



**Mpinda v M'Rinyiru t/a Milestones Supplies (Civil Appeal  
E023 of 2023) [2024] KEHC 9547 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9547 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E023 OF 2023  
EM MURIITHI, J  
JULY 25, 2024**

**BETWEEN**

**JUDITH MPINDA ..... APPELLANT**

**AND**

**EUNICE MPINDA M'RINYIRUT/A MILESTONES SUPPLIES ... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. M.A Odhiambo  
(SRM) delivered on 16/12/2022 at Meru CMCCC No. E428 of 2021)*

**JUDGMENT**

1. By a plaint dated 22/10/2021, the Respondent herein, the Plaintiff in the trial court, sued the Appellant herein, seeking the sum of Ksh. 1,033,340 as pleaded in paragraph 6 of the plaint and costs plus interest. The Respondent pleaded that on 18/9/2021, she entered into a transportation agreement with the Appellant whereby the Appellant was to transport a consignment of petroleum products from Nairobi to the Respondent's customers in Meru County at an agreed transportation cost of Ksh. 30,000. By virtue of the said agreement, the Appellant loaded 10,000 litres of petroleum oil purchased by the Respondent from Lake Oil Limited at Nairobi at a total cost of Ksh. 1,195,000 onto her Motor Vehicle Registration No. KBT 943 Z for transportation and supply to the Respondent's customers in Meru County. Under the said transportation agreement, it was the duty of the Appellant as the bailee or carrier to ensure that the goods were safely delivered to the Respondent's customers. In breach of the said agreement, the Appellant failed to deliver the goods to the Respondent's customers thereby causing a loss of 8,000 litres of petroleum oil valued at Ksh. 1,003,340, as a consequence of which the Respondent suffered loss and damage.
2. The Appellant denied the claim vide her statement of defence dated 9/2/2022 and prayed for its dismissal with costs.



3. Upon full hearing of the claim, the trial court entered judgment at the sum of Ksh. 1,033,340 in favour of the Respondent together with costs and interest.

### **The Appeal**

4. On appeal, the Appellant filed her memorandum of appeal dated 3/2/2023 raising 5 grounds as follows:
  1. The learned Resident Magistrate erred in law and fact in finding in favour of the Respondent who never testified in favor of her claim.
  2. The learned Resident Magistrate erred in law and fact in finding that 8000 litres of petroleum oil was spilled when the appellant had pleaded that the same was drained by the Respondent after the accident and/or was delivered.
  3. The learned Resident Magistrate erred in law and fact by failing to appreciate that the contract between the appellant and the Respondent was to transport petroleum consignment from Nairobi To Meru and the accident occurred past Meru meaning the contract had been spent.
  4. The learned Resident Magistrate erred in law and fact by failing to make a finding that PW1 never demonstrated that he was the operations manager of Judith Mpinda and had no authority to testify on her behalf.
  5. The learned Resident Magistrate misapplied her mind to arrive at a wrong decision.

### **Duty of the Court**

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123).

### **Evidence**

6. PW1 Eutyclus Mwenda testified that, "I live in Meru at Kooje. I do distribute fuel in Meru. On 29/3/2022 I recorded statement adopted the same as evidence. I also filed a list of document. I wish to produce same as PEXB 1 – Business registration certificate, PEXB 2 – interim business license, PEXB 3 – holding tax invoice, PEXB 4 – Police abstract, PEXB 5 – Demand letter. I also have a further List of document dated 23/5/2022. PEXB 6 – Delivery Notices (2), PEXB 7 – Equity statement. I am praying for relief as per the plaint. That is Kshs 1,033,340/=."
7. On cross examination, he stated that, "I have been a distributor since 2018. I have been using Judy Mpinda for 2 years. I loaded fuel on 18/9/2021. Accident occurred on 19/9/2021. We loaded the fuel at 12:00 pm. Accident occurred at 3:00 am on 19/9/2022. I deposited fuel at Sahara City. I was also to supply Leonard, Peter Gitine and others. Sahara city is in Tharaka Nithi. I do not know how long it takes to off load fuel. Accident occurred at Ruirii area. I do not know what happened it was road traffic involving. The vehicle developed mechanical problem. This is what the police said. I do not have photos of the spillage. I had not off loaded the fuel. The abstract does not indicate any spillage. The police did not allow us to ofload the fuel. Since I was not the owner of the tanker. We supplied Sahara City 200 litres. We only drained 2000/= - (2 litres). We called the fuel department."
8. On re-examination, he stated that, "We had loaded 10,000 litres, 2000 litres was supplied to Sahara city. I was left with 8000 litres when accident occurred. Nothing was recovered. The fuel was a waste."



