



**Mupeki Hauliers Limited v Dooba Enterprises Limited (Civil Suit
51 of 2015) [2023] KEHC 23130 (KLR) (20 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23130 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 51 OF 2015
DKN MAGARE, J
SEPTEMBER 20, 2023**

BETWEEN

MUPEKI HAULIERS LIMITED PLAINTIFF

AND

DOOBA ENTERPRISES LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff filed suit on 15/4/2015 vide a Complaint dated 14th April 2015. The Plaintiff pleaded among others that:
 - i. The Plaintiff and Defendant enjoyed a principal-agent relationship in which the Plaintiff was the agent in clearing and transporting by road of consignments on behalf of the Defendant to Uganda as the destination.
 - ii. The Defendant would make periodic payments to the Plaintiff on invoices raised in consideration of clearing and forwarding the goods.
 - iii. In May 2013, the Defendant instructed the Plaintiff to clear and forward 39 containers from Mombasa to the Defendant's destination at Maina Freight in Uganda.
 - iv. It was an implied or express term that the Plaintiff would enter into contracts and pay port charges and incidental costs on behalf of the Defendant which the Defendant would reimburse after delivery of the consignment to Uganda.
 - v. The Plaintiff entered into a guarantee agreement for the release of the containers to the Plaintiff on behalf of the Defendant in which demurrage and incidental costs were guaranteed by the Plaintiff and paid to Maersk Line (K) Ltd/Safmarine Ltd upon demand.
 - vi. After delivering the consignment, the Defendant caused delay by failing to offload the goods and pay import taxes on the consignment leading to penalty and demurrage charges and as



a consequence of which the Plaintiff was blacklisted as agent from the shipping line causing loss of 90% of its revenue given that Maersk Line (K) Ltd/Safmarine Ltd controls 90% of the market in Kenya.

- vii. The Plaintiff's claim is for US \$ 351,945.60 payable to the shipping line arising from the guarantee agreement and the Plaintiff's haulage cost of US \$ 94,243 making a total of US \$ 446,188.
2. The Plaintiffs thus prayed for the following reliefs: -
 - i. A sum of US \$ 446,188
 - ii. Cost and Interest.
 3. The Defendant filed its Defence and Counterclaim dated 13th July 2015 on 14th July 2015 in which it was inter alia pleaded as follows: -
 - i. Upon executing the guarantee agreement, it was the responsibility of the Plaintiff to ensure that cargo is cleared at the port and transported to its destination in Uganda within reasonable time.
 - ii. Demurrage was caused by the Plaintiff's delay to clear and forward cargo from Mombasa to Kampala despite having been given the necessary documents in time.
 - i. Demurrage expenses were also caused by the Plaintiff's delay to pick and return empty containers despite having been handed to their appointed Inland Container Depot in Kakajo Kampala in time.
 - ii. The Plaintiff failed to forward demurrage invoices, if any, which were only delivered to the Defendant on 5th May 2015.
 - iii. Some demurrage expenses of US \$ 11,220 were paid to the Damco Logistics Uganda Ltd as instructed and the empty containers were supposed to be dropped at Maersk Line in Kampala which the Plaintiff refused to oblige and kept the containers for more than 100 days and a further demurrage was unwarranted.
 - iv. The claim by the Plaintiff has been settled in excess of US \$ 105,581 and a reconciliation of accounts was done in April 2014 conforming that the Plaintiff owed the Defendant US \$ 105,581 and so the claim in the Plaintiff exaggerated.
 - v. In the Counterclaim, the Defendant pleaded thus:
 - a. The Defendant paid to the Plaintiff a total of US \$ 595,535
 - b. The joint reconciliation discovered that the Plaintiff owed the Defendant US \$ 105,581
 - c. Demurrage invoices were forward to the Defendant several months after the suit was filed instead of promptly upon receiving the empty containers instead of 2 years later in May 2015.
 - d. The Defendant thus claimed for refund of excess amount of US \$ 105,581 with interest, loss of business and costs.
 4. In the end the Defendant prayed that the suit be dismissed and the court to enter judgment on the counterclaim for a sum of US \$ 105.581 for the defendant.



Background

5. The matter did not proceed immediately. The pleadings were concluded way back in 2015. For reasons only known to the parties, they kept fixing the matter for mention for purpose of auditing accounts. This was never done. For over 4 years, there was a dispute on who was to carry out accounts.
6. When the matter came before me, a similar request was made. I directed parties to proceed to hearing. I directed that the court is not in business of preparing or supervising audits on behalf of parties. If any party so wished to file an audit report they were free to do so. I fixed the suit for hearing with directions that there was to be no other adjournment.
7. This was informed by the fact that both parties were claiming liquidated claim. It is their duty to prove the same. It is the duty of the party pleading to have its case done and evidence gathered. This is in line with the locus classicus case of special damages, that is the decision of David Bagine Vs Martin Bundi [1997] eKLR, the court of Appeal stated as follows: -

“It has been held time and again by this Court that special damages must be pleaded and strictly proved. We refer to the remarks by this Court in the case of Mariam Maghema Ali v. Jackson M. Nyambu t/a sisera store, Civil Appeal No. 5 of 1990 (unreported) and Idi Ayub Sahbani v. City Council of Nairobi (1982-88) IKAR 681 at page 684: “...special damages in addition to being pleaded, must be strictly proved as was stated by Lord Goddard C.J. in Bonham Carter vs. Hyde Park Hotel Limited [1948] 64 TLR 177 thus:

“Plaintiffs must understand that if they bring actions for damages it is for them to prove damage, it is not enough to write down the particulars and, so to speak, throw them at the head of the court, saying, ‘this is what I have lost, I ask you to give me these damages.’ They have to prove it”

8. I was further comforted that the dispute was on a liquidated claim. In such claims, there must be a cogent defense. It is either the debt was never due or it is paid. The court is thus not involved in evidence gathering. The Court of Appeal in the case of Raghbir Singh Chatte v National Bank of Kenya Limited [1996] eKLR, which stated as doth in respect of payments: -

“The main object of this rule and Rule 14 is to bring the parties by their pleadings to an issue, and indeed to narrow them down to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing (per Jessel M. R. in Thorp v Holdworth (1876) 3 Ch. D. 637). This object is secured by requiring that each party in turn should fully admit or clearly deny every material allegation made against him. Thus, in an action for a debt or liquidated demand in money, a mere denial of the debt is wholly inadmissible”, (underling supplied).

