



**Kuenche+Nagel Limited v Integra Supply Chain Solutions Ltd
(Commercial Appeal E207 of 2023 & Appeal 230 of 2023 (Consolidated))
[2025] KEHC 10010 (KLR) (Commercial and Tax) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E207 OF 2023 & APPEAL 230 OF 2023 (CONSOLIDATED)**

RC RUTTO, J

JULY 4, 2025

BETWEEN

KUENCHE+NAGEL LIMITED APPELLANT

AND

INTEGRA SUPPLY CHAIN SOLUTIONS LTD RESPONDENT

*(Being a partial appeal from the Judgment and decree of Hon. BM Cheloti
PM delivered on 21st August, 2023 in MCCOMSU no. 55 of 2020)*

JUDGMENT

1. Before me for determination are two appeals Appeal No. E207 of 2023, Kuehne + Nagel Limited v. Integra Supply Chain Solutions Limited and Appeal No. E230 of 2023, Integra Supply Chain Solutions Limited v. Kuehne + Nagel Limited. The appeals arise from the judgment delivered on 21st August 2023 in Nairobi Chief Magistrate’s Court Milimani Commercial Case No 55 of 2020.
2. By an order granted on 27th June 2024, these appeals were consolidated, with Appeal No. E207 of 2023, Kuehne + Nagel Limited v. Integra Supply Chain Solutions Limited being designated as the lead file.
3. In determining the consolidated appeals, and for ease of reference during submissions and analysis, the appellant in Appeal No. E230 of 2023 will be referred to as the “respondent,” and their appeal will be treated as a rejoinder to the lead appeal.
4. The first appeal, Appeal No. E207 of 2023, is by Kuehne + Nagel Limited against Integra Supply Chain Solutions Limited. In this appeal, the appellant seeks to have the judgment, decree, and all consequential orders issued by the trial court set aside. The appellant further prays that the court



substitutes the judgment with an order dismissing the respondent's case at the lower court and allowing the appellant's counterclaim.

5. This appeal is based on nine grounds, that the trial court erred in both law and fact, summarized as follows:
 - a. The trial court erred in both law and fact by delivering a judgment that was inconsistent with the applicable law, the pleadings, and the issues framed for determination, thereby reaching an erroneous legal conclusion and occasioning a serious miscarriage of justice.
 - b. The trial court erred in both law and fact by failing to properly apply the principles of contract law, effectively rewriting the contract between the parties through its findings.
 - c. The trial court erred in both law and fact by failing to adequately consider the circumstances under which the appellant issued credit notes to the respondent, including the timelines for payment and the reasons why those credit notes were not payable.
 - d. The trial court erred in both law and fact and wrongly concluded that the appellant had not discharged its evidential burden of proof, despite the presence of overwhelming and unchallenged evidence to the contrary.
6. The second appeal, Appeal No. E230 of 2023, is by Integra Supply Chain Solutions Limited. In this appeal, Integra Supply Chain Solutions Limited partially challenges the judgment of the trial court. Specifically, it seeks the following reliefs: that interest on the judgment sum of Kshs. 2,053,000 awarded against (Kuehne + Nagel Limited) be computed from 13th February 2020, being the date of filing the suit; that the costs of the suit and counterclaim in the magistrate's court be awarded to the appellant; and the costs of this appeal be granted in its favor.
7. The appeal is premised on grounds, which may be summarized as follows: that the trial court erred in both fact and law by improperly exercising judicial discretion and failing to award the appellant costs of the suit without providing any reasons, by departing from the well-established principle that costs follow the event; by failing to award costs of the counterclaim, despite having rightly dismissed the appellant's counterclaim; and that the court erred in failing to award interest from the date of filing the suit, notwithstanding that the claim was for a liquidated sum.
8. The crux of the claim, as set out in the amended plaint, is that Integra Supply Chain Solutions Limited (the respondent herein) instituted proceedings against Kuehne + Nagel Limited (the appellant herein) for breach of contract. The respondent alleged that the parties had entered into a transportation agreement under which the appellant was to provide transportation services. Pursuant to this agreement, the respondent rendered trucking services and issued invoices and credit notes totalling Kshs.2,058,857.09. However, the appellant allegedly failed to settle the outstanding amount.
9. The respondent contended that the appellant improperly introduced extraneous issues into the contractual relationship specifically, claims relating to the alleged loss of goods at Tusky's Supermarket as a pretext for refusing to honor what the respondent described as a straightforward invoice. Consequently, the respondent sought judgment in the sum of Kshs. 2,053,857.09, general damages for breach of contract, interest, and costs of the suit.
10. In response to the claim, the appellant filed an amended statement of defence and counterclaim. It admitted the existence of a contractual relationship for the provision of transport services, governed by a Framework Agreement for Trucking/Transport Services, a Trucking Supplier Evaluation Form, and the Kuehne + Nagel Limited Supplier Code of Conduct. The appellant explained that, under the agreement, the respondent was required to submit an invoice, proof of delivery from the consignee,



