

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMMA NO. E159 OF 2023**

HFC LIMITED.....APPELLANT

-VERSUS-

QUALANT LOGISTICS LIMITED.....1<sup>ST</sup> RESPONDENT

ROBERT MOEGI ONYONO.....2<sup>ND</sup> RESPONDENT

LEAH WANGESHI WACHIRA.....3<sup>RD</sup> RESPONDENT

*(Being an Appeal from part of the judgment and decree of the Learned Magistrate, Hon. B.M. Cheloti, Principal Magistrate, delivered on 23<sup>rd</sup> June 2023 in MCCOMMSU No. E480 of 2021 at the Chief Magistrate's Court, Nairobi.)*

**JUDGMENT**

1. The (plaintiff) appellant filed a suit against the defendants (respondents) in the lower Court vide a plaint dated 31<sup>st</sup> March 2021, seeking judgment against them jointly and severally for special damages in the sum of Kshs.7,230,838.31, being the amount due and owing as at 22<sup>nd</sup> December 2020, together with interest at the Kenya Bankers base rate of 13% per annum from that date until payment in full, and an order compelling the defendants to surrender the motor vehicles registration numbers KCF 647R, KCF 355E & ZF 2886F for purposes of valuation and sale, with the proceeds, if any, to be applied towards reduction of the outstanding debt.
2. The appellant's case was that pursuant to various letters of offer dated 20<sup>th</sup> November 2015, 14<sup>th</sup> December 2015 and 15<sup>th</sup> February 2016, it advanced the 1<sup>st</sup> respondent three (3) separate hire purchase facilities of Kshs.3,360,000/=, Kshs.3,600,000/=, and Kshs.2,160,000/=, respectively,

to facilitate the purchase of motor vehicles registration numbers KCF 647R (tractor), ZF 2886F (trailer), and KCF 355E (prime mover) respectively, on agreed repayment terms with interest and charges as set out in the Hire Purchase Agreements. The appellant stated that under the said Agreements, the 2<sup>nd</sup> & 3<sup>rd</sup> respondents executed guarantees undertaking to indemnify it against any loss arising from the 1<sup>st</sup> respondent's default.

3. The appellant averred that the 1<sup>st</sup> respondent subsequently breached the Agreements by failing to service and repay the facilities despite numerous accommodation by it, leading to termination of the Agreements. It asserted that efforts to repossess the subject motor vehicles in March 2018 were unsuccessful as they were concealed and their tracking systems tampered with. That although the 1<sup>st</sup> respondent later admitted indebtedness in writing on 17<sup>th</sup> April 2018 and proposed a payment plan, it was not honoured. It further stated that despite demand and notice of intention to sue, the respondents failed or refused to regularize the accounts.
4. In opposition to the appellant's suit, the 3<sup>rd</sup> respondent filed a statement of defence dated 8<sup>th</sup> September 2021 where she denied all the averments contained in the appellant's plaint. The 3<sup>rd</sup> respondent averred that she is a stranger to the matters pleaded in paragraphs 7 & 10 of the appellant's plaint. She contended that no order compelling surrender of the alleged motor vehicles ought to issue against her. She further averred that no demand or notice of intention to sue was served upon her prior to the institution of the suit in the lower Court and that she was under no obligation to satisfy the appellant's claim.
5. In a Judgment delivered by the Trial Court on 23<sup>rd</sup> June 2023, the said Court held that the appellant failed to prove, on a balance of probabilities,

that the 3<sup>rd</sup> respondent should be held liable to indemnify the 1<sup>st</sup> respondent. It entered Judgment for the appellant against the 1<sup>st</sup> & 2<sup>nd</sup> respondents for payment of Kshs.7,230,838.31, being the amount due and owing as at 22<sup>nd</sup> December 2020, together with interest at the Kenya Bankers base rate of 13% per annum from 22<sup>nd</sup> December 2022 until payment in full, an order compelling them to surrender motor vehicles registration numbers KCF 647R, KCF 355E & ZF 2886F for purposes of valuation and sale, with the proceeds, if any, to be applied towards reduction of the outstanding debt and an order that the costs of the suit be borne by the 1<sup>st</sup> & 2<sup>nd</sup> respondents herein.