I will also add that the crucial deficiency of a general denial which I have already described, also applies to the evasive, inconsistent and contradictory alternative general traverse in the appellants defence. This was that if the respondent had extended any overdraft facilities without stating the amount involved, to the appellant which was moreover, denied, then the same and here again, without stating how and when, had been paid. Such a spurious pleading in the alternative cannot give any merit to the defence and so also makes it one which discloses no reasonable defence for all purposes including that of 0 6 r 13(1)(a).”



9. The role of the court in fact finding in adversarial system is severely limited to what parties bring before the court. Indeed Order 2 Rule 4 (1), tells Defendants what to do when there are issues of payment or satisfaction. It states: -

“ 4. Matters which must be specifically pleaded

(1) A party shall in any pleading subsequent to a plaint plead specifically any matter, for example performance, release, payment, fraud, inevitable accident, act of God, any relevant Statute of limitation or any fact showing illegality—

- (a) which he alleges makes any claim or defence of the opposite party not maintainable;
- (b) which, if not specifically pleaded, might take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceding pleading.

- 10. If the Defendants had paid, they should be in a position to know how much they paid. If no debt was due, then, they need to raise a defence to that effect.
- 11. I also noted the parties had been using accounts as a gimmick to have the case in court forever. It is the duty and responsibility of parties not to pack the court with cases and then adjourn them at whims. I directed that if the matter did not proceed on the date appointed, the suit was to stand dismissed. for any reason at all, it shall stand dismissed. This worked magic.
- 12. The matter proceeded without a hitch. However, it could not be reached on the next hearing date, though parties were ready. I assigned them a different date after satisfying myself that they were not to blame.
- 13. The Plaintiffs claim for US \$ 351,945 payable is said to be a balance from 39 out of 83 consignments cleared by the Plaintiff, which are payable to the shipping line and US \$ 94,243 haulage charges, already spent.
- 14. The defendant stated that the Plaintiff is guilty of material non-disclosure. They stated that it was the responsibility of the Plaintiff to service the guarantee for release of the container and consignments that they cleared. Further, it was the responsibility of the Defendant to refund.
- 15. The Plaintiff averred that they were now compelled to pay Maersk line (K) Ltd /Safmarine Ltd US \$ 351,945.60, being money due and owing from the Defendant. This being an agency relationship, the Plaintiff as an agent bound the Defendant to pay the amount. The said is said to be due and owing.
- 16. The claim for haulage charges of US \$ 94,243 arises from transportation of the cleared consignment from Mombasa to Kampala Uganda and returning empty containers. My understanding is that the haulage charges were agreed upon.
- 17. They were not dependent on the delay of billing. This were agreed at a specific rate of 3,800 for the 20-foot container and 4000 for a 40 feet container. The haulage charges are therefore arithmetic issues.
- 18. The plaintiff therefore prayed the total US \$ 446,188 being US \$ 94,243 for haulage and US \$ 351,945.60.



19. The Defendant filed Defence and denied owing a sum of US \$ 446,188. They state that they paid the Plaintiff US \$ 595,535 and upon joint reconciliation they discovered that the Plaintiff owed the Defendant US \$ 105,581 being an overpayment. The Defendant blames, without more, the Plaintiff for demurrage for: -
 - a. Delaying clearing despite being given document in time.
 - b. Delay to pick empty containers from Kakajo in Kampala Inland Container Terminal.
 - c. Failure to forward demurrage invoices. The invoices were received on 5/5/ 2015 by DHL waybill No. 9668900986.
 - d. Blackmailing by Maersk Line Kenya was caused by Plaintiff's delay to return empty containers.
20. The defendant was of the view that they had paid all dues and was claiming a refund of US \$ 105,581. Further that the defendant had fully paid and there was no justification to hold on the containers. The defendant blamed the Plaintiff for failure to clear the shipping line was causing the unreasonable accumulation of demurrage despite being paid in full.
21. On the issue of agreement, they state that there was no documentation on demurrage, advance demurrage and agreement to forward containing to Uganda. They stated that there was no evidence for payment of advance demurrage.
22. They urge me to dismiss the suit and allow the counter claim with costs.

Plaintiff's Submissions.