and a month-end statement by the 25th of each month. Payments were to be processed 30 days after receipt of these documents.

11. The appellant alleged that the respondent failed to deliver 12,343 pieces of various products valued at Kshs.2,947,590.26. As a result, a debit note was issued and served upon the appellant for settlement. The appellant, however, allegedly refused to issue a corresponding credit note or provide proof of delivery for the missing goods. The appellant claimed to have suffered special damages amounting to Kshs.3,419,204.70, inclusive of 16% VAT, representing the value of the lost goods. It set out particulars of breach of contract on the part of the respondent and prayed for special damages in the said amount, together with costs of the suit, costs of the counterclaim, and interest at court rates.
12. Upon hearing the parties and evaluating the evidence presented, the trial court entered judgment in favor of the respondent in the sum of Kshs.2,053,857/=. Interest was awarded at court rates from the date of delivery of the judgment. Each party was ordered to bear its own costs. Regarding the counterclaim, the court held that although the appellant claimed to have compensated its client, there was no proof of such payment. The counterclaim was therefore dismissed on the basis that it was a claim for special damages, which must be strictly proven.
13. The appeals were canvassed by way of written submissions. The appellant's submissions are dated 18th July 2024, while the respondent's submissions are dated 9th August 2024.

Appellant's Submissions

14. The appellant submitted on the grounds of appeal as set out in his appeal as well as on whether the respondent's appeal in HCCOMM No. E230 of 2023 has any merit.
15. On the first and second grounds, the appellant submitted that the trial court's judgment and the underlying proceedings were superficial and failed to engage with the evidence and issues raised. It was argued that the parties were bound by a Framework Agreement duly executed by both sides, which stipulated strict timelines for the issuance and settlement of invoices, particularly where debit and credit notes were involved. The appellant contended that the trial court failed to reconcile the terms of the Framework Agreement with the pleadings and oral testimony. To support this position, the appellant cited the case of National Bank of Kenya v Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR, emphasizing that courts are not permitted to rewrite contracts between parties.
16. On the third and fourth grounds, the appellant argued that the trial court failed to consider the context in which credit notes were issued and the reasons why certain amounts were not payable. It was submitted that the validity of the invoices was in question, as they were not accompanied by proof of delivery and other supporting documents as required under Clause 10 of the Framework Agreement.
17. The appellant further contended that the respondent approached the court with unclean hands, which should have disentitled it from the reliefs sought. In urging the court to uphold the sanctity of contractual terms, the appellant relied on the decisions in Samuel Kimondo Theuri v Joseph Kahura Kaniaru & Another (Civil Appeal No. 410 of 2017) and Kairu v Shaw & 3 Others [1985] eKLR.
18. On the fifth and sixth grounds, the appellant submitted that the respondent had persistently failed to provide proof of delivery and other supporting documentation, thereby breaching Clause 10 of the Framework Agreement. This failure, the appellant argued, resulted in special damages, as it was compelled to compensate its principal client the sum of Kshs.3,419,204.70 (inclusive of VAT) for goods unaccounted for by the respondent. The appellant maintained that this payment was evidenced by an ETR receipt dated 1st February 2018, which the trial court failed to consider or explain why it was deemed insufficient. The appellant cited Jennifer Nyambura Kamau v Humphrey Mbaka Nandi



