



**Logistics v Monopol Colors East Africa Limited (Civil Appeal
E546 of 2023) [2025] KEHC 8616 (KLR) (Civ) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8616 (KLR)

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

CIVIL

CIVIL APPEAL E546 OF 2023

WM MUSYOKA, J

JUNE 20, 2025

BETWEEN

ACCELER GLOBAL LOGISTICS APPELLANT

AND

MONOPOL COLORS EAST AFRICA LIMITED RESPONDENT

(Appeal from orders made in the ruling of Hon. Judith Omollo, Senior Resident Magistrate (SRM) and Adjudicator, delivered on 9th June 2023, and reviewed on 20th June 2023, in Nairobi SCCC No. E2113 OF 2023)

JUDGMENT

1. From the pleadings, in the record of appeal, the suit at the trial court was initiated by the appellant against the respondent, with respect to services rendered. The claim was for Kshs. 465,102.00. The respondent raised a preliminary objection, through a notice dated 28th April 2023, which was dismissed, vide a ruling delivered on 9th June 2023.
2. The appeal herein arises from the ruling on the preliminary objection, dated 28th April 2023, which was delivered on 9th June 2023, and which was allegedly subsequently reviewed on 20th June 2023. The grounds of appeal, turn on three points, the court erring in holding that the suit was res judicata, in holding that all the invoices needed to be prosecuted in one suit, and in disregarding the evidence of the appellant and its submissions.
3. Evidently, the appeal targets the decision of the court on review, in the ruling that was allegedly delivered on 20th June 2023.
4. The appeal was canvassed by way of written submissions. Both sides have filed submissions.



5. The submissions by the appellant turn on the doctrine of res judicata, as set out in section 7 of the *Civil Procedure Act*, Cap 21, Laws of Kenya. *Invesco Assurance Co. Ltd vs. MW* [2020] eKLR and *Highway Development Ltd vs. Central Bank of Kenya & 2 Others* [1996] eKLR are cited. On the matter of invoices, the appellant submits on joinder of causes of action, and cites Order 2 of the Civil Procedure Rules, *Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd* [1969] EA 696 and *Gulf Power Limited vs. Kenya Electricity Transmission Company Ltd* [2018] eKLR. On its evidence being disregarded, it founds its case on section 107 of the *Evidence Act*, Cap 80, Laws of Kenya, and Order 21 rule 4 of the Civil Procedure Rules, on what ought to be proved. It cites *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123 and *Murungi vs. Wambugu* [1984] KLR 453.
6. On its part, the respondent argues around three principal issues, whether the record of appeal is fatally defective, whether leave was obtained to appeal and whether the suit was res judicata. On the record of appeal, it cites Order 42 rule 13(4) of the Civil Procedure Rules, to argue that the same was incomplete, to the extent that it lacked the proceedings of the trial court reviewing the ruling and the order, the subject of the appeal. *Grace Okumu & Another vs. Paul Fundi Arap Boss* [2013] eKLR is cited. On leave, Order 43(2) is cited, on the leave to appeal from orders under the Rules, and *Mbaya vs. Kamau & Another* [2023] cited. On res judicata, section 7 of the *Civil Procedure Act* is relied on for the submission that the matter had been subject to previous proceedings, where all the issues were heard and determined. *Independent Electoral and Boundaries Commission vs. Maina Kiai & 5 Others* [2017] eKLR and *Simon Kirima Muraguri & Another vs. Equity Bank (Kenya) Limited* [2021] eKLR are cited. It pleads entitlement to costs, based on section 27 of the *Civil Procedure Act* and *Jasbir Singh Rai & 3 Others vs. Tarlochan Singh Rai & 4 Others* [2014] eKLR.
7. I believe that this appeal should rise or fall on the completeness of the record. Order 42 rule 13(4) of the Civil Procedure Rules sets out the material that ought to be placed before an appellate Judge, for the purpose of having the appeal resolved. These include the memorandum of appeal, the pleadings, the trial notes of the magistrate, a transcript of the trial notes, all affidavits and other documents placed on record, and the judgement order or decree appealed from, including, where appropriate, the order giving leave to appeal. There is a proviso. What is of relevance here would be proviso (ii), that the Judge may dispense with production of any document or part of a document which is not relevant, but such dispensing with would not include exclusion of the memorandum of appeal, the pleadings and the judgement order or decree appealed from.
8. The record of appeal lodged herein is not complete. I have not seen in it the notes of the trial magistrate/ adjudicator, and the transcript of those notes. It would appear that there was a review application, which culminated in the review order of 20th June 2023, that review application, if one was filed, and it would appear that one was, is not on record. The review ruling of 20th June 2023, or an order extracted from it, which should be the foundation for the appeal, is also missing.
9. I note, from proviso (ii) to Order 42 rule 13(4), that the order or decree appealed from is one of those documents that should not be dispensed with. That makes sense. The decree, order, or judgement appealed from would be the basis or the target of the appeal. It would be the reason why there is an appeal. The court needs to understand what is being objected to, and to assess the point at which the trial court erred, if at all. Without that order, decree or judgment, the court would be handicapped. Completely unable to move. For there would be no basis for making a determination on appeal, for lack of the document from which the determination should be made.
10. The appellant herein is complaining about the review that the trial court allegedly made on 20th June 2023. The trial court had ruled, on 6th June 2023, that the matter was not res judicata. Then, according to the appellant, it reviewed that determination of 6th June 2023, by revising it on 20th June 2023, to