Evidence

23. Pursuant to my directions the Plaintiff was ready for hearing and called one witness, Peter Mulei Kithome who adopted witness statement filed on 15th April 2015 and the bundle of documents file in Court. It was his case that the Defendant had not paid the Plaintiff for the services rendered.
24. It was his further case that the Plaintiff's claim was for demurrage and storage charges were payable to the shipping line by the consignee. Therefore, any delay is attributable to the consignee. He stated that the Plaintiff claimed US \$ 366,976 for demurrage and US \$ 79,212 payable to Kenya Ports Authority as warehouse rent charges raising a total claim of US \$ 446,188 that accrued due to delay caused by the Defendant.
25. The witness stated that they cleared 81 containers for the Defendant but 39 containers had a problem in that they received the bills of lading late and the Defendant did not remit the payments in time. While referring to the Plaintiff's Bundle of Documents at page 2, he testified that container No. MSKU 86 was expected in Mombasa on 14th August 2013 and the Plaintiff received its bill of lading no. 580316448 late and incurred consequential storage charges after 9 days of free storage.
26. The witness further stated that he would issue invoices to the Defendant after release of the containers from Kenya Ports Authority for all the consignments. He also stated that they raised their invoices in time between 29th August 2013 and 28th December 2013 and he informed the Defendant that it was supposed to pay demurrage charges but that instead of paying to Maersk, they paid to Damco Logistics.
27. The witness also stated that in reference to the container in Batch F of his Bundle of Documents, there were 11 of 20-foot containers that arrived on 12th July 2013 at Mombasa but the Defendant gave him



- the documents on 5th August 2013 and as a result storage charges accrued and custom warehouse to Kenya Ports Authority, and demurrage to the shipping line.
28. He further stated that he was not informed that the demurrage charges had not been paid and so the Defendant continued to incur demurrage and the Plaintiff had to sign the guarantee form with the shipping line committing to guarantee the containers.
 29. On cross examination, it was his case that the guarantee form was signed to show where they would deliver the containers in which the agent took up the responsibility on behalf of the consignee but that when demurrage was not forthcoming from the Defendant they had to keep the containers in a yard for storage.
 30. It was his further case on cross examination that the Defendant refused to pay the invoices much to the detriment of the Plaintiff. He further stated that the Defendant did payment to the wrong account with Damco Logistics instead of paying to the Plaintiff. It was his case that the Plaintiff was blacklisted due to acts and omission of the Defendant.
 31. In re-examination, the witness confirmed that he had proved existence of the contract because they had been trading with the Defendant since 2003 and the Defendant had been paying.
 32. The Defendant called one witness, DW1, Nazeba Charles. Initially he was testifying well in chief. While being cross examined, he took unnecessarily long to answer questions. The court noted the same and request counsel for the Defendant to rectify the situation. Counsel noted that it could be an issue of internet. I directed that the Witness was to testify on another date physically. He travelled from Kampala and was available to testify on the appointed time.
 33. In his testimony the witness relied on the witness statement dated 17th October 2017 and the Bundle of Documents dated 13th October 2017 to support the Defendant's case. The Defendant's case was that they never instructed the Plaintiff. They were paying on account. The Plaintiff was to pay and they refund. They stated that they were dealing with only one Grace Ojuma when delay was much as opposed to 9-10 days that was normal. They do not recognize the Defendant's contract. I shall revert on this.
 34. In cross examination, it was his case that the Defendant transacted with the Plaintiff in a total of 83 containers out of which 9,14,16,17,18,19 and 20 as highlighted in the Bundle of Documents were in contention and the rest had no dispute on payments. He further stated that the Plaintiff was responsible for the delay because not all containers arrived on time and the Plaintiff did not pay in time. The witness also stated that the Plaintiff kept the containers for 122 days over the required 35 days and did not disclose the payable demurrage charges to the Defendant.

Plaintiff's Submissions.

35. The plaintiff filed submissions where they stated that that the Defence case was three fold;
 - a. It paid in time, and in full.
 - b. The Defendant failed to clear and return containers in time.
 - c. The Defendant overpaid.
36. The state that the plaintiff has proved their case. I shall analyse the rest of the submissions in the Judgment



Defendants submissions

37. The Defendant filed submissions dated 27/6/23 where they stated that the Plaintiff was not authorized to transact on behalf of the Defendant. They claim that they are therefore entitled to US \$ 105, 581. There are said to arise from: -
- a. Payment for Ocean Freight 71,324.
 - b. Transport 287,295
 - c. Demurrage 31,523
 - d. Port Rent 90,005
 - e. Warehouse rent 6180
- Total 595,535
38. They posit that an overpayment US \$ 105,581 was discovered. There is no breakdown for this. We are not told that we paid these invoices and paid this particular amount twice. Overpayment cannot arise unless you circumscribe the payment.
39. The Defendant identified three issues;
- a. Whether there was an express agreement allowing the Plaintiff to clear and forward consignment.
 - b. Who occasioned delay in clearing and forwarding as well as retuning empty container to the shipping line and to what extent should that party bear costs of expect demurrage and Defendant costs.
 - c. Who between the Plaintiff and Defendant proved their case and therefore entitled to damages.
40. The Defendant relied on the provisions of Section 146(2) (9) and (b) of East African Community Management Act as revised in 2019 that only the agent must be authorized in writing. Their view was that they were instructed by Grace Ojuma to carry out clearance and forwarding. They stated that there was no agreement that was presented to court by the plaintiff.
41. The defence witness stated the Grace Ojuma worked for another Freight services was were contracted. They questioned why the Plaintiff did not call Grace Ojuma to demonstrate existence of authority. They state that the correct party to the contract was Grace Ojuma. They state that it was not in dispute by both parties at page 81 that the said Grace Ojuma admitted delay. They state that delay for cluster A should not attract demurrage.
42. There was delay in returning containers for 490 days, which they attributed to the Plaintiff. In cluster B, there was 7 months' delay. Cluster C Took a month to clear cluster D no demurrage was payable and as at 40 days to clear and 5 months to return the containers and stated that demurrage had been paid.
43. In another cluster, they posited that it took 6 months to clear, with 159 days delay in returning entity continues. They showed that in the next cluster, a bill of a bill of lading was given earlier but it took 5 months to clear and 174 months to return 10 containers. They stated that demurrage charges were due to negligence of the agents.
44. The defendant sought to lay reliance on the decision of MA Bayusufu and Sons =vs= Reliable Freight Services HCCC 483 of 1998.