[2013] eKLR to argue that the trial court erred in finding that the appellant had not discharged its burden of proof, despite the uncontroverted evidence presented. It was submitted that the appellant had sufficiently proved its claim for special damages and that the dismissal of the counterclaim was therefore unjustified.

19. As to whether the respondent's appeal had merit, the appellant relied on *Punchlines Limited v Joseph Mugo Kibaria & 10 Others* [2018] eKLR to emphasize that the award of costs is a matter of judicial discretion. It was argued that the respondent had misrepresented facts in an attempt to manipulate the outcome of the case and was therefore undeserving of an award of costs. The appellant urged the court to find that it had discharged both the evidentiary and legal burden of proof, and that its appeal was meritorious. Accordingly, it prayed that the respondent's appeal in Petition No. E230 of 2023 be dismissed with costs for lack of merit.

Respondent's Submissions

20. The respondent relied on its submissions dated 9th August 2024. In support of its own appeal (Appeal No. E230 of 2023), the respondent consolidated the grounds into two key issues for determination namely; whether the trial court erred in failing to award interest from the date of filing the suit, given that the claim was for a liquidated sum; and whether the trial court erred in failing to award costs of the suit and counterclaim to the respondent, and in failing to provide reasons for that decision.
21. In response to the appellant's appeal (Appeal No. E207 of 2023), the respondent submitted that the appeal lacked precision and therefore offended the provisions of Order 42 Rule 2 of the Civil Procedure Rules. The respondent distilled the appellant's grounds of appeal into four issues as follows: whether the judgment was inconsistent with the law, pleadings, and issues presented by the parties; whether the trial court's findings amounted to a rewriting of the contract between the parties; whether the trial court failed to consider the circumstances under which credit notes were issued by the appellant; and whether the trial court erred in finding that the appellant had not discharged its burden of proof in relation to the counterclaim.
22. The respondent submitted that the trial court properly identified and determined the issues arising from the parties' pleadings and submissions. It was therefore incorrect to assert that the court failed to analyze the issues presented.
23. On the allegation that the court rewrote the contract, the respondent argued that the appellant was indebted to it for unpaid invoices specifically Invoice Nos. 1144, 1204, and 1258—amounting to Kshs. 2,053,000. The respondent contended that these invoices were valid, as evidenced by the appellant's own actions which included claiming VAT on two of the invoices, generating a withholding tax certificate, and acknowledging debit notes issued by the consignee. Accordingly, the appellant was estopped from denying liability. The respondent cited the case of *Carol Construction Engineers Limited & Another v National Bank of Kenya* [2020] eKLR in support of the doctrine of estoppel.
24. The respondent further relied on email correspondence between the parties, which it argued clearly demonstrated the appellant's acknowledgment of the debt. It also submitted that the issue of timelines for raising invoices and credit notes was neither pleaded nor raised at trial and should therefore be disregarded by this court.
25. Regarding the counterclaim, the respondent submitted that the appellant failed to produce credible evidence of payment of Kshs.3,419,204.70. Specifically, the appellant did not furnish an RTGS advice or a VAT withholding certificate. Instead, it relied on a purported ETR receipt allegedly issued by Beiersdorf East Africa Limited. The respondent challenged the authenticity of this receipt, noting that it did not bear the name of the payee or the issuer, and its validity was therefore highly questionable.



