

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CIVIL APPEAL NO. E008 OF 2024**

**TWO FOUR SEVEN ENERGY FOR**  
**SUPPLY OF PETROLEUM PRODUCT.....APPELLANT**  
**VERSUS**  
**LINUS OKUKU ILODE.....RESPONDENT**

**(Appeal from the judgement and decree, by Hon. Kassim  
Akida, Resident Magistrate, in Busia SCC No. E029 of 2023)**

**JUDGEMENT**

1. The suit, at the primary court, was by the respondent, for Kshs. 910,000.00, being money paid by the respondent, to the appellant, for delivery of fuel, which was never supplied. The claim was resisted by the appellant, who denied the claim, and counterclaimed for Kshs. 847,897.00, being the value of the goods supplied, to the respondent, which had not been paid for.
2. An oral hearing was conducted. Both sides called 1 witness each. Judgment was delivered, on 9<sup>th</sup> February 2024, in favour of the respondent.
3. The appellant was aggrieved, hence this appeal. The grounds are that its defence and counterclaim were not considered; failing to question why the respondent would pay Kshs. 1,400,000.00 to settle an outstanding credit facility; the court declining to entertain evidence to challenge the allegations made by the respondent that he did not owe the appellant for fuel supplied; the trial court disregarding the counterevidence that clearly established the intentions and conduct of the appellant and the respondent; failing to find that it was the respondent who was indebted to the appellant; and failing to factor in the fact that the respondent

had not established a case on a balance of probability, as the evidence by the respondent had massive irregularities and contradictions.

4. Directions were taken, on 9<sup>th</sup> June 2025, for canvassing of the appeal, by written submissions.
5. On its defence not being considered, it is submitted, by the appellant, that the trial court focused only on the respondent's evidence, without considering the testimony by the appellant that the respondent was indebted to it for prior fuel supplies worth Kshs. 1,700,000.00. It is submitted that the appellant had led evidence that the respondent paid Kshs. 3,400,000.00, with instructions to supply 2 trucks of fuel and to refund the balance, acknowledging that a debt of Kshs. 1,700,000.00; and a refund of Kshs. 1,400,000.00 was made at the request of the respondent, with a promise to clear the debt.
6. The appellant submits that there was failure to analyse the evidence of the oral agreement. It is also submitted that the trial court failed in not interrogating why the respondent paid Kshs. 3,400,000.00 and received a refund of Kshs. 1,400,000.00 if the debt existed. It is further submitted that the trial court refused to consider the evidence challenging the indebtedness of the respondent, by dismissing the defence documents due to discrepancies in the receipt names, without considering whether the respondent had received the deliveries.
7. The matter herein turns largely on the evidence tendered. The respondent claimed that he deposited Kshs. 910,000.00 for fuel, which was not delivered; while the appellant claimed Kshs. 847,892.00 for fuel supplied and unpaid for.
8. The respondent stated that he had been doing business with the appellant, who would supply him with fuel on the basis

of cash on delivery. He testified that, on 24<sup>th</sup> August 2024, he deposited, into the account of the appellant, Kshs. 3,400,000.00, for supply of fuel. The appellant deducted what was due to it, and deposited the balance of Kshs. 1,300,000.00 back into his account. He then ordered for fuel worth Kshs. 910,000.00, on 6<sup>th</sup> September 2023. That consignment was never delivered. He denied owing any money to the appellant. He stated that he made a deposit, on 23<sup>rd</sup> August 2023, into their account Kshs. 3,600,000.00 from which they deducted Kshs. 2,300,000.00 owed, and then returned the balance on 4<sup>th</sup> September 2023. He asserts that if anything was owing, there would have been no refund.

9. The witness, for the appellant, testified that they used to supply the respondent with fuel, who would then pay for it the following day. He testified to receiving Kshs. 3,600,000.00, on the understanding that they would supply fuel to the respondent, in 2 trucks, and refund the balance. He explained that they did not deduct what was due, because the respondent had asked to be given the balance, so that he could pay what he owed from money he was expecting from the Cooperative Bank. He said that the appellant was owed Kshs. 1,700,000.00; which the respondent settled in tranches of Kshs. 90,000.00, Kshs. 88,000.00, Kshs. 700,000.00 and Kshs. 210,000.00. He said the appellant would still supply fuel, even before the respondent had settled the earlier debt. He said that the appellant supplied fuel worth Kshs. 847,000.00, between April and August, which the respondent did not pay for.

