



REPUBLIC OF KENYA



**Trueblaq International Limited v Jays Pyrotechnics Limited (Civil Appeal E330 of 2024)
[2026] KEHC 6006 (KLR) (Commercial and Tax) (5 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 6006 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E330 OF 2024**

BK NJOROGE, J

MAY 5, 2026

BETWEEN

TRUEBLAQ INTERNATIONAL LIMITED APPELLANT

AND

JAYS PYROTECHNICS LIMITED RESPONDENT

(An Appeal arising out of the decision rendered by Hon Rawlings Liluma Musiega, Senior Resident Magistrate at the Milimani Commercial Magistrate Court on 4th October 2024)

JUDGMENT

1. This Judgement on Appeal arises out of the decision rendered by Hon Rawlings Liluma Musiega, Senior Resident Magistrate at the Milimani Commercial Magistrate Court on 4th October 2024.

Background Facts

2. The Appellant filed the Memorandum of Appeal on the following grounds: -
 - a. The Magistrate erred in law and in fact by failing to consider and appreciate that the Respondent's witness testimony, admission and evidence tendered that the services in relation to Invoice Numbers INV#JPLTD/2190, INV#JPLTD/2191, INV#JPLTD/2207 and INV#JPLTD/3004 were rendered to a third party, the East African Breweries Limited (EABL) and not the Appellant.
 - b. The Magistrate erred in law and in fact in failing to appreciate that there was no privity of contract between the Appellant and the Respondent in relation to Invoices Numbers INV#JPLTD/2190, INV#JPLTD/2191, INV#JPLTD/2207 and INV#JPLTD/3004 and therefore the Appellant was not liable to settle the Respondent's Claim.



- c. The Magistrate erred in law and in fact in failing to appreciate that much as there was no privity of contract between the Appellant and the Respondent, Invoice Number INV#JPLTD/3004 was settled by the Appellant in a special arrangement and with express instructions from the East African Breweries Limited (EABL).
 - d. The Magistrate erred in law and in fact in holding and finding that the contract was undisputed whereas the Appellant actually disputed the contracts that gave rise to Invoice Numbers INV#JPLTD/2190, INV#JPLTD/2191, INV#JPLTD/2207 and INV#JPLTD/3004.
 - e. The Magistrate erred in law and in fact by holding that the Appellant was aware of the arrangements between the Respondent and East African Breweries Limited which knowledge should have been demonstrated by the Respondent by way of evidence.
3. The Appellant prayed for the following orders;
- i. The appeal be allowed.
 - ii. The Court to set aside the judgment and Decree of the Honorable (sic) magistrate ordering the Appellant to pay the Respondent a sum of Kshs.969,200/= for the unpaid invoices, interest and costs of the suit.
 - iii. Costs of this appeal be provided.

Issues for determination

4. The Court has carefully considered the Appeal, the Record of Appeal, the written submissions and the oral highlights by Counsel by the parties. The Court frames a single issue for determination;
- a. Whether the Appeal is merited.

Analysis

5. This is a first Appeal. The Appeal raises issues of both facts and law. The only way to determine it is by re-examining the evidence adduced before the trial Court in order to reach an independent finding. This is the role of the first Appellate Court as discussed in the case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court .. is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

6. It was the Appellant’s submission that the finding by the Trial Court that the contract was undisputed was erroneous. Further, the finding that the Appellant was part and parcel of the contract and therefore liable to settle the invoices in contention was not only wrong but the same was also not supported by any evidence. There was no privity of contract between the parties in respect of the invoices in contention.
7. On the other hand, it was the Respondent’s case that there was a binding contract between the parties. The Appellant issued purchase orders, the Respondent rendered services and invoiced the Appellant. That the Appellant then obtained funds from East African Breweries Limited (hereinafter referred to as “EABL”) to settle those invoices. These dealings created obligations between the Appellant and



Respondent independent of any EABL contract. That the Appellant's agency status with EABL does not dilute its direct liability to the Respondent, as affirmed by the Trial Court.

8. The Court has reviewed the Respondent's case. It is pleaded in the Plaint as follows;

- “ 3. That for all purposes material to this suit, the Defendant engaged the Plaintiff between 2017 - 2020 to provide inter alia events setup accessories primarily within the Plaintiff's core nature of business and which services the Plaintiff duly provided to the Defendant's satisfaction on all the various events it was engaged. The specific events and amounts due thereto shall be elaborated at the hearing hereof.
4. That the Plaintiff through its renowned expertise executed all the Defendant's assignments with the legitimate expectation that the Defendant would meet its end of the bargain to pay for the said services offered.
5. That during the stated period, the Plaintiff invoiced and or made demand for payments part of which the Defendant duly paid to the Plaintiff as shall be particularized at the hearing hereof.
6. That the Defendant however has since fallen short of its payment obligations to the Plaintiff thus occasioning a breach of Contract herein.