45. It was their case that on cross examination the Plaintiff had said that advance demurrage had not been paid. They state that there is no such requirement under the guarantee agreement.
46. They also referred to the case of China Wu yi Co. Ltd = vs= China Africa Logistics Co. Ltd HCCC 106 of 2016 on Trade Usage, where the court stated as doth; -

“What was not admitted by China Wu Yi was that, in addition to the return of containers, the Deposit would only be paid upon the principal delivering the following documents being CD 16, CD 18, letter of Exemption of Tax or evidence of payment of Tax to its agent. On the other hand the case for China Africa is that the delivery of these documents was a matter of Trade Usage and Custom.

9. For that reason the only issue for determination would have to be whether the alleged Trade Usage or Custom was proved so as to disentitle China Wu Yi from its claim.

10. A Trade usage or custom is defined as,

“A practice or method of dealing having such regular observance in a region, vocation, or trade that it justifies an expectation that it will be observed in a given transaction; a customary practice or set of practices relied on by persons conversant in, or connected with, a trade or business”. (Black’s Law Dictionary (10th Edition)

11. Save where Trade Usage or Custom is of such general or local notoriety as to require no proof (and for which the Court shall take judicial notice), Trade Usage and Custom must not only be pleaded but also proved to the satisfaction of the Court. In the decision in Harilal & Co. vs. The Standard Bank Ltd [1967] EA 512, the Court had this to say on the manner of proving Trade Usage and Custom,

“A Trade usage may be proved by calling witnesses, whose evidence must be clear, convincing and consistent, that the Usage exists as a fact and is well-known and has been acted on generally by persons affected by it. A Usage is not proved merely by the evidence of persons who benefit from it unsupported by other evidence. Where a particular usage has acquired sufficient general or local notoriety judicial notice may be taken of it under S.60 of the *Evidence Act*. Where a Trade Usage is proved to exist then, unless expressly or impliedly excluded, it is presumed to have been incorporated into the contract between the parties and this is so even though one of the parties may in fact be unaware of the usage so long as the circumstances are such that he ought to have been aware of it”. (my emphasis)

Analysis

47. The case is a fairly straight forward one. The parties had a contract for clearing and hauling container from Mombasa and delivering to Uganda, at Kakajo inland container terminal. The defendant maintains that the plaintiff is a stranger as they only had an agreement with Grace Ojuma. They did not plead nor exhibit documents showing the agreement with Ojuma.



48. During the hearing the parties were in agreement on the rates of haulage and clearance charges. As a fact both had a list of 44 containers that were cleared and paid for without a hitch. It is therefore untenable to have pleadings that appropate and reprobate. It is either there was no contract or payment was done.
49. There is no explanation how the paid a sum of US \$ 595,535 as alleged to the Plaintiff without a contract to a stranger. There was no explanation on the basis of overpaying a stranger. Overpayment, by itself means making remittances over and above agreed amount.
50. The amount stated to have been paid was US \$ 595,535. This amount is equivalent at today's exchange rate of 3,755.98, to Uganda shillings 2,236,817,549.30, an equivalent of Ksh 556,439,548 at exchange rate of 148.15. to make matters even more dicey, the entire amount is not claimed. It is only a sum of US \$ 105,581 claimed as an overpayment. This means the Defendant recognized that the Plaintiff did a job for which it was worthy to be paid a sum of US \$ 489, 954 was properly paid.
51. Filing a counterclaim is usually a dangerous gamble in matters of this nature. The Defendant denied existence of agency relationship between the parties. However, it alleged to have overpaid. The question in my mind, why were they over paying a stranger.
52. The next question in the same pleadings is that the Plaintiff allegedly instructed the defendant to pay US \$ 11,220/= to Damco Logistics. However, the Plaintiff delayed with containers for 100 days. Why was a stranger having containers which were to be in the custody of the Defendant.
53. To put it in a layman's language, the Defendant got containers from strangers. They took the juice inside. Paid other strangers, on instructions of the Plaintiff a whole US \$ 11,220/= and surrendered the empty containers to strangers, to give to other strangers who have been paid.
54. It cannot be that the Defendants were sufficiently philanthropic, to just pay money on instructions of strangers. It could have paid for the Defendant to be more candid than they were. They received a total of 81 containers. Only a handful are in dispute. They admit paying the Plaintiff for the haulage of the other containers that are not in issue.
55. Put another way, by alleging overpayment, it is an admission that in one way or another the parties dealt with each other. They had contracts in this case, the contract was for clearing goods. It is common ground that only a few containers had issues. Others were cleared and paid for.
56. The court cannot re-do the contract. In It is never this court's duty to redo the contract for the parties. The Court of Appeal in the case of National Bank of Kenya Limited Vs Pipeplastic Samkolit (K) Limited & Another [2002] E.A. 503;

“A court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.”
58. At no time was the existing contract, in issue. The lack of instructions was equally not an issue. As a fact, the Defendant placed the obligation on the Plaintiff on the basis of the guarantee signed. A party cannot depart from its pleadings.
59. The main reason d' etre for pleadings is for parties to know the case they are facing. This avoids ambushes, this is even so in military incursions.
60. The parties are bound to plead their cases fully. In the case of Daniel Otieno Migore =vs= South Nyanza Co. Ltd (2018) eKLR where Justice AC Mrima, held as doth: -



11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria in Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002 where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

“.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....