10. During cross-examination, he admitted to receiving Kshs. 3,600,000.00, from the respondent, to pay for fuel, in August 2023, which fuel had been supplied between April and August 2023. Kshs. 1,700,000.00 was the amount accumulated, in respect of the fuel supplied. The balance or surplus was refunded, at the request of the respondent, yet there was an amount outstanding. He conceded that no fuel

was supplied after the respondent deposited Kshs. 910,000.00, explaining that that was because there was an outstanding balance of Kshs. 847,000.00.

11. The trial court reviewed that evidence, and was persuaded that the appellant had not provided proof that it supplied fuel to the respondent which was not paid for; and that there was evidence, which was admitted by the appellant, that the respondent deposited with it Kshs. 910,000.00; but the fuel was not supplied, allegedly as there was a debt.
12. What came out, from that evidence, and which the trial court considered, is that the 2 sides conducted business, involving large sums of money, but the appropriate accounting documents were not generated, such as appropriate delivery notes, invoices and receipts. The parties relied on digital communication in social platforms, such as WhatsApp, and on bank statements, instead of the traditional accounting documents.
13. There was one piece of very clear evidence; the respondent deposited Kshs. 910,000.00, with the appellant, for fuel. The deposit was evidenced by the bank account statement. The receipt of that amount was acknowledged by the witness for the appellant, but he justified the non-supply of the fuels on outstanding debt. Yet, the evidence on the outstanding debt of Kshs. 847,000.00 was not established.
14. The appellant relied on 2 delivery notes. However, the supply, evidenced by the delivery notes, was not to the respondent, and the connection between the recipients and the respondent was not established. Additionally, the value of the fuels, allegedly delivered, was not indicated. Those delivery notes were for 30<sup>th</sup> June 2023. It was common ground that a deposit was made by the respondent for Kshs. 3,600,000.00, on 24<sup>th</sup> September 2023, to clear the debts

incurred by the respondent, between April and August 2023. The appellant deducted what was due, and refunded the balance, of Kshs. 1,300,000.00.

15. One would presume that the amount received in August 2023, to clear the debts incurred prior, should have cleared the alleged debts of 30<sup>th</sup> June 2023, if at all the deliveries, the subject of the delivery notes produced as evidence, were made to the respondent. Otherwise, there would have been no point of refunding moneys received, when there were still debts outstanding.
16. Based on the evidence tendered, the trial court was justified to come to the conclusions that it came to. I do not, in the circumstances, find merit in the appeal herein. I hereby dismiss the same, with costs to the respondent. Orders accordingly.
17. The last thing. This was a matter before the Small Claims Court. The Small Claims Court is not a Magistrate's Court, but a separate court, established under the Small Claims Court Act, Cap. 10A, Laws of Kenya, while the Magistrate's Court is established under the Magistrate's Court Act, Cap. 10, Laws of Kenya. The 2 courts are distinct and separate.
18. I raise this as I have noticed that the impugned judgement, herein, was signed by a "Magistrate." Yet, magistrates have no jurisdiction over claims filed at the Small Claims Court, under the Small Claims Court Act. The judicial officer vested with jurisdiction, under the Small Claims Court Act, is an Adjudicator. The impugned judgement should have been signed by an Adjudicator. A magistrate exercises jurisdiction over claims filed in a magistrate's court, under the Magistrates Court Act. A magistrate cannot lawfully sign a judgement in a Small Claims Court matter, as a magistrate, for lack of jurisdiction.

19. I am aware that that no substantive Adjudicators have been appointed to handle the Small Claims Court matters, filed in the Small Claims Court, and some magistrates have, instead, been appointed to act as Adjudicators. That, however, is no excuse for such magistrates, to sign off judgements at the Small Claims Court, as magistrates, for they do not sit as magistrates at the Small Claims Court, but as Adjudicators. Signing judgements, and other processes, at the Small Claims Court in their capacity as magistrates, instead of Adjudicators, could expose those judgments to challenge, for legitimacy questions could arise.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN  
CHAMBERS, AT BUSIA,  
THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

**Mr. Ojijo, instructed by Ojijo Senaji & Associates, Advocates for the appellant.**

**Mr. Ouma, instructed by BM Ouma & Company, Advocates for the respondent.**