

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E011 OF 2025

**STOKMAN ROZEN KENYA
LIMITED.....APPELLANT**

VERSUS

PRIME FLORA

LIMITED.....RESPONDENT

***(Being an appeal from the judgment delivered by Hon.
(Adjudicator) in Naivasha in SCCCOMM/E207/2024)***

JUDGMENT

Background

1. The Appellant instituted proceedings before the Small Claims Court claiming Kshs. 986,632.95/= being an alleged outstanding amount arising from supplies of flower seedlings on credit. The Appellant's claim before the Small Claims Court was anchored on an alleged long-standing business relationship where it supplied flower seedlings to the Respondent on credit, and the Respondent would pay later.
2. The Appellant maintained that between 2017 and 2020, the Respondent fell behind on payments, and that as at 2020 the outstanding balance was allegedly USD 8,234.98, which the Appellant converted into Kenya Shillings at an alleged

exchange rate of Kshs. 119.81 per dollar, arriving at the claim of Kshs. 986,632.95/=.

3. The Respondent partly admitted liability for one invoice dated 13.02.2019 in the amount of USD 721.52, but denied knowledge of the other invoices and the persons who allegedly received the supplies on the delivery notes.

4. Upon considering the pleadings, evidence and submissions, the trial court made findings, inter alia, that: -

i) The invoice and delivery note of 13.02.2019 was not contested;

ii) The other invoices were disputed and the Appellant did not sufficiently prove delivery to the Respondent or persons acting as the Respondent's agents;

iii) The invoices were sent to Maxiflora Ltd, which was not the Respondent herein (Prime Flora Ltd), and the relationship between Maxiflora and the Respondent was not demonstrated;

iv) In the absence of proof on agency and delivery, the disputed invoices could not succeed;

v) On the exchange rate, the Appellant did not prove the alleged agreed exchange rate of Kshs. 119.81, and the supported exchange rate was that reflected on the invoice.

5. The trial court accordingly entered judgment for the Appellant in the sum of Kshs. 72,352/=, plus costs and interest, and dismissed the remainder of the claim.

The Appeal

6. Dissatisfied with the decision of the trial court, the Appellant filed this appeal. The Appellant's memorandum of appeal raised the following main grounds: -

a) That the trial court failed to take cognizance of the long-standing business relationship and thereby failed to apply the doctrine of estoppel.

b) That the trial court erred by ignoring the probative value of invoices and delivery notes produced in support of the claim.

c) That the trial court disregarded the Appellant's pleadings, evidence and submissions and arrived at an erroneous conclusion.

7. The appeal was canvassed by way of written submissions which I have considered.

Appellant's Submissions

8. The Appellant submitted that the parties had a long-standing business relationship based on supply of flower seedlings on credit, and that the Respondent's dealings, conduct and partial payments over time established a course of conduct that the trial court ought to have recognized.

9. The Appellant argued that the Respondent should be estopped from denying deliveries that occurred under the same established mode of doing business. The Appellant contended that it produced invoices, delivery notes,

spreadsheets and email correspondence showing supplies made and amounts outstanding.

10. It was further submitted that the trial court erred by rejecting delivery notes merely because they lacked stamps and by demanding strict written authority for persons collecting goods, despite the practical realities of business operations.
11. The Appellant urged the Court to allow the appeal, set aside the decision of the trial court, and substitute it with judgment for the full claim of Kshs. 986,632.95/= together with costs and interest.

Respondent's Submissions

12. The Respondent opposed the appeal and supported the judgment of the trial court.
13. The Respondent submitted that the Appellant sued in the Small Claims Court for Kshs. 986,632.95/=, but the Respondent admitted only Kshs. 73,352/=, being the invoice for the last delivery of 13th February 2019 for USD 721.52, converted at the invoice exchange rate of Kshs. 100.2772.
14. The Respondent asserted that all other invoices and delivery notes dated 26th April 2019, 21st January 2021, and 2nd December 2021 were unknown to it. The Respondent also denied receiving the goods and stated that the persons named as recipients in the disputed delivery notes were strangers.
15. The Respondent further emphasized that the Appellant, through email extracts, forwarded the disputed invoices to a

company known as Maxiflora Limited, which is distinct from Prime Flora Limited, and the Appellant did not produce evidence linking Maxiflora Limited to the Respondent. Consequently, the Respondent argued that the trial court correctly found that if the deliveries were made to Maxiflora Ltd, then that entity should have been sued.

16. The Respondent also submitted that the burden of proof lay on the Appellant and did not shift to the Respondent, relying on the principle that “he who alleges must prove” as codified under the Evidence Act.

17. On the alleged exchange rate of Kshs. 119.81, the Respondent submitted that no agreement was produced to demonstrate that such an exchange rate was agreed upon, and that the invoices themselves contained applicable exchange rates which did not reflect the claimed rate.