...In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”

61. Let me analyse the plaintiff's counter claim for US \$ 105,581. It is not specifically pleaded how the Defendant overpaid US \$ 105,581. Payment for US \$ 595,535 was made for services requested. The payment is particularized at paragraph 19. Out of the payment of 595,535 there is no pleading on what position was overpaid. How much was to be paid? What was the period? Which invoices were involved?
62. The Defendant cannot throw to the court a figure of US \$ 106,581 and as to be paid. There was an attempt in the submission to introduce a breakdown as follows: -
- a. Ocean Freight US \$ 71,324
 - b. Transport US \$ 287,295
 - c. Demurrage US \$ 31,523
 - d. Port Rent US \$ 90,005
 - e. Warehouse Rent US \$ 6180
 - f. Total US \$ 595,535
63. These figures are not pleaded to be for certain invoices. Even if they were to be pleaded, there should be for example a pleading that payment for demurrage was US \$31,523 but only US \$ 15 was due hence overpayment by US \$ 31,508.
64. The introduction on figures at submissions level does not in any way keep the Defence case. In Robert Ngande Kathathi v Francis Kivuva Kitonde [2020] eKLR, Justice G V Odunga was of the considered opinion that: -

“...in Ngang'a & Another vs. Owiti & Another [2008] 1KLR (EP) 749, the Court held that:

“As the practice has it and especially where counsel appears, a Court may hear final submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallise the substance



of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable."

21. As stated by the Court of Appeal in Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR:

"Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "marketing language", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented."

22. The Court of Appeal in Avenue Car Hire & Another vs. Slipha Wanjiru Muthegu Civil Appeal No. 302 of 1997 held that no judgement can be based on written submissions and that such a judgement is a nullity since written submissions is not a mode of receiving evidence set out under Order 17 Rule 2 of the Civil Procedure Rules [now Order 18 rule 2 of the Civil Procedure Rules]. The same Court in Muchami Mugeni vs. Elizabeth Wanjugu Mungara & Another Civil Appeal No. 141 of 1998 found the practice of making awards on the basis of the submissions rather than the evidence deplorable." Similarly, in Ngang'a & Another vs. Owiti & Another [2008] 1KLR (EP) 749, the Court held that:

"As the practice has it and especially where counsel appears, a Court may hear final submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallise the substance of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable."

64. The liquidated claim must first be particularized before proceeding to prove. It cannot be thrown to the court. Consequently, a claim for US \$ 108,581 is dismissed in limine with costs of US \$ 2508 to the Plaintiff.



Claims for delays and haulage

65. Therefore, the Court cannot take into consideration evidence that does not go to prove any of the issues set out in pleadings. A party therefore cannot collect all evidence it can and then turn around to say, though I did not tell you, I am not contesting what I say I will contest, but have had enlightenment at submissions level, my guns will now be trained on an issue which I have tendered evidence on but not pleaded.
66. Though all these questions were raised, there was no counterclaim for the damages caused by the delay. Is imperative that parties know that the court only acts on pleadings. Parties are bound by pleadings. When parties set out pleading and state certain positive facts, they must be followed by a positive request for the court to so find.
67. For example, once the Defendant positive averred that there was a sum of US \$ 105,581 was due and owing. They went ahead and specifically set out a counter claim for the same. In the case of the lengthy breaches occasioned by the Plaintiff, there is not positive averment and prayer for a declaration related to the breach. The court cannot find a party to be in breach without averments and particulars to that effect.
68. In the case of *Malawi Railways Ltd vs Nyasulu* [1998] MWSC 3, Malawi Supreme Court of Appeal stated as doth when the learned judges cited with approval an article by Sir Jack Jacob entitled “The Present Importance of Pleadings” published in [1960] *Current Legal Problems* at p 174 whereof the learned author posited that: -
- “In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”
69. In respect to the essence of pleadings, the Supreme Court of Kenya in its ruling on inter alia scrutiny in the case of *Raila Amolo Odinga & Another vs. IEBC & 2 others* (2017) eKLR found and held as follows in an election petition: -
70. The court cannot act on evidence, even where it is established, in the absence of pleadings. In the recent presidential Election Petition, the Court of Appeal of Nigeria sitting as the election court, in *Peter Gregory Obi & another versus Senator Bola Ahmed Tinubu & INEC & 3 others* consolidated with petitions no. 4 and 5 both of 2023, stated as doth: -
- “In *Belgore Versus Ahmed* (2013) 8 Nwlr (Pt.1355) 60 the complaint against averments in the petition that were unspecific, generic, speculative, vague, unreferable(sic), omnibus and general in terms. The Apex court specifically held as follows: -
- “Pleadings in an action are written statements of the parties wherein they set forth the summary of material facts on which they rely on in proof of this claim or his defence as the case may be, and by means of which real matters [in] controversy between the parties are to be adjudicated are pleaded in a summary form. They must nevertheless be sufficiently specific and comprehensive to elicit the necessary answers from the opponent.”
71. Therefore, questions tending to show blame of the Plaintiff were not in support of the Defendant’s counter claim. This was evidence attempted to be tendered without pleadings. The Defendant must



show, whether or not they paid the debt that is shown to arise out of the contract. If there were issues on execution, there must be very specific payers to that effect.

72. The case related as set out in the Plaintiff dated 15/4/2010 to 39 containers from Mombasa to Main Freight in Uganda. The same does not include 42 which were transported and there is no hitch regarding the same. It was admitted that the 42 containers had no issues whatsoever.
73. When the Defendant testified, they did not segregate payments. It was important to segregate payments made to non-contested containers and contested containers. The contest relates to late receipt of invoices. The one question that the Defendant did not address was the aspect of haulage charges.
74. This was the cost of moving cargo. Whether the cargo was moved late or not it was moved. It left Mombasa to Kampala and containers were returned. Specific figures were agreed upon, that is, US \$ 3,800 for a 20 feet container and US \$ 4,000 for a 40-foot container. This was payable inter se, that is between the agent and the principal. There were no third parties involved or other penalties. There was no defence offered on how the same was paid.
75. The haulage was specifically pleaded and tones of pages of documents shown to establish haulage charges. The parties are in agreement of the containers they are disputing over. The dispute is not on ownership. It is only on delays. I am satisfied that the rates agreed upon and from documents set out by both parties that a sum of US \$ 94, 243. This is based on the agreed transport for 40-foot and 20-foot containers of US \$ 4000 and US \$ 3,800.
76. The claim is not real disputed. The defendant is unhappy about the delays in surrendering the containers. However, there is no counterclaim for the same. I, find and hold that a sum of US \$ 94, 243 for haulage charges was proved on the basis of the documents on record. I accordingly enter judgment for the Plaintiff for the said sum. I dismiss a claim for delayed return as it is neither pleaded as a counterclaim nor proved.

