



**Kenya National Highways Authority v Njue (Civil Appeal
E245 of 2024) [2025] KEHC 7827 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E245 OF 2024
FN MUCHEMI, J
MAY 29, 2025**

BETWEEN

KENYA NATIONAL HIGHWAYS AUTHORITY APPELLANT

AND

JUDY MURUGI NJUE RESPONDENT

*(Being an Appeal from the Ruling of Hon. D. N. Musyoka (CM) delivered on
17th September 2024 in Gatundu CM Misc. Application No. E024 of 2024)*

JUDGMENT

Brief facts

1. This appeal arises from the ruling of Gatundu Chief Magistrate in CM Miscellaneous Application No. E024 of 2024 whereby the trial court found in favour of the respondent as against the appellant and ordered the appellant do prefer criminal charges against the respondent if it found that her motor vehicle registration number KDE 023 was overloaded. In the event the appellant did not do so within the two days after the ruling as directed by the trial court, the appellant was directed to release the said motor vehicle to the respondent.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 8 grounds of appeal summarized as follows:-
 - a. The learned trial magistrate erred in law and in fact by failing to appreciate that the East Africa Community Vehicle Load Control Act has provision for control of vehicle loads, harmonized effect and institutional arrangements for the Regional Truck Road Network within the East Africa Community, which under Section 25 takes precedence over parties' states' laws.



- b. The learned trial magistrate erred in law and in fact by misdirecting himself in finding that the respondent herein can be charged under the [Traffic Act](#) with regard to the offence of overloading.
 - c. The learned trial magistrate erred in law and in fact in failing to appreciate and consider EACVLC Act decriminalizes overloading and prosecution in court and instead requires offloading, re-distribution of cargo and payment of an overload fee for the Regional Truck Road Network within the East Africa Community thus the [Traffic Act](#) cannot apply.
 - d. The learned trial magistrate erred in law and in fact in failing to appreciate that the respondent in her application sought substantive orders that cannot be issued in a miscellaneous application.
 - e. The learned trial magistrate erred in fact and in law by making a finding that the fine levied against the respondent was exorbitant yet the prescribed fees were levied in accordance with Sections 17(2) and (6) of the EACVLC Act as read together with the third Schedule of the East Africa Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 thus in compliance with the applicable law.
3. Parties disposed of the appeal by way of written submissions.

The Appellant's Submissions

4. The appellant refers to the case of Kenya National Highways Authority vs Geoffrey Munga [2021] KEHC 1230 (KLR) and argues that the trial court did not have jurisdiction to proceed with the respondent's application.
5. The appellant submits that Section 17 of the EACVLC Act provides for procedures in case of vehicle overloading and the same provides for penalties for overloading which are administrative in nature and do not require prosecution in a court of law Section 17(4)(b) of the Act grants a right of appeal to an aggrieved party which may be exercised through an internal administrative review or before the competent national court. The appellant further submits that although the [Traffic Act](#) contains provisions on overloading, they do not override the specific regional framework provided by the EACVLC Act.
6. The appellant argues that it is a well-established principle of statutory interpretation that where two laws apply to the same subject matter, the more specific law prevails over the general law. In the instant case the EACVLC Act is a specialized statute enacted to regulate vehicle load control across the East Africa region while the [Traffic Act](#) is a general law governing road traffic offences within Kenya.
7. The appellant refers to Section 25 of the EACVLC Act and the case of Office of the Director of Public Prosecutions (ODPP) vs Juma Chemomenyu Batuli [2020] KEHC 512 and submits that the Act shall take precedence over partners' states' laws in respect to any matter to which its provisions relate. The appellant argues that by the trial court invoking the [Traffic Act](#), it ignored its special role under the EACVLC Act thus creating confusion and overcomplicating a straightforward regulatory process. Relying on the cases of John Kipkoech Maritim t/a Jolly Super Enterprises Limited vs Kenya National Highways Authority & 7 Others [2022] KEHC 3366 (KLR) and Exxon Investment Limited vs Kenya National Highways Authority [2021] KEHC 4577 (KLR), the appellant argues that the fine it imposed upon the respondent's motor vehicle was lawful and properly within the Act.



8. The appellant further relies on the case of Geoffrey Muthinja & Another vs Samuel Muguna Henry & 1756 Others [2015] eKLR and submits that where a dispute resolution mechanism exists outside courts, the same must be exhausted before the jurisdiction of the courts is invoked.