9. DW1 Judith Mpinda and the Appellant herein testified that, “I live in Nairobi. I do deal with oil product. I recorded statement dated 12/5/2022 adopted the same as evidence. I do have a list of documents. I adopted as my exhibit.”
10. On cross examination, she stated that, “I do transport oil. I do use a tanker to transport oil – KBT 943Z. On 18/9/2021, I hired the vehicle to milestone to carry/transport oil. It was Kshs 30,000/= .I was paid the money. The same was transport from Nairobi – Meru. I do hire a driver. The driver was mine. I was to ensure that the goods are safely delivered. The lorry had 10,000 litres of oil. The oil was valued at Kshs 1 million. The lorry was loaded with 10,000 litres. I saw a tax invoice from Lake oil (PEXB 3). It is 1,195,000/= cost of oil. The vehicle was involved in an accident. I got to the scene of the accident and confirmed that the accident occurred. It is true accident occurred. When the accident occurred the lorry was loaded with the oil product. I was told that it had 8000 litres of oil since the driver had sold 2000 litres. When he called me (owner of oil) after the accident he said the lorry had oil. I did not see the 8000 litres of oil. It was also not given the 8000 litres of oil. I do not know the amount of petrol that was salvaged. I do not have proof that plaintiff was given any amount of oil. I do not have any witness to confirm that 8,000 litres was salvaged. I got to the scene of the accident after about 5 hours I did not see any spillage. When oil/petrol pours or spills on the ground, it drains on is absorb on the ground. The lorry was a right off. The body of the lorry was completely damaged. I had not insured the goods on board. The owner of the load was the one who ought to have insured his goods. I only had motor vehicle insurance and not for the goods. I have not compensated the plaintiff for loss of goods.”
11. On re-examination, she stated that, “I am the one who took the photos of the vehicle. I did not see any spillage of 8000 litres of oil.”

### **Submissions**

12. The Appellant urges that PW1 lacked locus standi testify on behalf of the Respondent, hence his testimony ought to be disregarded, and cites *Law Society of Kenya v Commissioner of Lands & Others*, Nakuru High Court Civil Case No. 464 of 2000, *Alfred Njau and Other v City Council of Nairobi* (1982) KAR 229 and *Savala & another v Ndanyi* (Environment and Land Case Civil Suit 248 of 2021 [2022] KEELC 2536 (KLR) (5 July 2022) (Ruling). She urges that there was no clear evidence of any amount of oil that was remaining in the vehicle at the time of the accident, and thus the Respondent’s claim was unsubstantiated. She urges that since she has expended her resources in prosecuting this appeal and the matter before the trial court, she should be awarded costs for both matters.
13. The Respondent did not file any submissions.

### **Analysis and Determination**

14. The gist of this appeal, as can be deciphered from the 5 grounds of appeal is whether the Respondent proved her case on a balance of probabilities.
15. The Appellant questions PW1’s capacity and his authority to testify on behalf of the Respondent. PW1 recorded in his statement dated 29/3/2022, which was adopted as his evidence in chief without any contestation by the Appellant hat, “I am the operations manager of the Plaintiff. The plaintiff deals in the business of supply and distribution of petroleum products.”
16. It is thus clear that PW1, as the operations manager of the Respondent, had the authority to testify on her behalf.
17. He further recorded in his statement that, “On 18/9/2021, I engaged the defendant to transport 10,000/- litres of petroleum oil valued at Ksh. 1,195,000/- from Nairobi to our customers in Meru.