Particulars Of Breach Of Contract By Defendant

- a. The Defendant has failed to honour payment on all the Invoices and or on works done.
 7. That the Defendant to-date owes the Plaintiff a total sum of Kenya Shillings Two Million Three Hundred Forty-Seven Thousand Six Hundred Forty Five and Twenty Three Cents [KShs. 2,347,645.23] from the aforesaid breach of the contractual relationship between the Plaintiff and Defendant.
 8. That the Plaintiff avers that despite numerous attempts to reach out to the Defendant through its directors, accountants and associated contact persons, the latter has failed and or neglected to make good of the demand herein except that it has so far given various undertakings to pay neither of which have been fulfilled to the detriment of the Plaintiff.”
9. The Respondent maintained that it would supply goods to EABL but on an LPO raised by the Appellant, who was an Agent of EABL.
10. On the other hand, the Respondent maintained that the Appellant was liable to pay for the delivery and services rendered, as pleaded in the Statement of Defence as follows;
- “ a) It was customary between the parties that the Plaintiff would issue an invoice together with the corresponding Local Purchase Orders (LPO) for the Defendant to verify the validity the same and execution of the assignment before processing payment.
 - b) The contention herein arises from invoices that were submitted by the Plaintiff to the Defendant for processing in the period 2018-2020. The said invoices



were submitted without any corresponding Local Purchase Orders (LPOs) as is customary and therefore they could not be processed.

- c) The Defendant has requested the Plaintiff to produce the LPOs for review and verification of the same but the Plaintiff has failed to produce the requested LPOs.
- d) The Defendant avers that it is only aware of a single invoice for the period of 2018-2020, invoice number INV#JPLTD/3004 for the sum of Kenya Shillings One Million, One Hundred Fifty Four Thousand and Two Hundred Only (Kshs.1,154,200.00).
- e) The Defendant has not refused to pay the aforesaid Invoice in the sum of Kenya Shillings One Million, One Hundred Fifty-Four Thousand and Two Hundred Only (Kshs.1,154,200.00) but processing of the said payment has been delayed by Plaintiff's insistence that all the contentious invoices should be paid together."

11. The Respondent's witness DW1 stated as follows in his Statement (underlined emphasis ours);

- "2. That the Defendant is a reputable company whose undertakings include conducting business in the entertainment industry.
- 3. That the parties herein have had a lengthy business relationship where the Defendant procures stage effects services from the Plaintiff directly for events it has been contracted to organize.
- 4. That in other instances when the Plaintiff is not a prequalified supplier for a certain client but the Defendant is, with full knowledge and in agreement the client would issue a Local Purchase Order (LPO) in the name of the Defendant, the Plaintiff would also invoice the Defendant who receives payment from the client and passes it on to the Plaintiff devoid of any profit or interest.
- 5. That the contention between the parties stems from four invoices in particular:
 - a) INV#JPLTD/2190
 - b) INV#JPLTD/2191
 - c) INV#JPLTD/2207
 - d) INV#JPLTD/3004
- 6. That the four invoices are connected to services offered by the Plaintiff to East African Breweries Limited (EABL) which has not prequalified the Plaintiff as a supplier in its list of prequalified suppliers.
- 7. That EABL often engages the Plaintiff through the Defendant with notice to the Defendant. EABL would thereafter issue an LPO in the Defendant's name as it would not directly engage the Plaintiff as supplier on account of not being prequalified.



55 Once the services were rendered by the Plaintiff to EABL, EABL would issue payments to the Defendant and authorize the Defendant to pay the Plaintiff.

