



Kenagro Suppliers Limited v Kioko Kilonzo t/a Image Debt Recovery Limited (Civil Appeal E1235 of 2023) [2025] KEHC 8015 (KLR) (Civ) (9 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8015 (KLR)

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

CIVIL

CIVIL APPEAL E1235 OF 2023

WM MUSYOKA, J

JUNE 9, 2025

BETWEEN

KENAGRO SUPPLIERS LIMITED APPELLANT

AND

KIOKO KILONZO T/A IMAGE DEBT RECOVERY LIMITED RESPONDENT

*(Appeal from judgement and decree of Hon. VM Mochache, Resident Magistrate/
Adjudicator, in Nairobi SCCC NO. E1919 of 2023, of 11th July 2023)*

JUDGMENT

1. The suit at the primary court was by the respondent, against the appellant. He sought Kshs. 286,058.00, being compensation for services rendered. The appellant denied owing any monies to the respondent, on the basis of any contract between them. A trial was conducted. Only the respondent testified. Judgement was delivered, on 11th July 2023, for Kshs. 286,058.00, plus costs and interests.
2. The appellant, being aggrieved, initiated this appeal. The grounds of appeal, in the memorandum of appeal, dated 15th November 2023, revolve around being denied a fair hearing, making a determination based on the facts presented by one side, finding that the respondent had provided proof of debt collection on behalf of the appellant, and passing judgement without proof that the respondent had worked for the appellant.
3. Directions were given, on 23rd October 2024, for canvassing of the appeal by written submissions.
4. In its written submissions, the appellant argues two grounds, around not getting a fair hearing and proof for a debt collection contract.



5. On fair hearing, it is submitted that the witness for the appellant was not given a chance to testify, for, on the date the matter came up for hearing, on 7th June 2023, the witness was out of the country, attending a seminar in the United States of America, USA, and the time for hearing in court clashed with the timing of the seminar. It is submitted that the trip to the USA was unforeseen at the time the matter was fixed for hearing. It is further submitted that the application for adjournment, made by its Advocate, was rejected by the trial court. Section 1A, B of the Civil Procedure Act, Cap 21, Laws of Kenya; Article 50 of the Constitution; *Savanah Development Company Limited vs. Mercantile Company Limited* [1992] eKLR (Kuloba, J); *Peter M. Kariuki vs. Attorney General* [2014] eKLR (Kiage, M’Inoti & Mohamed, JJA); *Job Obanda vs. Stagecoach International Services Ltd & Another* [2002] eKLR (Gicheru, Lakha & Owuor, JJA) are cited in support.
6. On proof of debt collection by the respondent, on behalf of the appellant, it is submitted that there was no evidence, hence there was no basis for his being found liable. It is argued that the document, relied on by the respondent, required submission of files containing details of the debts and debtors, yet no such list of debtors was presented in court to show that there were instructions to collect the alleged debts. It is submitted that burden of proof was not discharged. *Evans Nyakwara vs Cleophas Bwana Ongaro* [2015] eKLR (Majanja, J) is cited in support.
7. The respondent submits that the Advocate for the appellant intimated to the trial court that she was ready to proceed, and the trial proceeded at 12:39 PM. He argues that the Advocate did not raise any challenge in procuring her witness to attend court. The issue of the witness being unavailable was raised after the respondent had closed its case, and even then the Advocate asked for five minutes to get her client online. When that failed to materialize the Advocate closed the case for the appellant. Thereafter, the Advocates for both sides filed submissions. The issue, therefore, he submits, of being denied the right to fair hearing, did not arise.
8. On the issue of proof of the respondent’s case, it is submitted that the respondent provided letters appointing him to collect debts on behalf of the appellant. It is further submitted that after delivery of the judgement cheques were issued, which were returned unpaid.
9. There are only two issues for determination: whether there was violation of the right to fair hearing, and whether there was proof of debt collection.
10. On the first issue, on whether there were fair trial issues regarding the appellant, the trial record should be the guide. The hearing happened on 7th June 2023. That date was picked by the parties, on 10th May 2023, by consent. Come 7th June 2023, the matter was confirmed for hearing at 10:00 AM, and it was later re-scheduled to 12:39 PM. In the morning sessions, the record is silent, as to whether the Advocate for the appellant, a Ms. Akinyi, ever intimated to having challenges procuring her witness to attend court to testify. It would appear that she was ready for the trial, and did not apply for adjournment, on account of absence of the witness for the appellant, to enable him attend, at the next date to be fixed.
11. The actual hearing commenced at 12:39 PM. The respondent testified. The record is silent on whether Ms. Akinyi applied for adjournment, before the respondent took to the witness stand. The respondent testified, and was cross-examined by Ms. Akinyi, and was re-examined at 13:08 PM, after which the respondent closed his case.
12. At the close of the case by the respondent, Ms. Akinyi intimated that the witness for the appellant was out of the country, and that there was a time difference, and asked for another date. Mr. Olonde, for the respondent, did not oppose that application, saying that he was leaving it to the court. Before the court could rule on the application for adjournment, Ms. Akinyi volunteered that her witness had intimated to her that he would be available to testify at 8:00 AM, USA time. Whereupon, the trial court ruled that