hold that the matter, was in fact res judicata. That alleged ruling, of 20th June 2023, is the substratum of the appeal. A copy of that ruling, or an order extracted from it, must be filed. It is not in the record of appeal. I cannot tell, without it, whether the trial court made any determination on 20th June 2023, about the suit being res judicata. In other words, I cannot tell whether that ruling exists or was delivered at all, and I have no material upon which I can assess whether that ruling, or the order made in it, was wrong. Without that determination before me, I cannot move at all.

11. I cannot possibly tell the considerations the court made to conclude that the matter was res judicata, without sight of that ruling, and, therefore, I cannot determine the ground of appeal that the court erred in holding that the suit was res judicata. There is no copy of an order or ruling, before me, which holds that the suit was res judicata. I cannot, similarly, make any determination on the ground relating to all the invoices needing to be prosecuted in one suit, given that I have no ruling before me, which holds that position.
12. The respondent has raised the issue of leave to appeal. Not all orders made by a court are appealable as a matter of right. Some are. Some are not. For those that are not, leave to appeal is a prerequisite. Section 75 of the *Civil Procedure Act* and Order 43 rule 1(1) of the Civil Procedure Rules list the orders that are appealable as a matter of right. That is where the right of appeal is automatic. Order 43 rule 1(2) indicates that, for any other order, outside those listed in section 75 and Order 43 Rule 1(1), appeal shall lie only with leave of court.
13. Was leave required from the order of 20th June 2023? I have not seen a copy of that ruling, or the order extracted from it, and I am, therefore, unable to tell the provisions of the law upon which it was premised. However, since it was a review order, then it must have been premised on Order 45 rule 3 of the Civil Procedure Rules, which provides for applications of review. Orders made under Order 45 rule 3 are listed in Order 43 rule 1(1)(x) as appealable as of right. There was no need, therefore, for the appellant to obtain leave of court to appeal, except if it was required to file appeal out of time, and extension of time to appeal was necessary.
14. In view of the above, there would be no basis for evaluating the appeal before me. It is incompetent, and it is hereby struck out. The respondent shall have the costs. It is so ordered.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 20TH DAY OF JUNE 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Caroline, Court Assistant, Milimani, Nairobi.

Ms. Azenga Alenga, Legal Researcher.

Advocates

Mr. Muguro Irungu, instructed by KMK Law LLP, Advocates for the appellant.

Ms. Wairimu, instructed by Kabugu & Company, Advocates for the respondent.