8. That in regards to invoices no: INV#JPLTD/2190 (Kshs. 185,600.00) and INV#JPLTD/2191 (Kshs. 319,000.00) EABL neither issued the Defendant with an LPO nor did it submit any payments intended for the Plaintiff. The Defendant did not procure services from the Plaintiff or in any way benefit from the services rendered by the Plaintiff in the two occasions.
9. That further to the aforementioned, the Defendant was also not procured by the client EABL to offer any services on the two aforementioned events wherefore the Plaintiff INV#JPLTD/2190 and INV#JPLTD/2191 and is not privy to the details thereof.
10. That in relation to invoice no: INV#JPLTD/2207 the Plaintiff had agreed on the services provided and the price thereof with EABL independently and was merely using the Defendant as a conduit.
11. That EABL issued an LPO to the Defendant of Kshs. 2,059,000.00 while the Plaintiff raised an invoice of Kshs. 2,523,000.00. EABL further provided the Defendant with Kshs. 2,059,000.00 as payment for the Plaintiff as provided in the LPO.
12. That The Defendant duly forwarded the Kshs. 2,059,000.00 from EABL to the Plaintiff on 23rd December 2019.
13. That as pertaining to the fourth invoice: INV#JPLTD/3004 (Kshs. 1,154,200.00) the Defendant vide an email from EABL dated 7th December 2018 was requested by EABL to use EABL's funds in their possession to honor the invoice despite EABL not issuing an LPO.
14. That the Defendant was ready to indulge the Plaintiff's client EABL by honoring the payment but received opposition from the Plaintiff who desired to have all the contentious invoices paid together.
15. That the Defendant formulated a payment plan with the Plaintiff for payment of the invoice no: INV#JPLTD/3004 for Kshs. 1,154,200.00 which it sent to the Plaintiff on 8th September 2022 for approval.
16. That from the foregoing the Defendant is only liable to pay Kshs. 1,154,200.00 as those are the only amounts it has received from EABL who was the Plaintiff's client.
17. That the Defendant has not benefited in any way from the transactions that gave rise to invoices no: INV#JPLTD/2190 (Kshs. 185,600.00), INV#JPLTD/2191 (Kshs. 319,000.00) and INV#JPLTD/2207 (pending amount Kshs. 464,000.00).
18. That the Plaintiff's antagonist is its client EABL whom it has not enjoined to this Cause.



12. The general rule in contract law, as held in *Agricultural Finance Corporation v Lengetia Ltd & Jack Mwangi* [1985] eKLR, is that no contractual right or liability may accrue to a person who is not privy to the agreement, unless there is a valid novation, assignment or statutory exception. The Court in this case stated that;

“As a general rule, a contract affects only the parties to it, and it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or make him liable to it. The fact that a person who is a stranger to the consideration of a contract stands in such a near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”

13. It is the Court’s understanding that there was no formal written agreement. There was no written document of novation or assignment. However, the Court notes that the Appellant in its witness statement stated that whenever the Respondent was not a prequalified supplier for a certain client but the Appellant was (in this particular case EABL), with full knowledge and in agreement the client (EABL) would issue a Local Purchase Order (LPO) in the name of the Appellant. The Respondent would also invoice the Appellant who received payment from the client (EABL) and passed it on to the Plaintiff devoid of any profit or interest.

“That in other instances when the Plaintiff is not a prequalified supplier for a certain client but the Defendant is, with full knowledge and in agreement the client would issue a Local Purchase Order (LPO) in the name of the Defendant, the Plaintiff would also invoice the Defendant who receives payment from the client and passes it on to the Plaintiff devoid of any profit or interest.”

14. In the instant case, the Appellant’s witness (ANTHONY NG’ETICH) went on to explain that, EABL often engaged the Respondent through the Appellant with notice to the Appellant. EABL would thereafter issue an LPO in the Appellant’s name, as it would not directly engage the Respondent as a supplier on account of not being prequalified. Once the services were rendered by the Respondent to EABL, EABL would issue payments to the Appellant and authorize the Appellant to pay the Plaintiff.

15. It is therefore the Court’s considered view that this was a consensual and somewhat a symbiotic business relationship. It is stated that the Appellant stood to make no financial gain from this relationship, but had to agree to have an LPO issued to it by EABL for goods and services that it not supply. It also had to agree to receive payments from EABL from which it would not accrue any financial benefit. This is because going by the narrative, the Respondent would send an Invoice to the Appellant for goods and services that it would not have provided to it, but rather would have provided to EABL. It would then expect that EABL would pay against the LPO and that the Appellant would equally remit the payments received.

16. This transaction involved several moving parts and had to rely on good faith and consensus. This is because it was not a written agreement and there was no privity of contract between the service provider, the Respondent and EABL. Without this privity of contract, the Respondent could not sue EABL for goods and services that it delivered to them but invoiced the Appellant. Yet going once more by this narrative, the Respondent did not deliver any goods and services to the Appellant on account of which it could reasonably maintain let alone prove an action for unpaid accounts for goods and services delivered to EABL.