- the witness be availed, online, in ten minutes. Ms. Akinyi asked for five minutes. The court resumed at 13:45 PM. Ms. Akinyi confirmed that she had reached out to the witness for the appellant, who asked for five minutes to get online, but he did not. She then closed the case for the appellant. Mr. Olonde indicated that he would not submit, but Ms. Akinyi asked for seven days to file submissions.
13. My understanding of those proceedings is that the court did not deny Ms. Akinyi an adjournment. Before the court could rule on the matter, she disclosed that the witness for the appellant had indicated that he would testify online, from USA. He was aware of the hearing, and he could have joined the proceedings online. He was given an opportunity to. He did not join. The court allowed Ms. Akinyi to contact him, which she did. He said, according to her, he would join, but he did not. Upon his failure to join, Ms. Akinyi did not renew her application for adjournment. She closed her case instead. The court did not close the case for the appellant, its Advocate did. The Advocate then asked for time to file submissions, and time was given.
 14. I do not see any incidence of violation of the right to fair hearing. The appellant was represented. Its officers were aware of the hearing. Its witness had indicated availability online. But he did not link up or join the proceedings. The court did not deny the application for adjournment. It did not force Ms. Akinyi to close the case for the appellant.
 15. If the appellant was keen to testify, there was still a window for him to apply to present his defence. The oral hearings closed on 7th June 2023. Judgement was delivered on 11th July 2023. The appellant had a chance, within that period, to move the court, to be allowed to present its witness in defence, before the matter moved to judgement. It did not exploit that opportunity.
 16. I see that, in its written submissions, dated 13th January 2025, at paragraphs 6, 7, 8, 9, 10 and 11, it offers a background, as to why the witness for the appellant was not available. This is coming too late in the day. That explanation should have been given to the trial court on 7th June 2023, or in an application thereafter, to be allowed to defend. It was not. The appellant passed up that chance, and did not give that explanation then to the trial court. Secondly, that explanation is a matter of evidence. Written submissions are not vehicles for conveying evidential material. That material should have been in an affidavit, which should have been placed before the trial court, as indicated here above.
 17. The appellant was not denied its right to a fair hearing. It chose, through its intended witness, from what I see from the record, to stay away from the hearing, despite being given a chance to participate. There is, therefore, no merit in this ground.
 18. On whether the respondent provided proof of debt collection, I would start with pointing out that the appellant had filed a response, denying that contract. It should be surprising that it now does not challenge the contract, but argues that there was no evidence that the respondent collected debts on its behalf.
 19. The respondent testified. He breathed life to his filings, which included his claim, witness statement and documents. No one testified for the appellant. The case presented by the respondent was not controverted. It included evidence that the appellant had issued a cheque, to settle the amount claimed, which was stopped before payment. That happened before the suit was filed. The trial court had a chance to see and hear the respondent testify. I see nothing, on the record, which suggests that the respondent did not establish his case against the appellant.
 20. Overall, I find no merit in the Appeal herein. The same is accordingly dismissed. The respondent shall have the costs.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 9TH DAY OF JUNE 2025.



WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Caroline Oyusu, Court Assistant, Milimani, Nairobi.

Advocates

Ms. Akinyi, instructed by Dennis Anyoka Moturi & Company, Advocates for the appellant.

Mr. Olonde, instructed by Odero-Olonde & Company, Advocates for the respondent.