6. Dissatisfied with part of the aforesaid Judgment, the appellant filed a Memorandum of Appeal dated 19<sup>th</sup> June 2023, raising the following grounds of appeal -

- i) That the learned Trial Magistrate erred in law and fact when she failed to consider the appellant's evidence indicating that the 3<sup>rd</sup> respondent had guaranteed to indemnify the appellant for any loss incurred by breach of the obligations by the 1<sup>st</sup> respondent under the hire purchase facilities advanced to the 1<sup>st</sup> respondent by the appellant;
- ii) That the learned Trial Magistrate erred in fact and law when she failed to consider that the 3<sup>rd</sup> respondent admitted to having guaranteed to indemnify the appellant for any loss incurred by breach of the obligations by the 1<sup>st</sup> respondent under the hire purchase facilities advanced to the 1<sup>st</sup> respondent by the appellant;
- iii) That the learned Trial Magistrate erred in fact and law by disregarding her own finding that the 3<sup>rd</sup> respondent had indeed guaranteed to indemnify the appellant for any loss incurred by breach of the obligations by the 1<sup>st</sup> respondent under the hire

purchase facilities advanced to the 1<sup>st</sup> respondent by the appellant;

- iv) That the learned Trial Magistrate erred in fact and law in finding that the 3<sup>rd</sup> respondent was not liable to indemnify the appellant for any loss incurred by breach of the obligations by the 1<sup>st</sup> respondent under the hire purchase facilities advanced to the 1<sup>st</sup> respondent by the appellant;
- v) That the learned Trial Magistrate misdirected herself when she failed to appreciate that the 3<sup>rd</sup> respondent was sued in her capacity as a guarantor and not as a Director of the 1<sup>st</sup> respondent;
- vi) That the learned Trial Magistrate misdirected herself when she held that the appellant had failed to prove whether it was the 3<sup>rd</sup> respondent who signed the proposed payment plan on behalf of the 1<sup>st</sup> respondent or whether the 3<sup>rd</sup> respondent was still a Director of the 1<sup>st</sup> respondent; and
- vii) That the learned Trial Magistrate erred in fact and law in failing to take cognizance of the fact that the 3<sup>rd</sup> respondent can only be released from the guarantees upon settlement of all liabilities to which the guarantees relate.

7. The appellant's prayer is for this Appeal to be allowed in its entirety with costs against the 3<sup>rd</sup> respondent, for the Court to find that the 3<sup>rd</sup> respondent guaranteed the hire purchase facilities advanced to the 1<sup>st</sup> respondent, thereby obligating her to indemnify the appellant for losses arising from breach of the said facilities, issue a declaration that the appellant is entitled to indemnity from the 3<sup>rd</sup> respondent and an order that the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondents are jointly and severally liable to pay the appellant Kshs. 7,230,838.31, being the amount due and owing as at 22<sup>nd</sup> December 2020, together with interest at the Kenya Bankers base rate of

13% per annum from that date, until payment in full. The appellant also prayed that the costs of the suit in the Trial Court be borne jointly by the respondents.

8. The instant Appeal was canvassed by way of written submissions. The appellant's submissions were filed on 6<sup>th</sup> August 2025 by the law firm of Wainaina Ileri Advocates LLP, while the 3<sup>rd</sup> respondent's submissions were filed by the law firm of Saroni & Stevens Advocates on 19<sup>th</sup> January 2026. From the Court record and the Case Tracking System, the 1<sup>st</sup> & 2<sup>nd</sup> respondents did not participate in this Appeal.
9. Ms Mwai, learned Counsel for the appellant submitted that the Trial Magistrate erred in law and fact by failing to properly consider and give effect to the Guarantee Agreements executed by the 3<sup>rd</sup> respondent, which unequivocally bound her to indemnify the appellant for losses arising from the 1<sup>st</sup> respondent's breach of the Hire Purchase Agreements dated 20<sup>th</sup> November 2015, 14<sup>th</sup> December 2015 and 15<sup>th</sup> February 2016. She further submitted that the said Guarantee Agreements, duly produced as exhibits, expressly obligated the 2<sup>nd</sup> & 3<sup>rd</sup> respondents to indemnify the appellant in respect of facilities advanced for motor vehicles registration Nos. KCF 647R, ZF 2886F & KCF 355E. Counsel asserted that the 3<sup>rd</sup> respondent admitted both in her evidence-in-chief and during cross-examination that she guaranteed the facilities.
10. Ms Mwai relied on the Court of Appeal case of **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another** [2001] eKLR and the case of **Weru v Nderitu** [2023] KEHC 20678 (KLR), and argued that the Trial Court, despite acknowledging that the guarantees existed, contradicted itself by declining to hold the 3<sup>rd</sup> respondent liable, thereby effectively re-writing the contracts between the parties herein and misapplying settled principles of contract law. She maintained that a

guarantor's liability is contractual, objective, and independent of whether the guarantor was a Director of the principal debtor, and that such liability can only be discharged upon full settlement of the guaranteed obligations.

