness of the officials of the appellant.

18. Overall, it is my finding that the appellant was found properly liable, and the trial court properly found in favour of the respondent. The appeal has no merit. It is hereby dismissed. The respondent shall have the costs of the appeal.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 17TH DAY OF JUNE 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Lawrence Maruti, Advocate for the appellant.

Mr. Oye Ashioya, instructed by Ashioya & Company, Advocates for the respondent.