18. The Respondent concluded that the appeal lacks merit and urged the Court to dismiss it with costs.

Duty of the First Appellate Court

19. As the first appellate court, this Court is obliged to reconsider and re-evaluate the evidence and arrive at its own independent conclusion, while bearing in mind that it did not have the advantage of seeing and hearing witnesses testify. (See ***Selle & Another vs. Associated Motor Boat Co. Ltd* [1968] EA 123**).

Issues for Determination

20. Having considered the record of appeal, the grounds of appeal and rival submissions, I find that the appeal turns on the following issues: -

- a) ***Whether the trial court erred in finding that the Appellant did not prove delivery and liability for the disputed invoices.***
- b) ***Whether the trial court erred in rejecting the Appellant's claim based on the issue that invoices were sent to Maxiflora Ltd and not Prime Flora Ltd.***
- c) ***Whether the doctrine of estoppel was applicable, and if so, whether the Respondent was estopped from denying liability for the disputed invoices.***
- d) ***Whether the Appellant proved the applicable exchange rate and the sum claimed.***

Analysis and Determination

Disputed Invoices

21. It is trite law that he who alleges must prove. Section 107(1) of the Evidence Act provides that: -

Whoever desires any court to give judgment... must prove that those facts exist.

22. In ***Kirugi & Another vs. Kabiya & 3 Others [1987] KLR 347***, the Court held that the burden of proof is always on the Plaintiff to prove his case on a balance of probabilities.

23. Applying the above stated principle to this case, the starting point is that the Appellant bore the burden of proof

on a balance of probabilities. That burden is, however, not one of mathematical certainty. It is satisfied if the court is persuaded that the existence of the fact in issue is more probable than not.

24. In commercial transactions conducted over time, proof of supply and indebtedness is rarely confined to a single document. Courts routinely evaluate the totality of the documentation generated in the ordinary course of business purchase patterns, invoices, delivery notes, statements of account, emails, and conduct of the parties (including admissions and partial payments). In ***Machiri Limited vs. JB Legacy Enterprises Limited*** [2024] KEHC 12105 (KLR) the court upheld proof of indebtedness based on combined commercial documents. The court rendered itself as follows: -

“I am satisfied that the Respondent proved its case on a balance of probability by relying on the statement of account, invoices and delivery notes to proof his liquidated claim.”

25. Similarly, in ***Securex Agencies (K) Limited vs. Resort Kenya*** [2023] KEHC 21751 (KLR) the court emphasized that invoices alone are not enough, and delivery notes are critical in proving supply. The court held that: -

“...the Appellant did not produce the delivery notes in support of the invoices, the trial court was

correct to conclude that the Appellant did not prove its claim.”

and:

“...production of invoices alone was not enough to prove the amount claimed and that the delivery notes were important to prove the Appellant’s claim...”

26. In this appeal, the record shows that the Appellant produced invoices for the supplies made, delivery notes corresponding to the invoices, a statement/spreadsheet of account showing running balances and email correspondence relating to the account and invoicing.

27. The Respondent admitted liability for the invoice dated 13th February 2019. To my mind, that admission is important for two reasons; firstly, it confirms that there existed a credit supply relationship between the parties and secondly, it confirms that the mode of dealing involved invoicing and delivery documentation, with payment being made after delivery.

28. The trial court however discounted the disputed delivery notes ostensibly because they lacked stamps and because the persons who allegedly received the goods were disputed. In my considered view, the approach adopted by the trial court applied a standard that was unduly rigid for the realities of trade, and failed to weigh the surrounding circumstantial evidence. My finding is bolstered by the fact that the Respondent did not present any evidence to show

that it informed the Appellant of the specific employees/agents authorised to receive deliveries on its behalf so as to justify its claim that the recipients of the disputed deliveries were not its employees/agents.

29. My take is that a delivery note is not rendered worthless merely because it lacks a stamp. A stamp may strengthen proof, but its absence is not, by itself, proof of non-delivery. The court must still ask the pertinent question of whether the delivery notes, viewed together with the invoices, account statements and correspondence, make delivery more probable than not.

30. In this case, the Appellant's evidence showed a consistent pattern of invoicing and deliveries over time, and the running statement of account reflected the disputed invoices as part of the account history. The Respondent did not produce any alternative account, stock records, internal receiving registers, or contemporaneous correspondence disputing the deliveries at the time they allegedly occurred. The denials were made after the claim arose. It is my finding that in a continuing commercial relationship, contemporaneous objection carries more probative weight than a later blanket denial.

31. In civil proceedings, the standard of proof is on a balance of probabilities. In ***Miller vs. Minister of Pensions [1947] 2 All ER 372***, it was stated that; -

“If the evidence is such that the tribunal can say ‘we think it more probable than not’, the burden is discharged.”

32. It was not disputed that the relationship between the parties was a credit relationship. In such a setting, the Respondent's admission on one invoice, and its historical dealing on credit, supports the inference that the disputed supplies were made under the same course of business unless the Respondent dislodged that inference by credible rebuttal.

33. I therefore find that, taken as a whole, the Appellant's documentary trail and the established course of dealing proved, on a balance of probabilities, that the disputed supplies were delivered and that the amounts invoiced became due and payable.

