



Catholic University of Eastern Africa v Uniglobe Northline Travel Limited (Commercial Appeal E157 of 2022) [2025] KEHC 3742 (KLR) (Commercial and Tax) (25 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3742 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E157 OF 2022**

RC RUTTO, J

MARCH 25, 2025

BETWEEN

CATHOLIC UNIVERSITY OF EASTERN AFRICA APPELLANT

AND

UNIGLOBE NORTHLINE TRAVEL LIMITED RESPONDENT

(Being an appeal from the judgment of the Small Claims Court delivered on 22nd April 2022 in SCC COM NO. E1008 OF 2021 by Hon C. A. Okumu)

JUDGMENT

1. The appellant being aggrieved by the whole decision of the Small Claims Court, that held that the respondent rendered travel agency services to the appellant and entered judgment in the sum of kshs.376,000/- in favour of the respondent herein lodged this appeal.
2. The appeal is premised on the grounds of errors in law and fact as follows: misapprehension of the evidence and holding that there was an oral contract between the appellant and the respondent for the supply of travel agency services contrary to the evidence on record; allowing the claim despite the lack of evidence on record to warrant and support the finding of a contractual relationship between the appellant and the respondent; failing to consider the applicable legal principles on contract and evidence and thus arrived at wrong findings contrary to law; failing to hold that the Appellant lacked capacity to enter into an oral contract due to the undisputed fact that its contractual relationships must be in writing, sanctioned and approved by its relevant authorities; flouting the principle of judicial precedent and acting on wrong principles of law; by holding that the Respondent had authority to institute the claim when no proof of such authority was provided in court.
3. The Appellant prayed that the appeal be allowed by setting aside the judgment issued by the Small Claims Court and they be granted costs of the appeal.



4. The appeal was canvassed by way of written submissions. The appellant's submissions are dated 15th August, 2024 while the respondents are dated 27th September 2024.

The Appellant's Submissions

5. The Appellant acknowledged the limitation of this Court to hear appeals on matters of law under section 38 of the Small Claims Court Act and proceeded to submit that this being the first and only appeal against the decision of the trial court, the Court had a duty to review the evidence adduced before the trial court and satisfy itself that the decision was well-founded. It sought to rely on the principle in the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, and Civil Appeal No E037 of 2024 *Naomi Wanjiru Irungu v Francis Kimani Karanja* (unreported).
6. The Appellant submitted that the trial court erred in law in failing to apply the relevant legal principles relating to construction and enforcement of contracts, misconstrued the facts of the dispute between the parties and acted on wrong principles in reaching its findings. It relied on the case of *Mbogo v Shah* 1968 EA 93 to urge the court to interfere with the discretion of the trial court.
7. It submitted that the respondent only relied on its self-generated documents that were not backed up by cogent evidence in the form of bank statements, receipts and copies of the received cheques allegedly from the appellant to prove previous payments and also that they did not know whom it dealt with at the appellant's institution. They urged that self-generated invoices and statements are prone to manipulation and create a false impression.
8. The appellant submitted that both the appellant and respondent are entities with perpetual successions and do not transact in the names of their officers but under their own name and seal.
9. Reliance was placed on the case of *Omar Gorhan v Municipal Council of Malindi (Council Government of Kilifi) v Overlook Management Kenya Ltd* (2020) eKLR to urge that, the respondent was expected to prove on a balance of probabilities the following essential elements to a contract agreement with the appellant: (a) an offer, (b) an acceptance, (c) any consideration, (d) Any intention to create legal relations as per section 3 of the *Law of contract Act* Chapter 23 of the Laws of Kenya. Also relied upon was the Court of Appeal case in *William Muthee Muthami vs Bank of Baroda* (2014) eKLR.
10. Further, the appellant submitted that the respondent's claim was in the form of special damages that must be strictly proved. That the totality of evidence tendered does not add up to the sum of kshs.376,600/- awarded to the respondent. That the figures claimed do not match the evidence tendered and no explanation was proffered for such incongruence. They relied on the case of *Hahn v Singh* Civil Appeal No 42 of 1983 (1985) KLR 716.
11. They urged the Court to find that the respondent failed to prove its claim to the required standard and allow the appeal as prayed with costs.

