



**Acceler Global Logistics v Landis Limited (Civil Appeal E538 of 2021)
[2024] KEHC 9643 (KLR) (Civ) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E538 OF 2021

H NAMISI, J

JULY 26, 2024

BETWEEN

ACCELER GLOBAL LOGISTICS APPELLANT

AND

LANDIS LIMITED RESPONDENT

*(Being an Appeal against the Ruling of Hon. Judith Omollo (SRM), in
Nairobi Small Claims SCCC No. E2112 of 2023 delivered on 9th June 2023)*

JUDGMENT

Introduction

1. This appeal arises from a suit in the Small Claims Court for recovery of Kshs 199,221.30 relating to logistical services offered by the Appellant to the Respondent on 30th June 2017 and 30th November 2017. The Appellant raised invoices numbers xxxxxx and xxxxxx, respectively. The Respondent failed to make good on payment of the invoices, thus necessitating the claim.
2. In response thereto, the Respondent raised a Preliminary Objection to the effect that the matter was res judicata. The Respondent's objection was based on the fact that the Appellant had filed a suit in Mavoko (CMCC NO. E009 of 2022) against the Respondent in which judgement had been entered on 27th September 2022.
3. The Respondent attached copies of the pleadings in Mavoko CMCC No. E009 of 2022, in which the Appellant had filed a suit for recovery of Kshs 3,320,047/-, being the sum due and owing to the Appellant in respect of logistical services offered to the Respondent. The Appellant had issued a demand letter to the Respondent dated 28th October 2021 for the outstanding amount.



4. In its Ruling of 9th June 2023, the trial court made reference to section 13 (2) of the [Small Claims Court Act](#), which provides that a claim shall not be brought before the court if the proceedings relating to that claim are pending in or have been heard and determined by any other court.
5. The Appellant, being aggrieved by the Ruling, filed a Memorandum of Appeal dated 21st June 2023 on the following grounds:
 - i. That the learned Magistrate erred in law by holding that the suit filed is res judicata;
 - ii. That the learned Judge (sic!) erred in law and in fact by holding that all invoices need to be prosecuted in one suit;
 - iii. That the learned Magistrate erred in law and in fact in disregarding the evidence of the Claimant and the submissions made for and on behalf of the Plaintiff;
6. Parties were directed to canvass the appeal by way of written submissions. On 6th June 2024, counsel for the Appellant was directed to file and serve his submissions by close of business. Counsel for the Respondent was granted leave to file his submissions within 14 days after service. I note that the Appellant's submissions were filed on 21st June 2024, very much out of time. By the time of writing this judgement, the Respondent had not filed their submissions, understandably so.

Analysis and Disposition

7. Section 38 of the [Small Claims Court Act](#) provides as follows:
 1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;
 2. An appeal from any decision or order referred to in sub section (1) shall be final.
8. In the case of *Otieno, Ragot & Company Advocates -vs- National Bank Kenya Ltd* [2020] eKLR, the Court of Appeal addressed the duty of a court considering points of law.

“This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).”
9. Similarly in the case of [Mwita v Woodventure \(K\) Limited & another \(Civil Appeal 58 of 2017\)](#) [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:

-“This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of *Stanley N. Muriithi & Another v Bernard Munene Ithiga* [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR in which it was held that: “In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered



matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

10. The duty of this Court in this instance is similar to that stated herein above, which is essentially on points of law. In the case of *J N & 5 Others -vs- Board of Management, St. G School Nairobi & Another* [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations.”

11. Turning to the grounds of appeal, these primarily relate to a question of law. In their submissions dated 21 June 2024, the Appellant relied on the case of *Invesco Assurance Ltd -vs- MW (minor suing through next friend and mother)* [2020] eKLR, in which the Court of Appeal held that for res judicata to apply, the following must be demonstrated:

- i. The matter in issue is identical in both suits
- ii. The parties in the suit are the same
- iii. There is a concurrence of jurisdiction
- iv. The matter has been heard and finally decided

12. I have analysed the evidence presented by the Appellant in the trial court. The Appellant filed a list of documents, one of which is a Statement of Account dated 10 June 2022. The same indicates transactions from 31 May 2017, with an opening debit balance of Kshs 1,315,990.99. The last entry is on 27 October 2021, with a closing debit balance of Kshs 3,320,047.44. This is the exact amount that the Appellant successfully sued the Respondent for in Mavoko CMCC No. E009 of 2022.

13. Among these entries are 2 invoices for 30 June 2017 (Invoice No. xxxxxx) for Kshs 196,901.20 and 30 November 2017 (Invoice No. xxxxxx) for Kshs 2,320. The total sum is Kshs 199,220.20 (emphasis mine), the exact amount that the Appellant claimed in the trial court.

14. Without delving into the other grounds of appeal, it is very evident that the amount claimed in the trial court was part of the sum claimed in the Mavoko case. Without belabouring the point this matter is res judicata.

15. The upshot of the foregoing is that the Appeal not only lacks merit, but is also a complete abuse of the court process. The same is dismissed with costs of Kshs 35,000/- awarded to the Respondent.

DATED AND DELIVERED AT NAIROBI THIS 26 DAY OF JULY 2024.

HELENE R. NAMISI

JUDGE

In the presence of:



...n/a for the Appellant

...Kabugu for the Respondent