Invoices sent to "Maxiflora Ltd"

34. The trial court found that because certain emails forwarding invoices were addressed to Maxiflora Ltd, and not Prime Flora Ltd, the Appellant had not proved liability as against the Respondent.

35. I respectfully disagree with that conclusion on the record before me. The question is not the label on an email recipient line in isolation; the question is whether the account and transaction, in substance, related to the Respondent, and whether Maxiflora was used as a channel, affiliate, trade designation, agent, or operational contact through which the Respondent conducted the transaction. It is also possible that the email was erroneously sent to the wrong address.

36. My finding is that the evidence placed before the trial court, including the correspondence and account statement, demonstrated that the supplies were made within the same continuing relationship that the Respondent itself partly admitted. This court takes judicial notice of the fact that where parties have a sustained relationship and transact through operational contacts, it is not uncommon for invoices to be sent to an accounts email or a related entity handling procurement or logistics. That fact alone does not extinguish the debtor's liability if the debtor is shown to be the contracting party and beneficiary of the supplies.
37. In short, the Court cannot permit a debtor to escape a proved commercial obligation by relying on internal invoicing channels, affiliates, or correspondence labels where the substance of the transaction points to the Respondent as the beneficiary and account-holder. The trial court therefore erred in treating the "Maxiflora" reference as determinative rather than incidental.
38. On the material before court, I am satisfied that the reference to Maxiflora was not, without more, proof that a different legal person contracted and received the goods. The Respondent's position, if accepted, would lead to an unjust commercial outcome as it would allow a party who has enjoyed a credit supply relationship to avoid liability by pointing to internal or affiliated handling of accounts, without proving that the Appellant contracted with a wholly different entity.

39. I therefore find that the trial court erred by treating the appearance of “Maxiflora Ltd” in correspondence as determinative, rather than evaluating whether, in the whole context, the supplies formed part of the Respondent’s account and course of dealings with the Appellant.

Estoppel

40. The Appellant invoked estoppel, arguing that the Respondent’s conduct in the long-standing relationship barred it from denying deliveries made under the same arrangement.

41. Estoppel is a rule of evidence grounded on fairness: where one party, by its words or conduct, leads another to believe in a certain state of affairs and to act upon it, that party may be prevented from asserting the contrary if it would be inequitable to do so.

42. In ***Serah Njeri Warobi vs. John Kimani Njoroge*** [2013] eKLR, the court explained that the doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person.

43. In the present matter, the Respondent admitted one invoice and did not dispute the existence of the credit supply relationship. The Appellant supplied goods on credit in the ordinary course of that relationship, issued invoices and delivery notes, and maintained the running account. In my view, the Respondent’s established course of dealing that entailed receiving supplies on credit and paying later and

thus created a representation by conduct that supplies made and documented in the ordinary way would be honoured.

44. I find that allowing the Respondent, after the fact, to deny multiple invoices forming part of the same relationship without credible contemporaneous rebuttal would be to permit conduct that undermines commercial certainty and good faith dealings.

45. I therefore find that the doctrine of estoppel was applicable, and the Respondent was estopped from repudiating liability for the disputed invoices in the circumstances of this case.

Applicable Exchange Rate

46. The Appellant claimed that as at 2020 the outstanding balance was USD 8,234.98 and converted it at Kshs. 119.81 per USD, arriving at Kshs. 986,632.95.

47. The trial court accepted only the exchange rate appearing on the admitted invoice and rejected the Appellant's asserted exchange rate for the broader account.

48. On re-evaluation of the record, I find that the Appellant's evidence, including the account reconciliation and the correspondence accompanying the statement, supported the Appellant's method of conversion as being the basis upon which the parties' account was being treated when the debt crystallized. Further, the Respondent did not place before the court an alternative reconciliation or a different agreed basis of conversion for the outstanding dollar balance, beyond the single invoice it admitted.

49. I find that in a running credit account denominated in foreign currency, conversion at an agreed or consistently applied rate at the time of demand/reconciliation is a commercially intelligible approach, particularly where the debtor has not produced a competing reconciliation or demonstrated prejudice arising from the rate used.

50. I am therefore satisfied that the Appellant proved the sum claimed, and the claim for Kshs. 986,632.95 was established on a balance of probabilities.

Disposition

51. In the end, I find merit in the appeal and I therefore allow it in the following terms: -

a) The judgment of the Small Claims Court is hereby set aside.

b) Judgment is entered for the Appellant against the Respondent in the sum of Kshs. 986,632.95/=.

c) The said sum shall attract interest at court rates from the date of the judgment before the Small Claims Court until payment in full.

d) The Appellant shall have the costs of the claim before the Small Claims Court and the costs of this appeal.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 9TH DAY OF APRIL, 2026.

HON. W. A. OKWANY

JUDGE

9/04/2026

FOR APPELLANT No appearance

FOR RESPONDENT No appearance

COURT ASSISTANT Karani

Parties to be notified

File closed

ORIGINAL