



**ATR Kenya Limited v E.Kati Hauliers Ltd & another (Civil Appeal  
E025 of 2024) [2025] KEHC 11165 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11165 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E025 OF 2024**

**RC RUTTO, J**

**JULY 22, 2025**

**BETWEEN**

**ATR KENYA LIMITED ..... APPELLANT**

**AND**

**E.KATI HAULIERS LTD ..... 1<sup>ST</sup> RESPONDENT**

**HEZRON OSORO ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment delivered by Hon. M. Thibaru  
(Adjudicator) on 15th January 2024 in SCCOMM No. E131 of 2023)*

**JUDGMENT**

1. This appeal arises from the judgment and decree delivered in Machakos SCCOMM No. E131 of 2023. In that suit, the 1<sup>st</sup> Respondent sued the Appellant for services rendered around April 2022, valued at USD 8,181.46.
2. The genesis of the suit as stated in the Statement of Claim was that on diverse dates up to November 2021, the 1<sup>st</sup> Respondent entered into an agreement with the Appellant for the transportation of goods to various destinations, under which the Appellant would pay upon safe delivery of its goods or, at times, in advance. The 1<sup>st</sup> Respondent however, claimed that the Appellant failed to pay the balance due and owing in the sum of USD 8,181.46.
3. In its response dated 18th August 2023, the Appellant denied any indebtedness to the 1<sup>st</sup> Respondent and further denied entering into the alleged agreement. The Appellant contended that the agreement had been signed by a person who was neither a director nor a shareholder of the company. It also argued that the agreement did not disclose any specific transaction, purportedly giving rise to the breach.
4. The Appellant brought in a third party, the 2<sup>nd</sup> Respondent, as the person who had signed disputed agreement. In his response dated 30th November 2023, the 2<sup>nd</sup> Respondent claimed that he had



never been employed by the Appellant but acted as its agent due to his romantic involvement with the Appellant's director/shareholder, Ms. Tuju. He further stated that his business with Ms. Tuju ended when their relationship broke down in or about March 2022, and that he had signed the agreement while working as an agent of the Appellant. Additionally, he alleged that, contrary to the Appellant's witness statement, the Appellant provided non-exclusive transport services as independent contractors, with many other entities, including the 1<sup>st</sup> Respondent being among their clients.

5. At the hearing, the record shows that the parties agreed to proceed by way of documents, as opposed to viva voce evidence. On 15<sup>th</sup> January 2024, the trial court subsequently entered judgment in favour of the 1<sup>st</sup> Respondent in the sum of USD 8,181.46 (equivalent to Kshs.818,146.00), with interest from the date of filing and costs. The trial court also dismissed the third-party notice with costs.
6. Dissatisfied with the trial court's decision, the Appellant filed a memorandum of appeal dated 6th February 2024, citing seven grounds. The Appellant argued that the Learned Adjudicator erred in law and fact by; failing to consider and finding that the Appellant could not be held liable for an alleged breach of a contract that it was not privy and or party to; not recognizing that the alleged contract dated 11<sup>th</sup> November 2023 was general in nature and not tied to a particular transaction thereby requiring the 1<sup>st</sup> Respondent to disclose the specific transaction alleged breach; failing to consider that the alleged specific transaction resulting to the alleged breach occurred sometime in April 2022 after the 2<sup>nd</sup> Respondent had ceased working for and or being associated with the Appellant making the agency invalid; failing to take into account that the invoice raised by the 2<sup>nd</sup> Respondent provided that payment be made to a company associated with the 2<sup>nd</sup> Respondent which the 2<sup>nd</sup> Respondent abbreviated the company name Aventt Transit Road Logistics Limited to ATR Logistics Limited a name very similar to the Appellant; misdirected herself in failing to acknowledge that it was in fact the 2<sup>nd</sup> Respondent who received payment for the alleged services provided by the 1<sup>st</sup> Respondent and not the Appellant; failing to consider the delivery notes presented by the 1<sup>st</sup> Respondent were not stamped by the Appellant to show the receipt of any goods as alleged and failing to judiciously analyse the evidence on record and as a consequence arriving at a decision that was erroneous, untenable, unfair and unjust to the Appellant.
7. The Appellant prayed that the appeal be allowed, and that the judgment delivered on 15th January 2024 in SCCOMM No. E131 of 2023 be set aside. The Appellant further sought that the costs and interest arising from the appeal be borne by the Respondents.
8. The appeal was argued by way of written submissions. The Appellant's submissions were filed on 13th November 2024, the 1st Respondent's on 30th January 2025, and the 2nd Respondent's on 29th January 2025.