Other amounts

77. On the other charges I note that the Plaintiff entered into a guarantee with the shipping line to return the containers on behalf of the consignee to Maersk line (K) Ltd/Safmarine Ltd upon demand. The Plaintiff offloaded at the ICD, in Kakajo, Kampala, Uganda.
78. The Plaintiff's case was based on a contract to clear goods for the Plaintiff at the port of Mombasa. The Law in Kenya is that only registered agents can clear cargo at the port whether it is the Plaintiff or some other company, they must clear cargo on behalf of and hand it over to the consignee.
79. As regards to goods for export, there is an obligation to ensuring goods follow a specific designated road to the country to which they are exported. Goods in transit are bonded and the bond is cancelled once they leave the country. Thus it is not plausible, that the plaintiff was to clear transit goods and leave them in the country in view of the pertinent provisions of the East Africa Customs Management Act, 2004.
80. Once the goods are cleared they have to be moved to the next inland container depot for clearance. In the case of Uganda, it came out that they have to be moved to the inland container depot at Kagaja, in Kampala. There was nothing to contract. The goods must be cleared from the bond and deposited in the custody of Uganda Revenue Authority at the ICD. There was no agreement to be reached in respect of where they were to be deposited.
81. However, in this case it had been agreed that transport was US \$ 4000 for a 40-foot container and 3,800 for a 20-foot container. The clearing agent cleared their obligations. Even where the agent assumes



- obligations they are payable by the consignee. These goods are either imported as cost, freight, and insurance or costs and freight up to Mombasa. The importer must pay for the transport and expenses to move goods from Mombasa to the next container terminal.
82. There is no obligation on part of the clearing agent to pay taxes, port charges and demurrages on behalf of the principal. It is the duty of the importer to ensure the clearing agent has all documentation necessary to clear the cargo. The obligations to make payment is and must start with the importer. It cannot be that the clearing agent was to pay for freight charges.
83. Where goods are imported they cover three crucial aspect cost, freight and insurance. This is the import cost of the goods. It cannot be the duty of the clearing agent to pay those. There could be instances freight is to be paid by the agents. It is not out of contractual obligation but does not create legal obligation.
84. The next aspect is the issue of payment of advance demurrage. In international trade, credit trade is usually very limited. The importer has a duty to pay for freight and necessary bond. If there is delay, then the same ought to be paid. There was a dispute as to why advance demurrage was not paid. The Defendant averred that it is the failure of the Plaintiff to ask for advance demurrage Invoice. The Plaintiff on the other hand maintains that it could not ask for the invoice without money to pay.
85. I have seen the invoices. They indicate the date of issuance as the tax date. This means issuance of such an invoice creates a tax obligation. The invoice is indicated to be due "on receipt". This means once the invoice issue it becomes due and owing. No wonder the Plaintiff required that he be put in funds before seeking invoices. This is also for another good reason. Demurrage charges are incurred daily. Issuance of an invoice creates obligations as at that date. The following day will have a different amount requiring an invoice.
86. The detention invoices are on payment terms, payable immediately. I therefore hold and find that the Plaintiff did not have an obligation to ask for retention invoices of advance demurrage invoices without funds. This could have created unnecessary obligations on the Plaintiff.
87. It is my considered view that failure to ask for advance demurrage invoice is not a reason not to make payment. I note that the owners of containers refused to accept the containers without payment. In one instant, it appears the Plaintiff had to forcefully surrender the containers to avoid more penalties. The Defendant conceded that a total of 83 containers were delivered. Out of the said containers 39 have one issue or another. This means 44 had no issues.
88. Further, the issue of reliable freight was not pleaded. It is not necessary to go into that contract. It was never averred that the work was not done. There could be a contract with reliable freight. Nevertheless, the 83 containers were not cleared by Reliable Freight services. They were cleared by the plaintiff.
89. There was an allegation that some containers were not dropped but used for 120 days. I don't know what the Defendant expected the court to do with this information. It is incumbent upon the parties to clearly plead their case in a manner that is actionable. This is beautiful information to possess. However, it does not help pleadings. The only counterclaim was not on the alleged use but on the amount of US \$ 108,581, that I have dismissed above.
90. The Defendant stated that in cluster the container arrived on 25/7/2013. The clearance documents, that is, the bills of lading were given to Grace Ajuma on 14/8/2013. They took 5 days to clear. The goods arrived on 19/8/2013. This cannot be true. The part of these days must have been for transport from Mombasa to Kampala.



