



REPUBLIC OF KENYA



**Muriuki v Metro Logistics Limited (Civil Appeal E864 of 2022)  
[2024] KEHC 7901 (KLR) (Civ) (2 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 7901 (KLR)

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

**CIVIL**

**CIVIL APPEAL E864 OF 2022**

**DAS MAJANJA, J**

**JULY 2, 2024**

**BETWEEN**

**DANIEL MURIITHI MURIUKI ..... APPELLANT**

**AND**

**METRO LOGISTICS LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon.C. Ndumia, SRM/Adjudicator dated 3rd October 2022 at the Small Claims Court, Milimani in SCC No. E4392 of 2022)*

**JUDGMENT**

**Introduction and Background**

1. Before the court for determination is an appeal filed by the Appellant that is grounded in his memorandum and grounds of appeal dated 22.10.2022 where the Appellant seeks to set aside the judgment of the Subordinate Court dated 03.10.2022 and substitute it with an order allowing his case.
2. According to his statement of claim, he contracted the Respondent to ferry goods worth Ushs 28,000,000 (equivalent to Kshs 885,400.00) from its supplier, Ntake Company at Kampala to his business premises at Kagio Township at a consideration of Kshs 90,000.00. He claimed to have paid for these goods on various dates in February and March 2022 and that he paid a deposit of Kshs 50,000.00 via MPESA to the Respondent through its agent, one Paul Murigi.
3. The Appellant averred that on 23.02.2022, his supplier handed over the duly purchased goods to worth Kshs 885,400.00 to the Respondent's agent and driver, Nicholus Kipkirui Kemboi. The goods were loaded into the Respondent's motor vehicle registration number KCK W/ZF1. The Appellant averred that it was an implied term of the agreement between the parties that the Respondent would safely transport the goods to the Appellant's business premises at Kagio Township, Kirinyaga County, that



the Respondent would be liable should it fail to deliver the goods and that the Respondent would be vicariously liable to the Appellant for any negligent, unlawful or wrongful acts of its employees, agents and/or drivers that it would engage to perform its duty of transporting the goods. The Appellant further stated that it was an implied term that the Appellant would pay the balance of Kshs 40,000.00 to the Respondent upon safe delivery of the goods.

4. The Appellant claimed that the Respondent failed to deliver the goods whereupon he reported the matter to the DCI Mwea West at Kiamiciri Police Station vide OB No 11/28/2/2022 on 28.02.2022. The Appellant claimed that the Respondent promised to compensate the Appellant but it failed to do so despite demand and notice and intention to sue. The Appellant thus prayed for payment of Kshs 885,400.00, refund of Kshs 50,000.00 paid to the Respondent, interest and costs.
5. The Respondent denied the Appellant's claim. It denied that the parties ever entered into any agreement with the Appellant as alleged or at all. It further denied receiving any payment from the Appellant. It further disputed knowing any such person as Paul Murigi and stated it only transacts using its directors. That it did not have any agent dealing with the Appellant or conduct business using agents. Thus, the Respondent held that it could not be held liable.
6. At the hearing, the Appellant testified on his own behalf while the Respondent called its legal officer, Vivianne Melima. In the judgment dated 03.10.2022, the Subordinate Court held that in as much as the Appellant produced evidence of payment of Kshs 50,000.00 to Paul Murigi, he did not provide any proof that the said Paul Murigi was the Respondent's agent. It further found that even though the Appellant stated it paid for the lost goods in various installments and transactions, he did not provide proof that the payments were made by him to the supplier. It pointed out that although the Respondent promised to compensate him in an application for anticipatory bail in Misc. Criminal Application No E065 of 2022, the complainant therein was one Simon Mwangi. The Subordinate Court thus did not find a clear indication of who may have entered into a contract with the Respondent since there seemed to have been two owners of the alleged stolen goods; the Appellant and Simon Mwangi. The court therefore concluded that the Appellant had failed to prove his case on a balance of probabilities.
7. The Appellant is dissatisfied with the decision of the Subordinate Court dismissing the appeal. The parties have filed written submissions in support of their respective positions. The appeal and the submissions rehash the positions already taken above hence I will only make relevant references to them in my analysis and determination below.

### **Analysis and Determination**

8. This is an appeal from the Small Claims Court thus the court's jurisdiction is limited by section 38(1) of the *Small Claims Court Act* (Chapter 10A of the Laws of Kenya) which provides that 'A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.' A court limited to matters of law is not permitted to substitute the Subordinate Court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (*John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR). Thus, the duty of this court is to determine whether the subordinate court's conclusions were supported by the evidence on record and the law.
9. The Appellant's claim was for a sum of Kshs 885,400.00 for goods he claimed were bought by him from a supplier and stolen by the Respondent's agent and Kshs 50,000.00 he said was paid to the Respondent's agent to transport the said goods. In dismissing the Appellant's claim, the Adjudicator



noted that there was no proof that the said goods belonged to or were bought by the Appellant or that the said Paul Murigi who was paid Kshs 50,000.00 was the Respondent's agent. Going through the record, I agree. From the Respondent's CR 12 produced by the Appellant, neither Paul Murigi who received the Kshs 50,000.00 nor Nicholus Kipkirui Kemboi, the Respondent's alleged driver is listed as a director or shareholder therein. The application for anticipatory bail in Misc. Criminal Application No E065 of 2022 relied on by the Appellant also indicates that it is one Samuel Mwangi and not the Appellant who contracted the Respondent on 27.02.2022 to transport the cargo comprising 400 bags of wheat pollard valued at about Kshs 400,000.00 from Uganda to Kagio. This differs from the Appellant's claim that the goods bought were worth Kshs 885,400.00. This supports the conclusion that there was no contract between the Appellant and the Respondent to transport the alleged stolen goods either directly or through an agent.

10. An agency agreement need not be in writing. It may be oral or it may be inferred from the conduct of the parties. In this case, there was no evidence of any agency agreement between the Respondent and any of the persons the Appellant contracted with. I am thus in agreement with the Respondent's submission that there was no direct link between the parties and without the nexus, the Appellant's claim could not stand. The Appellant failed to prove that the said Peter Murigi and Nicholus Kipkemboi were agents of the Respondent.
11. In conclusion, I hold that the Adjudicator arrived at a conclusion consistent with the evidence on record.

#### **Disposition**

12. The Appellant's appeal is dismissed with costs assessed at Kshs 20,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF JULY 2024.**

**D. S. MAJANJA**

**JUDGE**