### **Appellant's Submissions**

9. The Appellant begins its submissions with a brief background of the case. It stated that the 2nd Respondent had been employed by the Appellant until 23rd February 2022. Following his departure, the 2nd Respondent incorporated a new company, Aventt Transit Road Logistics Limited, on 20th April 2022. The Appellant claimed that, without its knowledge or consent, the 2nd Respondent entered into several contracts with Kobo 360, misrepresenting himself as an agent of the Appellant. As a result, the 1st Respondent, under the mistaken belief that it was transacting with the Appellant, provided transportation services to the 2nd Respondent's company and subsequently issued an invoice dated 3rd May 2022 to the Appellant. Meanwhile, the 2nd Respondent had issued his own invoice to Kobo 360 on 29th April 2022, using a misleading name—"ATR Logistics Limited"—which resembled the Appellant's name. The Appellant further stated that Kobo 360 paid USD 4,054.31 to Aventt on 25th May 2023, but the 2nd Respondent failed to remit any portion of this payment to the 1st



- Respondent. This non-payment led to the 1st Respondent initiating legal proceedings against the Appellant.
10. The Appellant identified a single issue for determination: whether it could be held liable for the actions of the 2nd Respondent, and if so, to what extent. Relying on the case of *Bharminder Singh Osaban v Helicopters International Limited* [2021] eKLR, the Appellant argued that it was not privity to the disputed contract and therefore could not be held accountable for any breach. While acknowledging a prior general agreement dated 11th November 2021 with the 1st Respondent, the Appellant maintained that this agreement was not linked to the specific transaction in question. It argued that reliance on this general agreement without identifying the specific transaction was erroneous. The Appellant also pointed out procedural irregularities that further supported its position namely that no Local Purchase Order was issued for the alleged transaction, and the delivery notes submitted by the 1st Respondent were not stamped by the Appellant. These omissions, according to the Appellant, clearly demonstrated its non-involvement in the transaction.
  11. The Appellant asserted that it played no role in the formation, negotiation, or execution of the contract between the 1st Respondent and Aventt Transit Road Logistics Limited. It argued that it was legally improper to impose any contractual obligations on it in relation to that transaction. The Appellant described the claims against it as baseless and emphasized that, as a third party to the transaction in dispute, it could not lawfully be held liable.
  12. In conclusion, the Appellant urged the court to allow the appeal, set aside the judgment of the trial court, and order that the costs and interest of the appeal be borne by the Respondents.