Respondent's Submissions

12. The respondent submitted that the Appeal has not met the threshold under section 38 of the Small Claims Act, that the appeal seeks a re-evaluation of the facts and therefore liable for striking out with costs as set out in the case of *Amunga v Muisu* (Civil Appeal E725 of 2022) [2024] KEHC 2504 (KLR).
13. The respondent submitted on all the grounds of appeal. On grounds one and two, it was urged that they were purely issues of fact and an attempt to ingenuity to dress up and camouflage purely factual



issues with borrowed grab of “legalness”. Also, that the appellant has not submitted on these two grounds thus the same be considered as abandoned.

14. On ground three, it was submitted that the same be considered as abandoned since the appellant did not submit on it and it does not meet the threshold under section 38 of the Small Claims Act.
15. On ground four, it was submitted that the same offended section 38 of the Small Claims Act. That besides, the appellant did not plead that it lacked capacity to enter into contract by performance and hence cannot freshly plead that at the appellate stage. That it was self-contradictory for the appellant to indicate that it lacked capacity to transact with the respondent while it produces statement showing the services it enjoyed from the appellant. Further that the appellant witness confirmed that she joined the university as an employee in November 2020 and did not know the position of the previous transactions as she was not given documents by the appellant’s procurement department. They urged this court to confirm that it rendered services to the appellant who made part payment.
16. Reliance was made to the cases of Trollope & Colls Ltd v Atomic Power Constructions Limited (1963) 1 WLR 333 and Elgon Road Development Co Limited v Centre for Development Consult Limited (2017) eKLR. They also urged that officers of the appellant were aware of the transactions and services offered and even proceeded to make part payment, as such the appellant could not run away from the same.
17. On ground five, it was submitted that the appellant has not specified the exact principles or precedents which were flouted, besides no submissions have been made on this point as such it ought to be deemed as abandoned.
18. On ground six, the respondent submitted that the same was an outright factual issue without any legal bearing. Further that it is not mandatory for a resolution of the Board to be filed, as evidence that the suit is approved by the Board of Directors, or that a resolution showing authority to a director to testify and a party disputing the absence of such authority has an obligation to produce the documents challenging the same. Reliance was place on the Court of Appeal case of Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] eKLR, cited with approval the case of United Assurance Co. Ltd v Attorney General: SCCA NO.1 of 1998.
19. The respondent also submitted on the issue of special damages, it was their submission that the appellant never pleaded the same on its original pleadings and cannot now submit outside its grounds of its appeal hence the issue should be rejected. Based on the foregoing, the respondent urged the Court to find that it was entitled to a sum of kshs.376,600 as evidenced in the unpaid invoices, thus, that the appeal is for dismissal with costs to the Respondent.

Analysis and Determination

20. The duty of this Court as an appellate court exercising jurisdiction under the Small Claims Court squarely falls under Section 38 of the *Small Claims Court Act*. This section limits the jurisdiction of the High Court on appeals from the Small Claims Court to matters of law only. What constitutes, points of law, has been settled in the case of Peter Gichuki King'ara Vs IEBC & 2 Others, Nyeri Civil Appeal No. 31 Of 2013, (Court of Appeal) (Visram, Koome & Odek, JJA) where the Court of Appeal stated as follows: -

“It is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court



further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanor – is an issue of law.”

21. Having considered the Memorandum of Appeal and the grounds set out there under, I note that the Appellant raises issues of both law and fact. All the grounds of appeal state that the learned adjudicator erred in “both law and fact”. The submissions also have been crafted to support both the issues of fact and law. Thus, based on the above authority, and on the definition, of what constitutes issues of law, this Court will limit itself from delving into issues of facts and address the only issue of law arising which is:

whether respondent proved its case on a balance of probability?