The defendant and I agreed on transportation charges of Kshs. 30,000/- which I paid in full through MPESA. The defendant agreed to transport the said consignment using her motor vehicle KBR 943 Z. The consignment was loaded onto the said vehicle and a loading tax invoice issued. It was the duty of the defendant as the bailee or carrier to ensure that the goods were safely transported and reached delivered to our customers. Out of negligence of the Defendant's driver or her agents Motor Vehicle KBT 943 Z was involved in an accident along Kiirua-Ruirii Road while transporting 8,000/- litres of Petroleum oil valued at Kshs. 1,003,340/-. As a consequence, the consignment of 8,000 litres got lost through spillage. It was the responsibility of the defendant as the bailee or carrier to take out an insurance cover for goods or indemnify the Plaintiff in the event of loss or damage to the goods." On cross examination, he stated that, "I have been a distributor since 2018. I have been using Judy Mpinda for 2 years. I loaded fuel on 18/9/2021. Accident occurred on 19/9/2021. We loaded the fuel at 12:00 pm. Accident occurred at 3:00 am on 19/9/2022. I deposited fuel at Sahara City. I was also to supply Leonard, Peter Gitine and others. Sahara city is in Tharaka Nithi. Accident occurred at Ruirii area...I had not off loaded the fuel...We supplied Sahara City 200 litres. We only drained 2000/= - (2 litres)." On re-examination, he stated that, "We had loaded 10,000 litres, 2000 litres was supplied to Sahara city. I was left with 8000 litres when accident occurred. Nothing was recovered. The fuel was a waste."

18. The Appellant admitted on cross examination that nothing was salvaged from the accident and she had not compensated the Respondent for the loss of the oil. She further affirmed that it was her responsibility to ensure that the oil was safely delivered to the Respondent in Meru. She testified on cross examination that, "I do transport oil. I do use a tanker to transport oil – KBT 943Z. On 18/9/2021, I hired the vehicle to milestone to carry/transport oil. It was Kshs 30,000/=. I was paid the money. The same was transport from Nairobi – Meru. I do hire a driver...I was to ensure that the goods are safely delivered. The lorry had 10,000 litres of oil. The oil was valued at Kshs 1 million. I saw a tax invoice from Lake oil (PEXB 3). It is 1,195,000/= cost of oil. The vehicle was involved in an accident. I got to the scene of the accident and confirmed that the accident occurred. When the accident occurred the lorry was loaded with the oil product. I was told that it had 8000 litres of oil since the driver had sold 2000 litres...I do not have proof that plaintiff was given any amount of oil. I do not have any witness to confirm that 8,000 litres was salvaged... I only had motor vehicle insurance and not for the goods. I have not compensated the plaintiff for loss of goods."
19. This court finds that the Respondent, proved on a balance of probabilities that she purchased 10,000 litres of petroleum oil from the Appellant, and that it was the duty of the Appellant to ensure that the oil was safely delivered to her customers in Meru.
20. The court further finds that the Respondent was entitled to a refund of the 8,000 litres of petroleum oil valued at Ksh. 1,033,340 she lost as a result of the accident together with the transportation cost of Ksh. 30,000.

#### **Orders**

21. Accordingly, for the reasons set out above, this court finds that the appeal is without merit and it is dismissed.
22. The Appellant shall pay to the Respondent the costs of the Appeal.

Order accordingly.

**DATED AND DELIVERED ON THIS 25<sup>TH</sup> DAY OF JULY 2024.**

**EDWARD M. MURIITHI**

**JUDGE**



Appearances:

Mr. Gichunge for Appellant.

Mr. Kariuki for the Respondent.