### **1<sup>st</sup> Respondent's submissions**

13. The 1st Respondent framed the issue for determination as whether the Appellant is bound by the agreement dated 11th November 2021, entered into between the Appellant and the 1st Respondent. It was submitted that the agreement was signed by both the Appellant's director and the 2nd Respondent, who at the time was the Appellant's Managing Director. The 1st Respondent highlighted that the 2nd Respondent remained an employee of the Appellant until 23rd February 2022, as acknowledged in the Appellant's response before the trial court. Therefore, the 1st Respondent argued that the Appellant is bound by any agreement entered into before the 2nd Respondent's departure.
14. In support of its position, the 1st Respondent cited Section 3(3) of the Contracts Act and the case of *National Bank of Kenya Limited v Pipeplastic Samkolit (K) Ltd* [2001] 2 EA 503, asserting that the Appellant not only signed the agreement that is the subject of the dispute but also made part payment. This, according to the 1st Respondent, is sufficient evidence of offer and acceptance. The partial payment was submitted as proof of part performance of the agreement. Relying on the doctrine of estoppel and the case of *Harrison v Harrison* [1974] EA 189, the 1st Respondent argued that the Appellant is legally barred from denying its participation in the agreement due to having made payments under it.
15. In response to the Appellant's claim that the delivery note was not stamped, the 1st Respondent explained that the purpose of a delivery note is to confirm the receipt of goods in the correct quantity and condition. The 1st Respondent stated that its duty ended upon delivery of the goods, after which it raised an invoice for payment which the Appellant failed or refused to settle. It submitted further that since the goods were delivered to a third party and not to the Appellant, the issue of stamping by the Appellant did not arise. Moreover, the 1st Respondent maintained that the Appellant did not substantively dispute the invoices and is therefore obligated to pay. As a transportation provider, it



argued that the issuance of a Local Purchase Order by the Appellant was irrelevant, given it was not involved in the purchase of goods.

16. The 1st Respondent further submitted that there is no evidence showing it made any false representations with intent to deceive the Appellant. It contended that all communications during the negotiation and signing of the agreement were made in good faith and were not misleading or fraudulent. It also emphasized that fraud is a criminal offence and that no criminal proceedings had been initiated against it. On the matter of misrepresentation, the 1st Respondent relied on the case of *Carter v McLachlan* [1959] EA 267, stating that the Appellant failed to pinpoint any specific false statements or demonstrate intentional deception. It argued that any disagreements over facts or contractual terms did not amount to misrepresentation, particularly since the Appellant had the opportunity to review and negotiate the agreement prior to signing.
17. In conclusion, the 1st Respondent reiterated that the Appellant is estopped from denying the existence of the agreement and urged the court to dismiss the appeal with costs.

## **2<sup>nd</sup> Respondent's submissions**

18. The 2nd Respondent began his submissions by outlining the background of the case and affirmed his reliance on the pleadings he had filed before the lower court. He noted that the Appellant had failed to submit written submissions at trial. Upon review of the pleadings and evidence, the court entered judgment in favour of the 1st Respondent and dismissed the third-party notice, holding that the 2nd Respondent was acting as an agent of the Appellant at the time the agreement was executed. The 2nd Respondent argued that the Appellant could not disown him as a stranger, given its own evidence focused on post-employment events, while the disputed agreement was signed during his period of agency. He added that the 1st Respondent proved its case on a balance of probabilities through documentation, whereas the Appellant failed to present sufficient evidence either to disprove the claim or support the allegations against him.
19. The 2nd Respondent submitted on three key issues for determination, whether the appeal meets the threshold under Section 38 of the *Small Claims Court Act*; whether the Appellant has discharged its burden of proof; and whether the 2nd Respondent is entitled to costs.
20. On the first issue, he relied on the cases of *Fidelity Insurance Company Limited v Korir*, *Watu Credit Limited v Randu*, and *Twaber Abdulkarim Mohamed v IEBC & 2 others*. He argued that all seven grounds of appeal raised by the Appellant were centered on factual disputes, as they all allege that the learned adjudicator erred in law and fact. According to the 2nd Respondent, appeals from the Small Claims Court are limited to questions of law. Thus, he asserted that the appeal violates Section 38 of the Act and should be dismissed with costs.
21. On the second issue, and in response to Ground 1, the 2nd Respondent submitted that he was not a party to the agreement dated 11th November 2021, and only signed as a witness. Citing *Aineah Liluyani v Aga Khan Health Services* (2013)eKLR, he stated that indemnity must be based on a contract, and no such contractual relationship existed between him and the 1st Respondent. Responding to Ground 2, of the memorandum of appeal, he submitted that it did not seek to enforce any contract as alleged. Notwithstanding this, the 1<sup>st</sup> Respondent produced evidence before the trial court, including invoices and delivery notes, which supported the specific transactions.
22. In response to Ground 3, the 2<sup>nd</sup> Respondent submitted that the Appellant failed to produce any evidence to corroborate its allegation that it was its employee. On the contrary, the Appellant's CR12 clearly demonstrated that the 2<sup>nd</sup> Respondent was neither a shareholder nor a director of the company.



