



REPUBLIC OF KENYA



KENYA LAW
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**Nunow v Eastmeat Supplies Limited (Civil Appeal E055 of 2024)
[2025] KEHC 9483 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E055 OF 2024
AN ONGERI, J
JULY 2, 2025**

BETWEEN

ABDI MOHAMED NUNOW APPELLANT

AND

EASTMEAT SUPPLIES LIMITED RESPONDENT

*(Being an appeal against the judgment of Hon. S. M. Musili (Adjudicator/RM) in
Taveta Small Claims Court Case No. E053 of 2024 delivered on 6th September 2024)*

JUDGMENT

1. The Respondent (Eastmeat Supplies Ltd) was sued by Abdi Mohamed Nunow in Taveta Small Claims Court Case No. E053 of 2024 for breach of contract.
2. The East Meat Supplies Ltd alleged that they contracted the Appellant for provision of livestock transportation services as follows:-
 - i. On 25.11.2021 livestock transportation from Mang'u to Taveta at a cost of Kshs. 35,000/=
 - ii. On 21.2.2022 livestock transportation between Garissa and Voi at a cost of Kshs. 150,000/=.
 - iii. On 23.2.2022 livestock transportation between Garissa and Voi at a cost of Kshs. 150,000/=.
 - iv. On 27.2.2022 livestock transportation between Garissa and Voi at a cost of Kshs. 150,000/=
3. The Respondent was seeking a total of Kshs. 485,000/= from the Appellant.
4. The Appellant filed a response dated 23rd April 2024 denying the Respondent's claim.
5. The trial court found that there was a contract for sale and transportation of livestock which was dealt with in Voi VMCC No. E141 of 2022.



6. The trial court found that a cursory look at the sale agreement confirmed delivery of the livestock on diverse dates.
7. The trial court said that since the livestock were delivered, it was only fair that the costs be paid and judgment was entered in favour of the Respondent against the Appellant in the sum of Kshs. 485,000/= with interest from the date of filing the suit.
8. The Appellant is aggrieved with the judgment and has filed an appeal on the following grounds:-
 - i. That the Honourable learned Magistrate erred in law and fact by finding that the Claimant proved their case on a balance of probabilities against the Defendant.
 - ii. That the Honourable learned Magistrate erred in law and fact in finding that there was a contract for transportation of livestock between the Claimant and the Respondent.
 - iii. That the Honourable learned Magistrate erred in law and fact in finding that the claim before Voi in MCC No. E141 of 2022 was the basis of the alleged transportation services rendered.
 - iv. That the learned trial Magistrate erred in law and fact in misconstruing the test on validity of contracts on proof of an offer, acceptance and consideration.
 - v. That the learned trial Magistrate erred in law and fact in granting judgment for the Claimant against the Respondent for Kshs. 485,000/= plus interest.
9. The parties filed written submissions as follows;
10. The Appellant, Abdi Mohamed Nunow, submitted that he has filed this appeal challenging the judgment of Hon. S. M. Musili (Adjudicator) delivered on 6th September 2024, which ruled in favour of Eastmeat Supplies Limited (the Respondent).
11. The Appellant contends that the trial court erred in law and fact by finding that the Respondent had proved its case on a balance of probabilities and by concluding that there existed a contract for the transportation of livestock between the parties, which the Appellant allegedly defaulted on.
12. The Appellant argued that no valid contract for transportation was ever established, as the evidence presented in the lower court demonstrated that the Respondent was, in fact, the purchaser of the livestock from the Appellant—not a transporter.
13. The Appellant emphasized that the Respondent failed to provide any proof of an agreement for transportation services, such as a written contract or corroborative evidence beyond the testimony of its witness.
14. Instead, that the only documented transaction was a supply agreement, which the Respondent had breached by failing to pay for the livestock, as evidenced by a separate judgment from the Voi Magistrate's Court.
15. The Appellant relied on legal principles from *William Muthee Muthami v Bank of Baroda* (2014) and *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi* (2013), which underscore that the burden of proving the existence of a contract (including offer, acceptance, and consideration) lies with the party asserting its existence.
16. The appellant submitted that in this case, the Respondent's claim was based solely on self-generated invoices, which the Appellant argues are insufficient to prove a transportation agreement.