11. Ms Ogolla, learned Counsel for the 3<sup>rd</sup> respondent submitted that the instant Appeal is devoid of merits and that the learned Trial Magistrate correctly found the 3<sup>rd</sup> respondent not liable, contending that the alleged deeds of guarantee relied upon by the appellant are fundamentally defective and unenforceable as they fail to identify, with any degree of specificity, the underlying Hire Purchase Agreements, the obligations guaranteed, or even the parties involved. He further submitted that the said deeds of guarantee consist merely of signatures without essential contractual particulars. Counsel argued that as a matter of settled law, a valid guarantee must clearly and unequivocally disclose the agreement secured, the nature and scope of the obligations guaranteed, and the intention of the guarantor, failing which no enforceable liability can arise.
12. Counsel cited **Halsbury's Laws of England (4<sup>th</sup> Ed. 2004 re issue)** at paragraph 101 and maintained that the 3<sup>rd</sup> respondent lacked the requisite intention to be legally bound, having testified that the documents were presented to her for signature without explanation, context, or opportunity for clarification, and no evidence was adduced by the appellant to demonstrate informed execution. Mr. Ogolla submitted that the 3<sup>rd</sup> respondent was merely a minority shareholder and a passive Director of the 1<sup>st</sup> respondent, who was excluded from management and operational decisions, and who later resigned from the company, and cannot therefore be held liable for the 1<sup>st</sup> respondent's debts, a position corroborated by an affidavit sworn by the 2<sup>nd</sup> respondent.

#### **ANALYSIS AND DETERMINATION.**

13. This being a first Appeal, it is by way of re-trial and as the first appellate Court, I have the duty to re-evaluate, re-analyze and re-consider the evidence adduced before the Trial Court and draw my own conclusions, while bearing in mind that I did not see the witnesses testify and give due allowance for the said fact. That was the position taken by the Court in the case of **Peters v Sunday Post Limited** [1985] EA 424, where it was held as follows –

*It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...*

14. An appellate Court will only interfere with the findings of a Trial Court if the same are founded on wrong principles of law or if the Court misdirected itself on facts. To this end, I am bound by the Court of Appeal finding in the case of **Mwanasokoni v Kenya Bus Services Ltd** [1985] KLR 931, where it was held that -

*Accordingly, on when a finding of fact that is challenged on appeal is based on no evidence, or on a misapprehension of evidence or the judge is shown demonstratively to have acted on wrong principles in reaching a finding he did, will this court interfere.*

15. I have re-examined the entire Record of Appeal and given due consideration to the written submissions by Counsel for the parties. The issue that arises for determination is whether the learned Trial Magistrate erred in finding that the 3<sup>rd</sup> respondent was not liable to indemnify the

appellant under the alleged Guarantee Agreements arising from the Hire Purchase Agreements between the appellant and the 1<sup>st</sup> respondent.

16. The appellant advanced three hire purchase facilities to the 1<sup>st</sup> respondent pursuant to letters of offer dated 20<sup>th</sup> November 2015, 14<sup>th</sup> December 2015 and 15<sup>th</sup> February 2016, and the 1<sup>st</sup> respondent defaulted in repayment of the said hire purchase facilities. It is also common ground that Judgment by the Trial Court was properly entered against the 1<sup>st</sup> & 2<sup>nd</sup> respondents. The dispute before this Court is confined to the enforceability of the guarantees allegedly executed by the 3<sup>rd</sup> respondent.
17. From the Record of Appeal, the appellant produced deeds of guarantee executed contemporaneously with the Hire Purchase Agreements, which expressly stated that the 2<sup>nd</sup> & 3<sup>rd</sup> respondents guaranteed and undertook to indemnify the appellant against loss arising from the 1<sup>st</sup> respondent's default of the Hire Purchase Agreements. On perusal of the 3<sup>rd</sup> respondent's statement of defence, and her evidence before the Trial Court, it is evident that she neither alleged nor demonstrated that the said guarantees were executed as a result of fraud, coercion, duress, or illegality. The existence of the guarantees was as a matter of fact, acknowledged by the Trial Court.
18. This Court further notes that during cross-examination of the 3<sup>rd</sup> respondent, she admitted that she signed the guarantee documents. While she sought to downplay the legal effect of the said guarantees by submitting that the documents were not explained to her, there was no evidence placed before the Court to demonstrate fraud, misrepresentation, coercion, undue influence, or incapacity that would vitiate the contracts. In the often cited case of **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another** [2001] KECA 362 (KLR), the Court of

