



Logistics Link Limited v Kenpaper (EA) c/o Ken Group (Civil Suit E118 of 2021) [2024] KEHC 16893 (KLR) (24 October 2024) (Judgment)

Neutral citation: [2024] KEHC 16893 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E118 OF 2021
F WANGARI, J
OCTOBER 24, 2024**

BETWEEN

LOGISTICS LINK LIMITED PLAINTIFF

AND

KENPAPER (EA) C/O KEN GROUP DEFENDANT

JUDGMENT

1. *Vide* a Plaint dated 25/11/2021, the Plaintiff, a limited company, pleaded that in February 2029, both the Plaintiff and the Defendant (a limited company incorporated in the Republic of Uganda), had an oral agreement where the Plaintiff was to offer logistics and customs clearing services to the Defendant.
2. The Plaintiff further pleaded that there was an express and/ or implied term of the agreement that the Plaintiff would accord the Defendant the following services; pursuant to the Plaintiff's Revolving Facility with M/S Wilhelmsen Ships Service Limited, the shipping line would facilitate payments on behalf of the Defendant which includes shipping line charges for issuance of delivery order. The Plaintiff would also deal with matters relating customs, CFS charges and processing of gate passes.
3. On the other hand, the Defendant would settle all charges presented by the Plaintiff, make own transport arrangements, ensure empty containers are returned, settle the Plaintiffs fee note within 7 days of receipt.
4. By virtue of the aforementioned agreement, the Plaintiff accorded the Defendant the services as agreed between 01/02/2019 and 26/02/2019. An invoice relating to consignment at Wilhelmsen amounting to USD 108,300 was raised but the despite the various demands. the Defendant has refused to settle the said amount. Since the Plaintiff was the guarantor, its Revolving Facility with the shipping company has been suspended until the money owed is paid.
5. The Plaintiff prayed that judgment be entered against the Defendant herein for: -



- a. A Declaration that the Defendant is indebted to M/S Wilhelmsen Ships Services Limited in the sum of USD 108,300.00 as at 24/11/2021 as well as ALL/ any further amounts as shall be raised by the said Entity, as concerns the Plaintiffs Revolving Facility with M/S Wilhelmsen Ships Services Limited in respect of the Agreement and resultant transaction subject hereof between the parties hereto.
 - b. An order to issue directing the Defendant to take ALL necessary steps within Seven (7) days of said order to free up and re-initialize the Plaintiffs Revolving Facility with M/S Wilhelmsen Ships Service Limited in respect of the Agreement and resultant transaction subject hereof between the parties hereto, in default whereof the Plaintiff be at liberty to deal with the instant consignment attached herein for purposes of negating the defendant indebtedness for M/ S Wilhelmsen Ships Service Limited.
 - c. Cost of this suit together with interest thereon.
 - d. Any other or further relief that this Honourable Court may deem just to grant.
6. The Defendant was served with the Summons to enter appearance in addition to the pleadings, but failed to enter appearance nor file its Statement of Defence. Matter was fixed for hearing, and despite the hearing notice being served, there was no attendance in court.
 7. The Plaintiff's Branch Manager in Mombasa gave sworn evidence and testified that he relied on his Witness Statement dated 25/11/2021. He also produced the documents as listed in the List of Documents dated 25/11/202. The Plaintiff's evidence was as per the pleadings summarized herein above.
 8. There being no other evidence, the Plaintiff closed its case and matter was set down for judgment.

Analysis

9. I have considered the pleadings on record and the evidence adduced by the Plaintiff. The only issue for determination is whether the Plaintiff has proved his case to warrant him being granted the relief sought.
10. Even though the suit remained undefended, it is trite that the legal burden of proof lies with the person who alleges. The Plaintiff bears the legal burden of proof to prove the claim against the Defendant. Section 107 (1) of the [Evidence Act](#), Chapter 80 Laws of Kenya provides as follows: -

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”
11. The Plaintiff's witness gave evidence as per the pleadings and the supporting documents. He testified that the matter had not yet been resolved.
12. Even though it has not been denied that the Defendant owes the Plaintiff the amount claimed as the suit was undefended, the orders being sought require a declaration that the Defendant is indebted to M/S Wilhelmsen Ships Service Limited. In addition to the above, the Plaintiff seeks to have the Defendant ordered to free up and re-initialize the Plaintiff's Revolving Facility with the shipping company.
13. The above mentioned shipping company has not been enjoined in the proceedings either as a Defendant or an Interested Party. In the case of [Communications Commission of Kenya and 4 Others v](#)



Royal Media Services Limited & 7 Others Petition No. 15 of [2014] eKLR the Supreme Court while relying on its earlier decision in the Mumo Matemo case it was held as follows:

“ An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

14. I find that the absence of the shipping line as a party to the suit, this court may not be in a position to settle the issues raises as far as the shipping company is involved.

Determination

15. Flowing from the above, judgment is entered as hereunder;

- a. A party cannot be condemned unheard; the suit is hereby struck out.
- b. No orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 24TH DAY OF OCTOBER, 2024.

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F. WANGARI

JUDGE

In the presence of;

Ngonze Advocate for the Plaintiff

N/A by the Defendant

Brian, Court Assistant