26. The respondent also argued that under the terms of the agreement, it was not liable for loss or damage to goods in this case, as the drivers of the trucks were arrested but never charged, the goods were left unattended, thereby compromising the integrity of the consignment. That the tallying of the allegedly lost goods was conducted unilaterally by the appellant without involving the respondent. Moreover, the tally sheet produced was unsigned by both the appellant's officer and the Tuskys representative, rendering it of no probative value. The respondent urged the court to draw an adverse inference from the appellant's failure to call a witness from Tuskys Supermarket. In support, it cited the case of Kenya Akiba Micro Financing Limited v Ezekiel Chebii & 14 Others [2012] eKLR.
27. On the issue of interest, the respondent submitted that where a party seeks a liquidated sum and judgment is entered in their favor, interest should ordinarily run from the date of filing the suit. Reliance was placed on the case of Orix Oil (Kenya) Limited v Paul Kabeu & 2 Others [2014] eKLR. The respondent also argued that the trial court failed to record any reasons for declining to award costs, thereby improperly exercising its discretion. In support of this position, the respondent cited Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another [2016] eKLR, which held that courts must provide reasons when departing from the general rule that costs follow the event.
28. In conclusion, the respondent urged the court to dismiss Appeal No. E207 of 2023 with costs for lack of merit and to allow Appeal No. E230 of 2023 as prayed.

Analysis and Determination

29. This being a first appeal, the court is guided by the Court of Appeal decision in *Selle v Associated Motor Boat Co Ltd & Others* [1968] EA 123. This court has a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that unlike the trial court, the appellate court, had no advantage of observing the demeanor of the witnesses and hearing their evidence first hand. Accordingly, I have carefully considered the evidence adduced before the trial court in its entirety; the grounds of appeal; the judgment of the learned trial magistrate and the written submissions of both parties in Appeals Nos. E207 of 2023 and E230 of 2023. The following are the key issues for determination:
 - a. Whether the trial court erred in awarding judgment in favor of the respondent (Integra Supply Chain Solutions Ltd) for Kshs. 2,053,857.09.
 - b. Whether the trial court erred in dismissing the appellant's (Kuehne + Nagel Ltd's) counterclaim for special damages.
 - c. Whether the trial court erred in failing to award interest from the date of filing the suit.
 - d. Whether the trial court erred in failing to award costs of the suit and counterclaim, and whether discretion was properly exercised.
30. The trial court awarded judgment in favour of the respondent for the sum of Kshs.2,053,857.09, a sum based on unpaid invoices. The appellant argued that the court failed to consider the contractual requirement for proof of delivery and supporting documentation under Clause 10 of the Framework Agreement.
31. The uncontested facts of the dispute are that the parties entered into a contract for provision of transportation services. As part of the term of the contract, any breakages, damages and/or loss of goods occasioned by the transporter would be offset against the invoices by way of credit notes issued.
32. In this case, the respondent rendered trucking services to the appellant and raised invoices numbers 1144, 1204 and 1258 plus credit notes number 1195 and 1260. The appellant's position is that the



invoices were invalid as they were not accompanied by a valid proof of delivery signed by the consignee or month end statements and that the credit notes were also invalid as they did not particularise the lost /damaged goods.