22. In this instance, the claim by the respondent was one of alleged breach of contract. The facts were that between the months of January to February 2018, the appellant, vide an oral contract, requested for and the respondent offered travel agency services. That partial payments were made leaving an outstanding amount of kshs.376,600 which was acknowledged by the appellant. To prove its case, the respondent called one witness who stated that the amount owed was kshs.376,000/=. To further prove their claim, they relied on the statement of accounts in their bundle of documents and further bundle of documents.
23. The bundle of documents contained statement and invoices, demand letter and email exchanges between the parties. Notably the invoices relied upon have been addressed to the Vice Chancellor of the appellant’s institution and claim for long outstanding invoices amounting to kshs.376,600 for travel in January and February 2018. The statement of account attached is from the period 29th November 2010 to 29th November 2019 and gives a closing balance of kshs.416,285.
24. Also relied upon were copies of invoices sales invoice no; TIN18010039; TIN18020038; and TIN18020231; showing tickets issued to several persons to different destinations as well as email correspondences whose email domain is @cue.or.ke between the appellant and the respondent. In one of the email correspondences, the respondent states that “we have sent the invoices this morning addressed to you plus the email communication of each ticket.” This email is responded to as follows “Morning, Reference is made to your statement of account dated 14/2/2020. Having gone through the same our reconciliation analysis shows that the following invoices were not forwarded for processing i. TIN17020033; TIN17054418; TNI18050372; TNI18050445; TNI8050482 Total KES 89855/=. I therefore request you to furnish us with the following information in order to facilitate settlement of the above pending bills. The email listed six documents which the respondent herein ought to have supplied to enable the appellant settle the pending bill.
25. In response to the claim before the trial court, the appellant denied the claim stating that it did not procure any travel agency services from the respondent, that there was no contractual relationship between the claimant and the respondent and that it did not receive any invoices concerning the alleged transactions. They also stated that their email address always has cuea.edu as the domain name. Also, that they never have had an employee called, Naftali Okodo the employee at the center of the email correspondence and that its employees are not allowed to transact without the requisite permission. They also stated that they is no record of the university ever dealing with the claimant and that when they deal with third parties, they pay via mostly cheque or Real Time Gross settlement (RTGS). They urged that the respondent should pursue the people she offered services to in person.



26. On cross examination the appellant witness stated that she had no records of procuring travel agency services for the year 2018 for the respondent, and confirmed that the statement of account annexed to the statement of response is a document that looks the same as from the finance department.
27. In the Small Claims Court judgment, the adjudicator set out three issues for determination namely: whether there was a contract as between the claimant and respondent; whether both the claimant and respondent had capacity to contract and whether the claimant was entitled to the relief sought.
28. The adjudicator proceeded to find that there was an oral contract between the parties. That the claimant adduced in evidence invoices of various dates addressed to the respondent, that the fact that the appellant witnesses stated that she joined the appellant in the year November 2020 and that there were no records meant that the evidence of the claimant remained unrebutted. The adjudicator discredited the evidence of the appellant holding that “the fact that the RW stated that she joined the respondent in the year November 2020 and there were no records which she found in support of the fact that the respondent could have procured the services of the claimant does not sound believable to the court”.
29. In evaluating whether the respondent proved its case on a balance of probability, this Court notes that the standard of proof in civil cases is on a balance of probability and the burden of proof is always on the party alleging the existence of a fact which he wants the Court to believe. (Refer to Section 107 (1) and (2) of the *Evidence Act*). It was therefore upon the respondent to show that indeed there existed a contract (whether oral or otherwise) and that the amounts due were outstanding.
30. In determining whether a contract existed, the Court of Appeal in *Ali Abid Mohammed versus Kenya Shell & Company Limited (2017) eKLR*, stated that a contract between parties can exist where no words have been used but where it can be inferred from the conduct of the parties that a contract has been concluded. The Court stated as follows;

“It therefore follows that a contract can exist where no words have been used but where it can be inferred from the conduct of the parties that a contract has been concluded. See *Timoney and King v King 1920 AD 133 at 141*.
31. Further, the Court of Appeal in *William Muthee Muthami versus Bank of Baroda (2014) eKLR*, stated that for a contract to be valid under the law of contract, it must be proved that there was offer, acceptance and consideration, thus:

“In the law of contract, the aggrieved party to an agreement must, in addition, prove that there was offer, acceptance and consideration. It is only when those three elements are available that an innocent party can bring a claim against the party in breach.”
32. The Respondent’s witness stated that she procured tickets on the basis of an oral contract with the respondent having communicated with the respondent orally and through email, however she did not know the name of the person she was communicating with. They also testified that she was paid through cheque but never availed a copy in court to prove the same. This Court notes that the respondent relied on email correspondences and a response from the appellant to show that a contractual relationship did exist. The respondent asserted that services were rendered between January and February 2018 and partial payments made leaving an outstanding amount of kshs 376,600 which was acknowledged by the appellant.
33. The Appellant witness on the other hand denied ever dealing with the claimant and that in fact all their communications were in writing as a good governance practice. He further testified that there were no



records from the procurement department of the respondent showing that there was procurement of travel agency services for the years 2012, 2015 or even 2018 and without the records it was impossible to verify if the respondent indeed paid for any travel agency services.

34. It is important to note worthnoting at this juncture that the email correspondences relied upon by the respondent had a domain “@cue.or.ke” which the Appellant dismissed stating that it uses the domain “cuea.edu” in its emails. Curiously, the Respondent states that it entered into an oral contract with the Appellant but it does not ‘remember’ who it was talking to at the Appellant’s.
35. It is worth noting at this juncture, that both parties in this case are juristic persons. The key question that arises is whether juristic persons can enter into an oral agreement? While there is no bar to a juristic person entering into an oral agreement, the same can only be done by legally authorized natural persons within the juristic person, such as directors in case of a company when one lifts the corporate veil. I am guided by this Court’s holding in *Menno Travel Services Limited v Menno Plaza Limited* [2020] eKLR thus:

“ 40. In my view, given that the defendant is not a natural person and the plaintiff’s claim against it was entirely founded on an alleged oral contract entered into on a specific day (21/10/1999), the plaintiff had a duty to lead evidence to demonstrate that specific authorized officer(s) or director(s) of the defendant company entered into the alleged oral contract on the alleged day. The plaintiff did not discharge that burden. First, the amended plaint was silent on the identity of the natural person who orally contracted on behalf of the defendant company. Second, both the written witness statement of PW1 and his oral evidence-in-chief did not focus on the identity of the natural person who purportedly committed the defendant company through an oral agreement on 21/10/1999. It was only during cross-examination that, after asserting that Frank Amolo represented the Co-operative Bank while AK represented Co-operative Merchant Bank, PW1 changed positions and contended that the duo at the same time represented the defendant company. There was, however, no evidence to suggest that the duo were, as at 21/10/1999 or at any other time, directors or authorized officers of the defendant company.

41. In my view, in the absence of evidence to demonstrate that specific director(s) or specific authorized officer(s) of the defendant company entered into the alleged oral agreement on behalf of the defendant company on 21/10/1999, the court has no evidential basis upon which to make a finding to the effect that there was an enforceable oral agreement entered into on 21/10/1999 by the parties to this suit, binding the defendant to pay the plaintiff Kshs.123,000,000. Consequently, my finding on the first question is that there is no evidence to support the allegation of an oral agreement between the parties to this suit, entered into on 21/10/1999 or any other date in October 1999, requiring the defendant to pay the plaintiff Kshs.123,000,000 as purchase price of the suit property.”

36. Consequently, I find that the Respondent did not adduce sufficient evidence to prove that there existed a contract, in particular, an oral contract, between itself and the appellant, particularly having failed to produce a written agreement between the parties, or to identify the natural person it dealt with on behalf of the Appellant.



37. The upshot is that this Appeal succeeds and the judgement of the Trial Court is hereby set aside. Each party to bear its own costs.

38. Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF MARCH 2025.

RHODA RUTTO

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 25TH DAY OF MARCH, 2025.

In the presence of;

Wanyoike Court Assistant

..... Appellant

..... Respondent