The Respondent's Submissions

9. The respondent submits that the trial court had jurisdiction to handle the dispute as the matter at hand was an overloading offence within the purview of the *Traffic Act*.
10. The respondent refers to the cases of Bluaxis Construction Limited vs Kenya National Highways Authority [2024] KEHC 9693 (KLR) and Njenga & Another vs Kenya National Highways Authority (KENHA) [2024] KEHC 7028 (KLR) and submits that the provisions of the EACLVC Act do not oust the application of the provisions of the *Traffic Act*. The respondent further argues that the offence of overloading is provided for in the *Traffic Act* in Sections 56(1) and 58(1) and therefore the trial court in directing that she be charged with the offence of overloading, chose to enforce a law which was less punitive in punishing the offence.
11. The respondent submits that the trial court considered all the relevant factors as well as the mitigating factors as under the EACLVC Act. She states that she was to pay a fine of Kshs. 2,727,509/- whereas under the *Traffic Act*, the maximum fine is Kshs. 400,000/-. Thus the respondent argues that the fees charged in the EACLVC Act are exorbitant and since she is a first offender she ought to benefit from the least punitive fees. The respondent further argues that her mitigating factors were persuasive as she told the court that she had purchased the suit truck through financing from Neno Sacco Limited and had been using the proceeds from the truck to service the loan. The truck had been impounded for a period of almost one month and thus condemning her to pay Kshs. 2,727,509/- would be akin to rendering her financially destitute.
12. The respondent submits that the appellant's actions were littered with procedural impropriety offending Article 47 of *the Constitution* as the appellant failed to explain why the motor vehicle was never weighed by the mobile enforcement team despite the driver stopping the vehicle. No incidence report has been attached to explain weighing was carried out as at the time of signalling the motor vehicle to stop. In the absence of a weighing report from Sagana by the appellant's mobile team the respondent argues that any subsequent result with regard to the weight of the motor vehicle is fruit of the same poisonous tree and thus no fines should be imposed upon her given the appellant's officers drove the vehicle themselves to Juja Weighbridge.
13. The respondent relies on the cases of Republic vs Kenya National Highways Authority ex parte John Mwaniki Kiarie [2016] KEHC 2277 (KLR) and Margaret Miano vs Kenya National Highways Authority [2015] KEHC 4768 (KLR) and submits that Regulation 15 of the Act violates Article 50 of *the Constitution* and pursuant to Article 2(4) of *the Constitution* is null and void. The respondent further argues that Section 17 of the Act is similar to that of Regulation 14 yet in the case of Disarano Limited vs Kenya National Highways Authority & Attorney General [2017] KEHC 7593 (KLR) the court held that a notification of the weighbridge report cannot constitutionally form the basis for imposing fees where a vehicle is found to be overloaded.
14. The respondent submits that the weighbridge ticket and weighbridge certificate do not indicate under what law the said tickets were issued. The respondent refers to the case of Mombasa Water Products Ltd vs Kenya National Highways Authority [2025] KECA 663 (KLR) and submits that no appellate procedure has been provided for under Section 17(4)(a) and (b) of the Act with regard to how a person found to have overloaded his vehicle is dealt with. Thus, the respondent submits that she ought to be



allowed to defend herself in a court of law and be charged as per Section 56 as read with Section 58 of the Traffic Act.

15. Relying on the case of Republic vs Kenya National Highways Authority ex parte John Mwaniki Kiarie [2016] KEHC 2277 (KLR), the respondent submits that if indeed it is true that Section 17 of the EACVLC Act is implemented in an administrative manner, there is no evidence tendered by the appellant to show that she was accorded a right to be heard.

Issues for determination

16. The main issues for determination are:-
 - a. Whether the trial court had the jurisdiction to entertain the application dated 26th August 2024.
 - b. Whether the East Africa Community Vehicle Load Control Act or the Traffic Act was applicable in the circumstances.

The Law

17. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....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. In particular,, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

18. In *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR the Court of Appeal stated that:-

An appeal to this court from a trial by the High 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.

19. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-
 - a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
 - c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

Whether the trial court had the jurisdiction to entertain the application dated 26th August 2024.



20. It is not disputed that the suit motor vehicle was overloaded by 14,720Kgs. The appellant insists that the respondent ought to pay overloading fees pursuant to Section 17 of the EACVLCA Act whereas the respondent argues that she ought to be charged under the *Traffic Act*.
21. Section 17(4) of the EACVLCA provides:-
- Where the fact of overloading is disputed by the transporter, the authorized officer weighing the vehicle shall indicate such dispute in the weighing report and a copy of the disputed report shall be issued to the transporter who may-
- a. Pay the requisite overloading fees on a without prejudice basis to ensure the release of the vehicle, make such necessary adjustment on the load as may be directed by the authorized officer and lodge an appeal against the fees as provided in the regulations made under this Act; or
 - b. Appeal against the fees, using regulations made under this Act, during which period the vehicle will remain detained at such designated place at the cost of the transporter.
22. It is clear from the above provision that an appeal from the decision of the authorized officer is made under the Regulations. The relevant regulations as provided under Section 17(4)(a) and (b) are the East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 (the Regulations) and particularly Part III thereof which relates to overloading fees.
23. I have perused the Regulations and it is clear that no appellate mechanism is provided thereunder as envisaged under Section 17(4)(a) and (b) of the EACVLCA with regard to how a person found to have overloaded his vehicle is dealt with. Given the lack of an appellate mechanism, it follows that there was no alternative dispute resolution remedy available to the respondent who is found to have overloaded. Thus, it is my considered view that there being no such mechanism for filing an appeal, the respondent was not faulted for instituting the instant suit before the court. It is therefore my considered view that the trial court had jurisdiction to entertain the application.

