



**Muthoni v Lempean Global Millers Ltd (Civil Appeal E337 of 2022)
[2024] KEHC 16776 (KLR) (30 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 16776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E337 OF 2022**

**NIO ADAGI, J
JULY 30, 2024**

BETWEEN

JOSEPH KIBUE MUTHONI APPELLANT

AND

LEMPEAN GLOBAL MILLERS LTD RESPONDENT

*(An Appeal from the Judgment of Hon. R. Otieno (RM) in
Thika SCCCOMM E1610 of 2022. delivered on 29/08/2022)*

JUDGMENT

1. By a Statement of Claim filed on 04/7/2022 the Respondent herein brought a suit against the Appellant seeking for Kshs.678,126/=.
2. In response thereto, the Respondent filed a Response to Statement of Claim dated 18/5/ 2022.
3. The matter proceeded for hearing with the Respondent calling two witnesses while the Appellant testified for himself.
4. The Respondent represented by the one Mr. Peter Wanjohi filed the claim claiming a sum of Kshs.678,126/= from the Appellant. During the hearing the Respondent's representative testified that they employed the Appellant through an employment agreement signed by the Appellant. It was the Respondent's witness statement that the Appellant who was a sales person of the Respondent owed the Respondent the said sum of Kshs.678,126/=.
5. The Respondent also called a further witness who identified herself as a director and/or accountant in the company. The witness did not produce any documentation proving her role or designation in the company. She testified that the Respondent owed the company the sum of Kshs.678,126/=.
6. The Appellant testified that he was an employee of the Respondent however; he did not enter into any employment agreement with the Respondent. It was the term of the oral employment agreement that



the Appellant would work as a sales person and also a driver. The Appellant was also tasked with the duty of marketing the Respondent's flour which would earn him a commission of Kshs.300,000/= if the flour would make entry into the market.

7. Upon consideration of the pleadings, evidence and submissions which were only filed by the Appellant, the trial magistrate found that the money mentioned in the text messages (C-Exhibit 3) included those the Appellant had received from the Respondent's customers but had not remitted to the Respondent and those which could have been pending payment by the customers to the Respondent through the Appellant, if any.
8. That the documents produced by the Respondent showed that there was a short fall of Ksh.678,126/- after consideration of the value of the goods supplied and the amounts paid to the Respondent. The burden of proof therefore shifted to the Appellant to give evidence of the customers who had not paid him for the supplies delivered but he failed to prove that. The trial magistrate found that the Respondent had proved his claim against the Appellant on a balance of probability and that there was no evidence of the Ksh.300,000/- counter claimed by the Appellant and dismissed the same.
9. Being aggrieved by the said judgment the Appellant lodged the appeal herein.
10. The Appellant in the Memorandum of appeal dated 29.12.2022 has raised 13 grounds of appeal which basically challenge the entire judgment of the trial court. The grounds are as follows:
 1. That the learned magistrate erred in law and fact in holding that the appellant was liable, while the elements of the case point, and prove that the claim is of employer employee relationship and therefore it was an employment claim and the court lacked instance jurisdiction to entertain the claim.
 2. That the learned magistrate erred in law and fact by admitting documentary evidence that were altered by peter Wanjohi Njuguna purportedly representing the respondent without any proof of CR12 certificate on record of the court.
 3. That the learned magistrate erred in law and fact by relying on skewed documents that were drafted by the purported director of the respondent without the knowledge of the appellant including a forged signature of the appellant thereby failing to carry out an independent assessment of the evidence hence arriving at an erroneous conclusion.
 4. That the learned magistrate erred in law and fact by failing to hold that the appointment letter produced before court by the respondent herein was void ab initio since the signature appended on it was not by the Appellant.
 5. That the learned magistrate erred in law and fact by failing to hold that the employment contract was oral in nature since the appointment letter was strange to the appellant, and the signature on it was forged by the respondent, a ploy for seeking to benefit from unlawful acts and denying the appellant his rightful salary and commission.
 6. That the learned magistrate erred in law and fact in failing to hold that the appellant was denied his rightful wages by the respondent in an amount of Kshs.300,000 and in the alternative filed this malicious suit of unjust enrichment with impunity to mislead the court.
 7. That the learned magistrate erred in law and fact by holding that the respondent had proved his case when indeed even in the judgement the evidence points out that the court lacked instance jurisdiction to preside over the matter.