33. From the record presented, this Court notes that the appellant prepared debit notes in respect of Invoice Nos. 1144, 1204, and 1258. It would not have been possible to generate these debit notes without corresponding proof of delivery. This strongly indicates that the respondent did, in fact, render the transportation services for which payment is now sought. Furthermore, the respondent has demonstrated the validity and enforceability of the invoices by showing that the appellant claimed VAT on them, generated withholding tax certificates, and acknowledged the debit notes issued against the same invoices. If the invoices were indeed invalid, it is unclear how the appellant could have relied on them to make tax-related claims. This conduct affirms the legitimacy of the respondent's claim.
34. The appellant argued that the trial court failed to reconcile the terms of the Framework Agreement with the facts and evidence adduced in court. However, the court considered the parties' conduct and found that the appellant had accepted the invoices without objection. A party cannot deny obligations it has previously acknowledged through conduct.
35. A court was entitled to interpret the contract in light of the parties' conduct and the documentary evidence presented. In this regard, I make reference to the decision in *ABSA Bank Kenya PLC v Mochache (Civil Appeal E370 of 2021)* [2024] KEHC 9039 (KLR), where the High Court reaffirmed that courts must interpret contracts based on the parties' intentions and the terms agreed upon and not substitute their own views.
36. Based on the above finding, I do find that the trial court did not err in awarding the judgment sum. The same was arrived at after considering the contract between the parties. The claim was further supported by credible documentary evidence and the appellant's own admissions. I am therefore not persuaded by the argument that the trial court rewrote the contract.
37. As to whether whether the trial court erred in dismissing the appellant's counterclaim for special damages for Kshs.3,419,204.70. It is already an established principle that special damages must not only be specifically pleaded but also strictly proved with credible documentary evidence.
38. The trial court correctly applied the principle that special damages must be specifically pleaded and strictly proved. The appellant failed to produce an RTGS advice or VAT withholding certificate and relied instead on an ETR receipt that does not show any nexus between it and the amount claimed, it does not contain the name and detail of the payee. The ETR receipt on its own is not sufficient evidence to prove the special damages given the contestation over the alleged lost goods.
39. The respondent also argued that it was not liable for the alleged loss under the contract, as the good were left unattended and that the tallying exercise was conducted without its participation. The failure to call a witness or produce evidence from Tuskys Supermarket to corroborate the loss further weakened the counterclaim. In *Kenya Akiba Micro Financing Ltd v Ezekiel Chebii & 14 Others* [2012] eKLR, the court held that:

“Where a party fails to call a material witness, the court is entitled to draw an adverse inference.”
40. This court therefore finds that the trial court correctly dismissed the counterclaim. The appellant failed to meet the evidentiary threshold required for special damages.
41. The respondent's appeal challenged the trial court's decision to award interest from the date of judgment rather than from the date of filing suit. The claim was for a liquidated sum, and the general



principle is that interest should run from the date of filing unless the court provides reasons for departing from this rule. Refer to *Orix Oil (Kenya) Ltd v Paul Kabeu & 2 Others* [2014] eKLR, the court held:

“Where a claim is for a liquidated sum, interest should ordinarily run from the date of filing suit unless the court records reasons for awarding it from a later date.”

42. It is therefore my finding that the trial court erred in failing to award interest from the date of filing suit as the trial court did not give any reasons for adopting a later date. The respondent is therefore entitled to interest at court rates from the date of filing suit.

43. The trial court ordered each party to bear its own costs but failed to provide reasons for departing from the principle that costs follow the event. Under Section 27 of the *Civil Procedure Act*, costs are at the discretion of the court, but reasons must be recorded when deviating from the general rule. In *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another* [2016] eKLR, the Court of Appeal held:

“Where the court decides not to award costs to the successful party, it must give reasons for doing so.”

44. This court thus finds that the error was not in the exercise of the discretion but in failing to provide the reason for deviating from the general rule. Having analysed the record, and considering the nature of the dispute, I will not interfere with the trial courts exercise of discretion on the award of costs.

45. Accordingly, the court makes the following orders:

- a. Appeal No. E207 of 2023 (*Kuehne Nagel Ltd v Integra Supply Chain Solutions Ltd*) is hereby dismissed with costs to the respondent.
- b. Appeal No. E230 of 2023 (*Integra Supply Chain Solutions Ltd v Kuehne + Nagel Ltd*) is allowed only to the extent that Interest at court rates on the judgment sum of Kshs. 2,053,857.09 shall run from the date of filing suit until payment in full. Each party to bear its cost in appeal E230 of 2023.

46. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 4TH DAY OF JULY 2025.

RHODA RUTTO

JUDGE

In the presence of;

..... for Appellant

..... for Respondent