17. This is a transaction or series of transaction that depended on EABL honouring their end of the bargain at all times, upon being supplied with goods and services by the Respondent. Without these payments from EABL, the Respondent could not go knocking at the doors of the Appellant demanding monies that there was no proof that the Appellant had received from EABL.
18. Essentially the first moving part in these series of transactions was the initial deal between EABL and the Respondent. Therefore, at the very least the Respondent would have been expected to prove that EABL paid over the invoiced amounts to the Appellant who was now holding out on the payments. In the alternative, the Respondent as the end beneficiary would have been expected to have some knowledge that EABL has raised an LPO to the Appellant, against which the Respondent was expected to perform. It would make no business sense for the Respondent to perform if EABL had not prepared an LPO.
19. The Court hears the Appellant complaining that it did not receive any payments from EABL and thus had no obligation to settle any invoiced amounts by the Respondent. This Court agrees with the Appellant on this front.
20. As previously stated, these transactions relied on good faith and consensus or agreement by way of meeting of the minds.
21. The Trial Court correctly noted that the law of contract gives effect to consensual agreements entered into by individuals for their own interests. The Court notes that an agreement need not have been in writing as it can be discerned from the conduct of the parties that they did intend to contract and did indeed contract.
22. The Trial Court went on to make a finding that the existence of this contract was not in dispute. The arrangement between the parties did not form a single contract but a series of separate and independent contracts that required performance at specific moments in time. It should not be lost to this Court that the Elephant in the room was EABL. Without EABL procuring for services there would be no contract. Thus, every time EABL sought for services from the none-prequalified Respondent, this formed a new transaction, a new contract. The Appellant maintains that there were no LPOs from EABL for the series of disputed invoices. Thus, the very basis of the transaction being the contract is denied. By holding otherwise, the Trial Court fell into error.
23. It is the Respondent who bore the burden of proving its case.
24. The *Evidence Act* lays this burden of proof upon the Respondent as follows;
 107. Burden of proof.
 - (1) 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.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
 108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
 109. Proof of particular fact.



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.

25. The Trial Court made a finding as follows;

“I think rather than trying to avoid liability, the defendant just needed to do an honorable thing and conduct due diligence whether services were rendered to EABL or not.”

26. This Court agrees with the Appellant that the Trial Court placed the burden upon the Appellant to find out if an LPO had been raised and if so, subsequent thereto, that the Respondent had supplied the goods and services. In doing so the Trial Court fell into serious error. The Court follows the decision of the Court of Appeal in *Mbuthia Macharia v Annah Mutua Ndwiga & another* [2017] KECA 290 (KLR).

27. The Court made a fundamental error by presuming that because Invoices had been issued, the services had been procured by way of an LPO raised by EABL.

“In the circumstances, I make a finding that the defendant was part and parcel of the contract between the plaintiff and the EABL because it was the medium through which payments were made to the plaintiff. The plaintiff proved by way of pro forma invoices that services were indeed offered.”

28. The Trial Court should have taken keen interest on the nature of defence raised by the Appellant. It was for the Respondent to approach EABL and obtain proof of the LPO and delivery of goods and services. Even an email from EABL addressing itself on the issue and informing the Appellant that since EABL had raised an LPO and received services from the Respondent for which they had remitted to the Appellant “xyz” amounts of monies, would have sufficed. As matters stand, the LPO which would have been the crucial document that signaled the initiation of this somewhat symbiotic and consensual relationship is missing and remains unaccounted for.

29. As matters stand and on a balance of probabilities, the Court finds the Respondent did not prove its case to the required standards. The Court overturns the decision of the Trial Court which was arrived at as a result of an error and dismisses the Plaintiff’s suit with costs. The Court follows the decisions in *Peter V Sunday Post Ltd* (1958) EA 42 and *Selle and Another V Associated Motor Boat Co. Ltd and other* (1968) EA 123.

30. As to costs of the Appeal, the same lie at the discretion of this Court. Costs, ordinary follows the event. The Appellant will have the costs of this Appeal.

Determination

31. The Appeal succeeds and is allowed in the following terms;

i.) The appeal be allowed.

ii.) The Court HEREBY sets aside and quashes the judgment and Decree of the Honourable Magistrate in MCOMMSU E534 OF 2022 dated 4th October, 2024 ordering the Appellant to pay to the Respondent a sum of Kshs.969,200/= for the unpaid invoices, interest and costs of the suit. It is instead substituted with a Decree dismissing the Plaintiff’s suit for lack of merits, with costs awarded to the Defendant.

32. The costs of this Appeal to be borne by the Respondent.



33. It is so ordered.

34. This file is marked as closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 05TH DAY OF MAY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Tanui for the Appellant.

Mr. Dawood Farrah for the Respondent.

Mr. John Paul - Court Assistant.