8. That the learned magistrate erred in law and fact by considering extraneous issues that were not among the issues for determination.
9. That the learned magistrate erred in law and fact by considering the respondent's evidence only and totally rejecting the appellant's version of events and thus demonstrating open bias and prejudice against the appellant.
10. That the learned magistrate erred in law and fact by failing to appreciate the fundamental doctrine of contract, equity and contra proferentem rule in documents evidence.
11. That the learned Magistrate erred in law and in fact by failing to address the issue raised by the Appellant together with the evidence but misleading himself on the findings derived from the Respondent.
11. That the learned magistrate judgment and decree is contrary to the weight of evidence and applicable legal principles.
12. That the learned magistrate exercise was so injudicious and wrong as to occasion such grave injustices to the Appellant, bring law into disrepute and invite anarchy and the law of the jungle.
13. The duty of this court on appeals from the Small Claims Court is clearly set out in the Small Claims Act.

An appeal from the small claims court is on issues of law only. This is pursuant to Section 38 of the [*Small Claims Court Act*](#). It provides that:

1. A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
 2. An appeal from any decision or order referred to in subsection (1) shall be final.”
14. 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) Of 13.02.2014, the Court of Appeal stated as follows: -

“It was held that 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.”

15. I have perused the Record of Appeal, considered and weighed the evidence and submissions on the appeal while taking into account that this court has a duty to re-evaluate, re-assess and re-analyze the record and make its own conclusions. I will analyze and determine the grounds of appeal as follows:
16. On grounds 1 and 7 as to whether the claim is of employer employee relationship and therefore it was an employment claim and the court lacked instance jurisdiction to entertain the claim. This court finds that the issue before the court was for a claim for recovery of unpaid amounts by the Appellant relating to goods he had supplied or sold on behalf of the Respondent. This was purely a commercial claim and not an employment one and therefore the court had the jurisdiction to entertain it. The Appellant too



counter claimed in the Respondent's claim meaning he accepted and submitted to the jurisdiction of the trial court and is therefore estopped from raising the issue of jurisdiction in this appeal.

17. On grounds 2, 3, 4 and 5 which touches on the documents that were either admitted by the trial court, allegedly altered or with forged signature, again this court finds that the Appellant did not challenge those documents and cannot raise it in this appeal. These grounds lack merit.
18. On ground 6 as to whether the Appellant was denied his rightful wages by the Respondent in an amount of Kshs.300,000 and in the alternative filed this malicious suit of unjust enrichment with impunity to mislead the court. This court finds that the trial court properly found that there was no evidence of the Ksh.300,000/- counter claimed by the Appellant and rightly dismissed the same.
19. On ground 8 as to whether the trial court considered extraneous issues that were not among the issues for determination. This court notes that there were no agreed issues for determination by the Parties and the trial court clearly set out three issues for determination which included: i) Whether the Claimant should be awarded the reliefs sought in the claim, ii) whether the Respondent should be awarded the reliefs sought in the counter claim and iii) who shall bear the costs of the claim. Clearly these three issues for determination as set out by the trial court cannot be said to be extraneous at all. In any event the Appellant has not attempted to demonstrate or set out such extraneous issue he is referring to.
20. On grounds 9,10,11 and 12 touching on how the trial court addressed evidence that was adduced in the claim, this court finds that the learned magistrate legally appreciated the facts and the evidence that was placed before court and rightly found that the Respondent had prove its case on a balance of probability and therefore allowed the claim.
21. Lastly on ground 13 that the learned magistrate exercise was so injudicious and wrong as to occasion such grave injustices to the Appellant, bring law into disrepute and invite anarchy and the law of the jungle. This court finds this ground to be a bit ambiguous, unsubstantiated and a bare attack to the trial court.
22. In the circumstances, I cannot fault the Adjudicator for reaching the conclusion that the Respondent had proved its case on a balance of probability whereas the Appellant failed to prove any of the issues raised in the counterclaim and properly dismissed the same.

The up shot is the appeal is dismissed but with no order as to costs.

DATED, SIGNED & DELIVERED AT MACHAKOS THIS 30TH DAY OF JULY 2024

NOEL I. ADAGI

JUDGE