Which Law Was Applicable in Charging The Respondent

24. The appellant argues that the applicable law is the EACVLCA which takes precedence over partners' states' laws. It is noteworthy that this court had an occasion in the case of *Bluaxis Construction Limited vs Kenya National Highways Authority* [2024] KEHC 9693 (KLR) to comment on the application of the EACVLCA in respect to the country's national laws. The court held as follows:-

The respondent is surely attempted to mislead the court by stating that the provisions of the EACVLCA overrides any other laws in the Republic of Kenya. According to the hierarchy of laws applicable in the Republic it is evident that *the Constitution* is the supreme law of the land followed by statutory laws and international laws. It is therefore not correct to say that the EACVLCA supersedes *the Constitution* or the statutory laws within the Republic.

25. From the foregoing, the *Traffic Act* is applicable in the country and provides for overloading offences in sections 56 and 58 of the Act which read as follows:-

Section 56(1) reads No vehicle shall be used on a road with a load greater than the load specified by the manufacturer of the chassis of the vehicle or than the load capacity determined by an inspector under this Act as provided for under the East African Community Vehicle Load Control Act, 2013.



Section 58(1) reads Any person who drives or uses on a road a vehicle in contravention of the provisions of Section 55, 56 Or 57 or in accordance with the East African Community Vehicle Load Control Act 2013, shall be guilty of an offence and liable to a fine not exceeding four hundred thousand or to imprisonment for a term not exceeding two years or both. Provided that the rules under this Act may provide that a person who is guilty of an offence under Section 55, 56 or 57 or in accordance with the East African Community Vehicle Load Control Act, 2013 shall be liable to pay a fine according to a prescribed scale and different scales may be prescribed for first offenders, and for second or subsequent offenders, within a prescribed period, but so that no person shall thereby be liable to pay a fine greater than the maximum provided by this subsection; and for the avoidance of doubt it is declared that liability of a person to pay a fine on a prescribed scale shall not affect that person's liability to imprisonment under this sub section as an alternative to, in addition to, or in default of, the payment of a fine.

26. I have perused the record and noted that various overloading cases have been filed in the magistrates courts under the Traffic Act. It must be noted that the police also charged drivers and owner of vehicles for overloading on other roads other than the East African Community Road network. Such charges are brought under the Traffic Act. It is not clear from the list that was presented by the applicant which category of cases listed were registered in court and whether it was the traffic police or the Kenya National Highway Authority KENHA officials who charged the said offenders.
27. As for the law applicable, it is important to note that the EACVLC applies to overloading of vehicles on East African Community region roads while the Traffic Act applies to overloading on other roads. As such the applicability of the law will depend on the road on which the overloaded vehicle was being driven at the time of occurrence of the offender
28. In my considered view, an offender has no right to choose under what law or in which court their cases should be registered. The learned magistrate directed the appellant to prefer charges against the appellant within two days under the Traffic Act and failure to comply would lead to release of the vehicle Reg. No. KDE 023 F.
29. The orders given by the court, in my view, were as a result of the applicant's vehicle having been detained for a period of one month despite it being a commercial vehicle. The most glaring issue herein is that the appellant lacks an appeal mechanism in their regulations which leaves the offender with no avenue to seek a remedy where overloading fees are disputed. Any law that gives no appeal mechanism is in my view oppressive. It is a high time that KENHA provided for an appeal mechanism in cases of overloading under the EACVLC Act. As things stand in the existing law, the offender in overloading cases will always feel that justice has been denied even as the overloading fees are paid to facilitate the release of the detained vehicle. In such a situation, people affected will result to filing for remedies in courts. It is for this reason that I find that the Magistrate's had jurisdiction since the applicant had not been tried in a tribunal.
30. In conclusion, I find no merit in this appeal and it is hereby dismissed with costs to the respondent.
31. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 29TH DAY OF MAY 2025.

F. MUCHEMI

JUDGE