91. The containers were given to the Plaintiff on 30/8//2013 but they were dropped at the shipping line on 28/12/14 – 122 days. They expected to be billed on 10/9/2013 but were billed on 7/5/2015, where 122 days were charged. Demurrage was US \$ 540.
92. In cluster B, it is said that it took 70 days to clear. The empty containers were given on 31/12/2013. The Plaintiff retained the containers for 95 days. Demurrage was due for 35 days for US \$ 17,340. There was Demurrage and detention for 155 days. In cluster C there was 176 days demurrage/ detention charged US \$ 8400 was charged for 16 days. In cluster D 183 days were charged. 39 days of demurrage for US \$ 7587. 41 days were taken to clear and forward cargo.
93. In reality, there is a clear admission that only small portion of demurrage charges are contested. In this evidence the Defendant did not contest transport charges. Their dispute is on a portion of the detention and demurrage charges.
94. Exhibit 1 is an agreement with reliable freight for 10/7/2009. The second document is a letter to Mupeki Hauliers Ltd advising to deposit to it US \$ 49,000/= by the Defendant from the NIC Bank. There are also other advices from NN Bank Uganda Ltd. as follows:
 - a. 22/7/2013 US \$ 4800
 - b. 1/8/2013 US \$ 38132
 - c. 12/8/2013 US \$ 2575
 - d. 30/8/2013 US \$ 26,604
(There is a handwritten but non countersigned explanation on this note.)
 - e. 6/9/2013 US \$ 10,000/=
 - f. 6/9/2013 US \$ 25,000
 - g. 12/9/2013 US \$ 50,000
 - h. 17/9/2013 50,000
 - i. 24/9/13 50,000
 - j. 25/9/13 6,899
 - k. 18/10/13 70,000
 - l. 1/11/13 (Not clear)
 - m. There was a voucher for 53,8000 on 24/7/13
 - n. 18,898 on 4/7/13
 - o. 1/8/2013 36/132
 - p. 13/8/13 19,665
 - q. 20/8/13 10,600
95. There was a receipt for 85,000 US \$ for invoices indicated relate to Damco Logistics Uganda Ltd. This amount of USD 11, 220 was not pleaded, to have been paid for any of the plaintiff's invoice. There are some kind of reconciliation from pages 56 – with handwritten notes. The outstanding and admitted amount was said to be US \$ 199,888. At least from the Defendant's point of view as at 24/4/2014 there was some money due to the Plaintiff.



96. There was an attempt to introduce in the submissions a question why the Plaintiff did not call Grace Ojuma. Ojuma was admitted to be an agent of the Defendant. Failure to call her is not on the Plaintiff but Defendant. The Court is entitled to infer on basis on the document at page 81 that, if she had been called by the Defendant her evidence could have been adverse.

97. In the case of Kenya Akiba Micro Financing Limited V Ezekiel Chebii & 14 Others [2012] eKLR where the court held that: -

“Section 112 of the *Evidence Act* Chapter 80 of the laws of Kenya provides:-

In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proofing of disproving that fact is upon him.....where a party has custody or is in control of evidence which that party fails or refuses to tender or produce, the court is entitled to make adverse inference that if such evidence was produced, it would be adverse to such a party’.

98. The plaintiff cited the case of Kimotho –vs- KCB (2003) 1 EA 108 the court held that adverse inference should be drawn upon a party who fails to call evidence in his possession. This is also in line with Section 109 and 112 of the *Evidence Act*, which provide as doth:-

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person

112. in civil proceeding, when any is especially within knowledge of any party to those proceedings, the burden of proving or disproving that fact is on him.

99. In the Defence evidence, the agent indicated that that money was wrongly remitted to Maersk without notifying the clearing agent causing delay. Using the Defendants documents it is clear the delay was caused by the Defendant either not remitting money or in one occasion, making payment to a different party. The claim for US \$ 108,581 was then made a red herring after the Defendant had purported to case out a reconciliation and find US \$ 199,888 as due. This could be 279,000 if the words of Grace Ojuma were to be considered.

100. In their defence, the defendant did not plead any payment not accounted for. The letter at page 41 explains that port storage demurrage custom warehouse rent are borne by the client. The delay for related to payment if US \$ 11,200 to Maersk was invoiced on 23/9/2023. The payment was made to Damco Logistics, Uganda on 1/10/2013. This was not payment to the Plaintiff.

101. Plaintiff’s documents are bulky. However, I shall summarize pertinent points. It is important to point out that in defence evidence, there was agreement that containers 9, 14, 16, 17, 18, 19 and 20 are in contention. A sum of US \$ 4000 was transport for 40-foot container and 3800 US \$ for 20 feet container in inclusive of their charges.

102. The charges were made up as hereunder: -

A. Charges for 40-Foot Container

a. Shipping line US \$ 389

b. KPA US \$ 236.0

c. Agency US \$ 300



d. Transport US \$ 3075

Total US \$ 4,000

B. charges for a 20-foot container

i. KPA US \$ 159

ii. Agency US \$ 200

iii. shipping line US \$ 270

iv. Transport US \$ 3171

Total US \$ 3, 800

103. The Defendant also admitted that the client is to pay for Ocean freight. There was also lack of funds by the Defendant. The Plaintiff indicated that there were no demurrage payable in the first 35 days. A sum of US \$ 11, 220 was not paid by the Plaintiff but by the Defendant.

104. The three issues for determination in this case are:

- a. Whether there is an outstanding contract amount owed to the Plaintiff by the Defendant.
- b. whether there is an outstanding contract amount owed to the Defendant by the Plaintiff
- c. Costs

105. On the existence, although the Defendant's witness alluded to existence of no contract between the Plaintiff and the Defendant, I note that there was indeed a contract. The principles and practices on unclear and implied contracts which guide courts in scenarios where an express written contract is unavailable have been illuminated as follows: -

“Legal authors in Chesire, Fifoot and Formstons, The Law of Contract, 14th Edition stated in pages 34 and 35 that: -

“The first task of the plaintiff is to prove the presence of a definite offer made.... Proof of an offer to enter into legal relations upon definite terms must be followed by the production of evidence from which the courts may infer an intention by the offeree to accept that offer.”

