



**Hae Kenya Limited v Sahara Winds Limited (Commercial Case E668 of 2024)
[2026] KEHC 2522 (KLR) (Commercial and Tax) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E668 OF 2024
JWW MONG'ARE, J
FEBRUARY 19, 2026**

BETWEEN

HAE KENYA LIMITED PLAINTIFF

AND

SAHARA WINDS LIMITED DEFENDANT

RULING

Introduction and Background

1. By the application dated 13th May 2025, the Defendant seeks to strike out the Plaintiff's suit on the grounds that the Plaintiff has no locus standi to file the present suit. Through the grounds set out on its face and the supporting affidavit of the Defendant's director, Leonard Mukhala, sworn on 13th May 2025, the Defendant avers that the Plaintiff is merely an agent of a disclosed principal, DHL Aviation ("DHL") and that the Defendant engaged DHL for freight services, and DHL referred them to its local agent, the Plaintiff. That there is no direct contractual relationship between the Plaintiff and the Defendant and the contract is solely between DHL and the Defendant.
2. The Defendant contends that the Plaintiff lacks authority to file this suit on behalf of DHL and is not privy to the transaction and that the proper plaintiff should be DHL which has not shown any interest in pursuing the claim. It accuses the Plaintiff of failing to disclose its agency relationship with DHL to the court, which amounts to suppressing material facts, that key documents such as air waybills relied upon by the Plaintiff are issued in the name of DHL, not the Plaintiff and that when the Defendant previously made a claim for spoiled perishable cargo, the Plaintiff referred them to DHL reinforcing that the Plaintiff is not the liable party. As such, the Defendant states that allowing the suit to proceed would waste the time and resources of both the court and the Defendant.



3. In response, the Plaintiff opposes the application, arguing it is frivolous, baseless, and an abuse of court process. It highlights the Defendant's inconsistency by stating that the Defendant filed a Defence and Counter-claim against the Plaintiff, acknowledging a relationship by suing for alleged negligence and confirming substantial part-payments to the Plaintiff. The Plaintiff deposes it is self-defeating for the Defendant to now claim no privity of contract and asserts that the Defendant has always dealt directly with the Plaintiff, not DHL, for services, billing, and payments related to the disputed shipment.
4. The Plaintiff counters the locus standi argument by attaching the Cargo Sales Agency Agreement with DHL dated 1st June 2022 claiming this agreement grants it the requisite authority to lodge and prosecute this suit. Specifically, it references clauses that outline its financial and operational responsibilities like invoicing customers and collecting freight rates, which imply a role in managing claims and liabilities arising from sales. The Plaintiff denies suppressing the agency relationship, stating its role was clear in the course of dealings and states it received the Defendant's claim and duly passed it to the operating airline, DHL, which rejected it under its own terms. This, the Plaintiff argues, is a normal process and does not negate its own standing in the contract with the Defendant and that even if there were any issue regarding the proper party, which is denied, the Plaintiff cites Order 1 Rules 9 and 10 of the Civil Procedure Rules, arguing that a misjoinder of parties is not fatal to a suit and the court has the power to remedy such a situation. For these reasons, the Plaintiff prays that the Defendant's application to strike out the suit be dismissed with costs.

Analysis and Determination

5. After careful consideration of the parties' pleadings and rival submission I note that the main issue for determination is whether indeed the Plaintiff is an agent of DHL, a disclosed principal and if so, that it lacks the requisite locus standi to sustain these proceedings. The parties agree that it is a common law principle that where the principal is disclosed, the agent cannot sue or be sued (see *Antony Francis Wareham t/a AF Wareham & 2 others v Kenya Post Office Savings Bank* [2004] KECA 166 (KLR)). Having reviewed the evidence in the parties' depositions, I find that the Plaintiff appears to have been acting as a principal in its own right in the subject transaction, not merely as an agent for a disclosed principal, that is DHL and I say so for a number of reasons. First, the Cargo General Sales Agency Agreement dated 1st June 2022 is explicit at Clause 2.2 that the Plaintiff's "...appointment by the principal [DHL] is on an undisclosed agency (commissionaire) basis for and on behalf of the principal." This contractually establishes the Plaintiff's role as one who contracts in its own name with customers.
6. Second, Clause 7.6 details the Plaintiff's duties of invoicing customers, collecting all Freight Rates and charges, and being solely responsible for the collection and remission of payments to DHL. I find this to be the behavior of a principal dealing with a customer. Third, Clause 6.3 restricts the Plaintiff from taking legal action in the name of DHL which implies that legal action, if taken, would be in the Plaintiff's own name, which is precisely what has happened here. Fourth, the Defendant did not deny and actually deposed that it has been making part payments to the Plaintiff which is consistent with a direct contractual relationship. Fifth, I am also in agreement with the Plaintiff's position that the Defendant's own Defence and Counter-claim is fatal to its application in that by counter-claiming against the Plaintiff for negligence, the Defendant implicitly recognized the Plaintiff as the proper party to the contract for the service. It is legally inconsistent to sue someone for breaching a contract while simultaneously arguing no contract exists with them.
7. Sixth, while I can agree that the Defendant may have known that DHL was the operating airline, this knowledge is not the same as contractual disclosure in an agency context. The contract for services was made with the Plaintiff who invoiced and was paid. DHL's role was as the sub-contracted performer of the carriage leg, not as the disclosed principal of the service contract. Seventh, I am in agreement



and persuaded with the Plaintiff's submission that as a matter of custom and trade usage in the aviation and cargo carriage industry, it is standard to have the Air Waybills in the name of the carrier or operating airline such as DHL. The contract of carriage is between the shipper/consignee and the carrier. However, the contract for the forwarding/logistics service, which includes arranging the carriage, providing the Air Waybills, collecting payment, and assuming responsibility for the logistics chain, is between the Defendant and the Plaintiff. The Plaintiff sold a logistics service using DHL's air capacity, it did not merely act as a transparent conduit for a direct DHL-Defendant contract.

8. As such, I find that the weight of the evidence strongly suggests the Plaintiff was acting as a principal and an undisclosed agent/commissionaire in its dealings with the Defendant, not as a simple disclosed agent for DHL. Therefore, I am satisfied that a direct contractual relationship for freight forwarding services existed between the Plaintiff and the Defendant and as such, the Plaintiff has locus standi to sue and be sued on that contract.

Conclusion and Disposition

9. In the upshot, the Defendant's application dated 13th May 2025 is dismissed with costs awarded to the Plaintiff. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF FEBRUARY 2026

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J.W.W. MONGARE

JUDGE

In the Presence of

1. Mr. Litoro for the Plaintiff/Applicant.
2. N/A for the Respondent.
3. Amos - Court Assistant

