



REPUBLIC OF KENYA



KENYA LAW
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**Signon CFS v Nyachoi (Civil Appeal E096 of 2024)
[2025] KEHC 12149 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 12149 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E096 OF 2024**

**F WANGARI, J
MAY 29, 2025**

BETWEEN

SIGNON CFS APPELLANT

AND

EVANS ISABOKE NYACHOI RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. V. Muthoni, Resident Magistrate delivered on 20/03/2024 arising from Mombasa SCCC No. E749 of 2024))

JUDGMENT

1. The Respondent who was the Claimant in the lower court claimed a refund of Kshs. 250,000 from the Appellant. He is the Director, Evafast Air Cargo Services, which was the notifying party in a shipment i.e. container No. MSCU 7507776 belonging to Alexander Hills, the Consignee. The cargo was stored in the Appellant's Cargo Freight Station (CFS).
2. The Respondent appointed agents namely Catlink Investment Ltd, Quickline International Ltd and Evafast Air Cargo Services as the clearing agents. The cargo had accrued storage charges where Kshs. 250,000/= was paid by the Respondent as negotiated storage charges. The container was not released as it was auctioned by Kenya Revenue Authority. The Appellant had undertaken to refund the money but didn't honour the promise to do so, hence filing of the claim in the lower court.
3. The Appellant, who was the Respondent in the lower court stated that the Claimant had no locus standi to file the suit in his own name as he ought to have filed I the name of the company. Further, the Respondent stated that there was no contract between the Claimant in person and therefore, the Respondent owed him any money.
4. The matter proceeded for hearing and the Claimant's claim allowed as prayed. The Respondent was dissatisfied with the judgment of the court hence the filing of this appeal. The Memorandum of Appeal dated 05/04/2024 was based on grounds inter alia that the trial court erred I law and in fact in holding



that the Claimant had locus standi to institute the claim, and finding that the claimant was entitled to the Kshs. 250,000/=.

5. The court directed that the appeal be canvassed by way of written submissions. Both parties filed their rival submissions which I have considered.

Analysis

6. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (See *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123)
7. Firstly, the Record of Appeal filed by the Appellant was incomplete. The Respondent filed Supplementary Record of Appeal. I note that the Witness Statement by the Claimant is missing from the records. I shall rely on the documents filed before this court.
8. Upon perusal of the documents filed, issues for determination are;
 - a. Whether the Respondent had locus standi to file the claim.
 - b. Whether the appeal has merits
9. The Respondent stated that the claim ought to have been filed by Evafast Aircargo Services being a 'company'. In the celebrated case of *Salomon v Salomon* [1897] AC 22, the principle of separate corporate personality was established. A company is a legal entity separate from its shareholders and directors. It has to be established first that Evafast Aircargo Services was a company so as to acquire the legal personality. He who alleges must prove.
10. In section 107 and section 109 of the *Evidence Act*, it provides as follows;
 - 107 (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.
 109. 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
11. Having perused through the documents filed, there is nothing to show that Evafast was a company under the *Companies Act*. Nothing stopped the Appellant from availing proof whose documents are in public domain, to prove its allegation. I agree with the finding of the lower court. On that ground, the appeal on lack of locus standi fails.
12. On whether the Appellant owed the Respondent the money awarded, the claimant in the lower court produced a copy of the cheque for Kshs. 250,000/= drawn in favour of the Respondent. It was denied that the money received was paid by the Respondent but claimed to have been paid by Quickline International Limited.
13. The Respondent said as the Notifying Party, he nominated clearing agents among them Quickline International Limited. A fact admitted by the Appellant. From the evidence of the Claimant, page 99 of the R.O.A, which is in page 3 of the proceedings, the Claimant testified that he issued the cheque



to the Appellant, which was banked by mistake and he had been called by the Respondent's Manager and informed of the same.

14. I have however perused through the original lower court file. The witness gave details how the Respondent gave false promises on refunding the money to him. The letters to the Respondent seeking for the refund have been produced as an exhibit. After the Respondent failed to refund the money and blocked the Claimant from accessing the Respondent's premises, he reported the matter to the police. The statement made to the police was produced as an exhibit.
15. I make reference to page 105 and 106 of the R.O.A on the analysis of the evidence by the parties in respect to the cheque in issue. The trial court found that the evidence of the Claimant in respect to the cheque was not rebutted. In the absence of any evidence to the contrary, I agree with the trial court and find that the Claimant proved that the did issue the cheque in issue to the Respondent.
16. Considering that the Appellant intends to file legal proceedings against the Consignee, Alexandra Hiles, the party is at liberty to claim the said amount from the Consignee.
17. On the issue of costs, a careful reading of Section 27 of the *Civil Procedure Act* indicates that it is trite law that they follow the cause or event unless the court, for some good reasons, orders otherwise. The appeal having no merits, costs are awarded to the Respondent.

Determination

18. In the upshot, this court orders as hereunder;
 - a. The the appeal has got no merits and is hereby is dismissed.
 - b. Costs to the Respondent

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 29TH DAY OF MAY, 2025.

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F. WANGARI

JUDGE

In the presence of;

M/S Machogu Advocate for the Appellant

Respondent present in person

M/S Norah, Court Assistant