23. In response to Ground 4, the 2nd Respondent submitted that the Appellant failed to prove any engagement of the 1st Respondent in the alleged transactions, or that he received any payments. Addressing Ground 5, he argued that the Appellant did not meet its burden of proof under Section 107 of the *Evidence Act*, referencing *Raila Odinga & Raila Odinga & Another v Independent Electoral and Boundaries Commission & 2 others; Aukot & Another (Interested Parties); Attorney General & Another (Amicus Curiae)* (Presidential Election Petition No. 1 of 2017) [2017] KESC 42 (KLR) (Election Petitions) (20 September 2017).
24. Regarding Ground 6, the 2nd Respondent noted that it is common industry practice for recipients of goods to examine and sign delivery notes if satisfied with the condition. On Ground 7, he contended that the Appellant failed to prove he was its employee, that he handled the disputed transactions, or that he received the alleged payment. He pointed out that claims of fraud found in the Appellant's submissions were not raised in the Memorandum of Appeal. He relied on *Kinyanjui Kamau v George Kamau* [2015] eKLR and *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR, to assert that allegations of fraud must be pleaded with particularity and supported by evidence, which was not done in this case.
25. In conclusion, the 2nd Respondent urged the court to dismiss the appeal and award him costs.

### Analysis and Determination

26. To begin with, the duty of this court as the appellate court is squarely regulated under Section 38 of the *Small Claims Court Act* which restricts the jurisdiction of the High Court on appeals from the Small Claims Court to matters of law only. It provides that:
- “ 38. A person aggrieved by the decision or an order Appeals. of the Court may  
(1) appeal against that decision or order to the High Court on matters of law. (2)  
An appeal from any decision or order referred to in subsection (1) shall be final.”
27. What constitutes, points of law, has been settled. In the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR, where the court stated as follows: -
- “ This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).
28. Upon reviewing the Memorandum of Appeal dated 6th February 2024 and the accompanying submissions, it is evident that the appeal is anchored on grounds alleging the Learned Adjudicator erred “in law and in fact.” The Memorandum of Appeal and submissions fail to specifically identify any point of law on which this appeal is anchored. Rather, the submissions call for a re-evaluation of evidence and factual findings by the trial court, which is contrary to the statutory limits imposed by Section 38 of the *Small Claims Act*.
29. The Appellant has not demonstrated the legal principles allegedly violated or the precise legal errors committed by the adjudicator. Instead, the appeal reflects an attempt to repackage factual grievances in an attempt at legal ingenuity to camouflage purely factual issues with the borrowed garb of 'legallness' to circumvent the jurisdictional confines of Section 38 of the *Small Claims Court Act*.



- 30. In essence, the issues raised challenge the lower court’s factual interpretations and discretionary findings, including the weight assigned to documents and credibility of witnesses. Additionally, the Appellant introduces new allegations, such as fraudulent misrepresentation, that were neither pleaded nor addressed before the trial court. These matters are intrinsically factual and evidentiary in nature and fall outside the permissible appellate scope.
- 31. Section 38 of the *Small Claims Court Act* restricts this appellate court’s jurisdiction to questions of law only. It does not permit a re-hearing on facts or evidence. The Appellant has not demonstrated any legal error committed by the adjudicator nor any misapplication of established principles of law that would warrant intervention by this court.
- 32. Accordingly, I find no merit in the appeal. It is hereby dismissed in its entirety. The judgment and decree of the Small Claims Court in Machakos SCCOMM No. E131 of 2023 delivered on 15<sup>th</sup> January 2024 is upheld. Each party to bear their own costs.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 22<sup>ND</sup> DAY OF JULY, 2025**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