Appeal in appreciating the effect and/or the binding nature of a contract held that –

*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. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.*

*As was stated by Shah JA in the case of Fina Bank Limited vs Spares & Industries Limited (Civil Appeal No 51 of 2000) (unreported):*

*“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain”.*

19. In light of the evidence adduced before the Trial Court and the above authority, this Court is persuaded that the learned Trial Magistrate fell into error by acknowledging the existence of valid guarantees, yet she declined to enforce them as against the 3<sup>rd</sup> respondent herein, without any legal basis for doing so. Once the Trial Court found, as it did, that the guarantees existed and were executed by the 3<sup>rd</sup> respondent, the only remaining inquiry ought to have been whether the conditions for enforcement had arisen. It is not in contest that the 1<sup>st</sup> respondent defaulted, thereby triggering the guarantor’s obligation to indemnify the appellant.
20. This Court is further persuaded that the Trial Court misdirected itself by placing undue emphasis on the 3<sup>rd</sup> respondent’s status as a Director/shareholder of the 1<sup>st</sup> respondent company, or her alleged participation in management decisions of the 1<sup>st</sup> respondent. This is

because a guarantor's liability is purely contractual and does not arise from corporate office or shareholding. On perusal of the appellant's plaint, it is clear that the appellant's claim against the 3<sup>rd</sup> respondent was founded on the Guarantee Agreements, not on her status as a Director of the 1<sup>st</sup> respondent company. Consequently, considerations such as whether she was a passive Director, had resigned, or signed repayment proposals on behalf of the company were irrelevant to the question of her liability as a guarantor.

21. On perusal of the Guarantee Agreements, it is evident that they were executed in the context of clearly identifiable hire purchase facilities, referenced the indebtedness of the 1<sup>st</sup> respondent, and were linked to the financing of the subject motor vehicles. When read together with the letters of offer and Hire Purchase Agreements, the intention of the parties and the scope of the guaranteed obligations were sufficiently certain. It is trite law that contracts must be construed holistically and not in isolation. The argument advanced by the 3<sup>rd</sup> respondent that the Guarantee Agreements were vague or lacked specificity was not supported by the evidence that was presented before the Trial Court.
22. This Court is therefore persuaded that the learned Trial Magistrate misapprehended both the evidence and the applicable principles of law governing guarantees, and arrived at an erroneous conclusion. This Court is satisfied that the appellant proved on a balance of probabilities that the 3<sup>rd</sup> respondent guaranteed the hire purchase facilities, and she is contractually bound to indemnify the appellant for losses arising from the 1<sup>st</sup> respondent's breach of the Hire Purchase Agreements. This Court therefore finds that this is a proper case for appellate interference as contemplated in the case of **Mwanasokoni v Kenya Bus Services Ltd** (supra).

23. In light of the foregoing, this Court finds that the instant Appeal is merited and it is hereby allowed in the following terms -

- i) **The part of the Judgment of the Trial Court delivered on 23<sup>rd</sup> June 2023 absolving the 3<sup>rd</sup> respondent from liability is set aside and substituted with an order that the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondents are jointly and severally liable to the appellant for the sum of Kshs.7,230,838.31, being the amount due and owing as at 22<sup>nd</sup> December 2020, together with interest at the Kenya Bankers base rate of 13% per annum, from that date until payment in full;**
- ii) **An order is hereby made compelling the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondents to surrender motor vehicles registration No. KCF 647R, KCF 355E & ZF 2886F for purposes of valuation and sale, and the proceeds, if any, shall be applied towards reduction of the outstanding debt; and**
- iii) **The costs of the suit in the Trial Court and of this Appeal are awarded to the appellant and shall be borne jointly and severally by the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondents.**

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI on this 13<sup>th</sup> day of February 2026. Judgment delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI  
JUDGE**

**In the presence of:-**

Mr. Mwai Muthoni h/b for Mr. Ngugi for the appellant

No appearance for the 1<sup>st</sup> & 2<sup>nd</sup> respondents

Ms Agasha with Mr. Ogolla for the 3<sup>rd</sup> respondent

Mr. Kimutai – Court Assistant.

ORIGINAL