106. Whereas the foregoing is persuasive, the authors set out the correct legal principles applicable in contract law generally. Therefore, the approach by a Court in considering whether a contract exists is an objective one as opposed to a subjective one.

107. Back home, the Court of Appeal in William Muthee Muthami vs. Bank of Baroda (2014) eKLR observed that: -

“...In the law of contract, the aggrieved party to an agreement must, in addition, prove that there was offer, acceptance and consideration. It is only when those three elements are available that an innocent party can bring a claim against the party in breach.”



108. Further, in *Abdulkadir Shariff Abdirahim & Another vs. Awo Sharriff Mohammed t/a A. S. Mohammed Investments* (2014) eKLR the Court of Appeal held that: -

“There is no general rule of law that all agreements must be in writing. The numerous advantages of a written agreement notwithstanding, all that the law requires is that certain specific agreements must be in writing or witnessed by some written note or memorandum. Section 3(1) of the [Law of Contract Act](#) is one such provision.”

109. On implied contracts, the Court of Appeal in *Ali Abdi Mohamed vs. Kenya Shell & Company Limited* (2017) eKLR referred to the following persuasive decisions: -

In *Lamb v. Evans* [1893]1 Ch 218, Bowen LJ stated:

The common law, it is true, treats the matter from the point of view of an implied contract, and assumes that there is a promise to do that which is part of the bargain, or which can be fairly implied as part of the good faith which is necessary to make the bargain effectual. What is an implied contract or an implied promise in law? It is that promise which the law implies and authorizes us to infer in order to give the transaction that effect which the parties must have intended it to have, and without which it would be futile.”

110. Bingham LJ in *The Aramis* [1989] 1 Lloyd’s Rep 213 made some general observations about the circumstances in which a contract might be implied. At p.224 col. 1, he said:

“As the question whether or not any such contract is to be implied is one of fact, its answer must depend upon the circumstances of each particular case - and the different sets of facts which arise for consideration in these cases are legion. However, I also agree that no such contract should be implied on the facts of any given cases unless it is necessary to do so; necessary that is to say, in order to give business reality to a transaction and to create enforceable obligations between parties who are dealing with the one another in circumstances in which one would expect that business reality and those enforceable obligations to exist.”

111. The foregoing reveal several legal imperatives. They include that a contract may be in writing or implied, that whether a contract is in writing or is implied the elements of offer, acceptance and consideration must be proved, in implying a contract the conduct of the parties remain paramount, that an objective approach in contract interpretation is to be adopted, among others.

112. I therefore find no basis looking at the admitted invoices, correspondence exchanges and the Bill of Lading and general contractual relationship by the conduct of the parties herein to rule out the existence of a valid contract between the Plaintiff and the Defendant, which I find in the circumstance of this case.

113. On this subject, Section 107 (1) of the [Evidence Act](#), Cap 80 Laws of Kenya provides that: -

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

114. Therefore, it follows that the Plaintiff has the duty to prove its claim of US \$ 446,188 and the Defendant has the burden to prove its claim of US \$ 105,581 in evidence. Courts have belabored that the burden and standard of proof in civil cases, which I find necessary to lay down as below. In *Anne*



Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, the Court of Appeal held that: -

“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

115. It follows that the initial burden of proof lies on the Plaintiff. THIS is the legal burden. However, the evidential burden may shift to the Defendant, depending on the circumstances of the case. The same applies to the counter claim where the Defendant is now the plaintiff. In the case of Evans Nyakwana –vs- Cleophas Bwana Ongaro [2015] eKLR it was held that: -

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person... The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.”

116. The question then is what amounts to proof on a balance of probabilities. Kimaru, J in William Kabogo Gitau –vs- George Thuo & 2 Others [2010] 1 KLE 526 stated that: -

“In ordinary civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”

117. Similarly, Lord Nicholls of Birkenhead in *Re H and Others (Minors)* [1996] AC 563, 586 held that: -

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriated in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.....”

118. Furthermore, in *Palace Investment Ltd –vs- Geoffrey Kariuki Mwenda & Another* [2015] eKLR, the Judges of Appeal held that: -

“Denning J, in *Miller –vs- Minister of Pensions* [1947] 2 All ER 372 discussing the burden of proof had this to say: -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal



can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not.

This burden on a balance or preponderance of probabilities means a win however narrow.

A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties...are equally (un) convincing, the party bearing the burden of proof will loose because the requisite standard will not have been attained.”

119. I have perused the claims and find that only US \$ 11, 220 is successfully challenged. The plaintiff was able to proof that a sum of USD 351,945 less 11,220/= making a sub-total total of 340, 725 was due and owing as shipping line charges. These are charges the plaintiff as the defendant’s agent has already guaranteed.
120. I had earlier found a sum of US \$ 94,243 due and owing as haulage charges. This totals up to US \$ 434, 968.
121. In the circumstances, I find that the plaintiff has proved a sum of US \$ 434, 968 as against the Defendant. I accordingly enter Judgment for the said amount of US \$ 434,968 with cost of US \$ 7208 payable to the Plaintiff.

Determination

23. In the final analysis I make the following orders: -
 - i. I enter Judgment for the Plaintiff against the Defendant for a sum of US \$ 434,968.
 - ii. The Counter Claim for US \$ 105, 881 is hereby dismissed with costs of US \$ 2508 to the Plaintiff in the suit.
 - iii. Costs and interest.
 - iv. Interest on US \$ 434,968 to apply from the date of filing on 14/4/2015 till payment in full.
 - v. There be 30 days stay of execution.
 - vi. The file is closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 20TH DAY OF SEPTEMBER 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Lukorito for the Defendant

Njuguna for Plaintiff