17. The Appellant further highlighted the absurdity of the Respondent's claim, given that a purchaser cannot logically charge for transporting its own goods.
18. On the issue of proof, the Appellant cited *Eastern Produce (K) Ltd v Bonfas Shoya (2018)*, which defines the balance of probabilities as requiring one party's evidence to be more convincing than the other's.
19. The Appellant maintains that their evidence—including the supply contract and the unpaid debt—was more credible and probable than the Respondent's unsubstantiated transportation claim.
20. In conclusion, the Appellant urged the High Court to overturn the trial court's decision, finding that no transportation contract existed and that the Respondent failed to meet its burden of proof. The Appellant also seeks costs of the appeal, as is customary.
21. The Respondent strongly opposed the Appellant's appeal, arguing that the trial court correctly awarded Kshs. 485,000 for unpaid livestock transportation services rendered between November 2021 and February 2022.
22. The Respondent maintained that the Appellant's attempt to link these transactions to unrelated supply disputes in Voi MCCC No. E141 of 2022 is a tactical move to avoid liability.
23. The Respondent asserted that a valid contract was formed through conduct, as evidenced by uncontested invoices detailing routes, dates, costs, and parties involved.
24. That the Appellant's silent acceptance of services without objection further confirms the agreement.
25. Citing precedent, the Respondent argued that commercial entities routinely engage in multiple independent contracts, and the transportation services—distinct from any supply arrangements—were specifically rendered in Voi, Garissa, and Taveta, where the Appellant operates.
26. The Respondent emphasized that it discharged its burden of proof by presenting unrebutted documentary evidence, shifting the evidentiary burden to the Appellant, who failed to provide any substantive counterevidence.
27. The reference to extraneous proceedings is dismissed as irrelevant, as those cases involve separate causes of action and cannot be conflated with the present matter.
28. The Respondent concluded that the appeal is a baseless delay tactic, urging the court to uphold the trial court's well-reasoned judgment, which was firmly grounded in evidence and contract law principles.
29. The Respondent asked this court to dismiss the appeal with costs.
30. This being an appeal from the Small Claims Court, the only issue is whether the same is on a point of law.
31. The issues for determination are as follows:-
 - i. Whether the Respondent proved his case to the required standard.
 - ii. Whether the appeal should be allowed.
32. I have carefully considered the proceedings before the trial court and the judgment together with the grounds of appeal and the submissions filed herein.
33. I find that the appeal raises fundamental questions on the existence of a valid contract and the burden of proof in contractual disputes.



34. The trial court's judgment was premised on the finding that the Respondent (Eastmeat Supplies Ltd) had proved the existence of a transportation contract and the Appellant's liability for unpaid services.
35. However, upon re-evaluation of the evidence, this court finds that the Respondent failed to discharge its burden of proving the alleged transportation agreement on a balance of probabilities.
36. The foundational principle in contractual disputes is that the party asserting the existence of a contract must prove its essential elements: offer, acceptance, consideration, and intention to create legal relations (William Muthee Muthami v Bank of Baroda [2014] eKLR).
37. The Respondent's claim hinged on invoices purportedly issued for transportation services, but critically, no written or oral agreement was adduced to demonstrate that the Appellant had contracted the Respondent as a transporter.
38. Instead, the evidence suggested that the parties' relationship was primarily that of a livestock supplier (Appellant) and purchaser (Respondent), as evidenced by the separate proceedings in Voi MCC No. E141 of 2022.
39. The trial court erred in conflating these distinct transactions without requiring the Respondent to prove the specific terms of the alleged transportation contract.
40. The respondent should have raised a counterclaim in Voi MCC NO.E141 of 2022.
41. Further, the Respondent's reliance on conduct to imply a contract was unsustainable.
42. While courts recognize contracts formed through conduct (Tana & Athi Rivers Development Authority v Jeremiah Kimigho Mwakio & 3 Others [2015] eKLR), such conduct must unequivocally demonstrate mutual assent to the terms alleged.
43. In this case, the Respondent's invoices alone, without corroborative evidence of the Appellant's request or acceptance of the services, were insufficient to establish a binding agreement.
44. The Appellant's denial of the transportation arrangement and the absence of any acknowledgment of debt or prior demand for payment further weakened the Respondent's case.
45. On the standard of proof, the Respondent was required to present cogent evidence that its version was more probable than the Appellant's (Eastern Produce (K) Ltd v Bonfas Shoya [2018] eKLR).
46. The trial court misdirected itself by shifting the burden to the Appellant to disprove the claim, contrary to the principle that he who alleges must prove (Section 107 of the *Evidence Act*).
47. The Respondent's failure to link the invoices to a specific agreement or demonstrate that the Appellant had an obligation to pay for transportation—particularly where the livestock were allegedly delivered under a separate supply arrangement—rendered its claim unproved.
48. The appeal is therefore merited. The trial court's finding that the Respondent proved its case was erroneous in law and fact, as it disregarded the lack of contractual proof and misapplied the burden of proof.
49. Consequently, the judgment in Taveta Small Claims Court Case No. E053 of 2024 is set aside, and the Respondent's suit is dismissed with costs to the Appellant.
50. For avoidance of doubt, the Respondent's claim against the Appellant is dismissed with costs in both the trial court and this appeal.

DATED, SIGNED AND DELIVERED THIS 2ND DAY OF JULY, 2025 IN OPEN COURT AT VOI.



ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

.....for Appellant

.....for Respondent

