



**Women & Youth Against Aids & Poverty v Kimelywa t/a Leon Interiors Décor & Designs
(Civil Appeal E995 of 2023) [2024] KEHC 11784 (KLR) (Civ) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11784 (KLR)

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

CIVIL

CIVIL APPEAL E995 OF 2023

AM MUTETI, J

SEPTEMBER 26, 2024

BETWEEN

WOMEN & YOUTH AGAINST AIDS & POVERTY APPELLANT

AND

**EUNICE KIMELYWA T/A LEON INTERIORS DÉCOR &
DESIGNS RESPONDENT**

(Being an appeal against the Judgment of Hon. G. Simatwo (Adjudicator) delivered on 6th July 2023 and decree issued on 8th August 2023 in Milimani Small Claims Case No. E 7584 OF 2022)

JUDGMENT

Introduction

1. The appellant in this matter challenges the decision of the learned Honourable Adjudicator on the basis that the adjudicator relied on disputed documents to arrive at the decision condemning the Appellant to pay the Respondent the sum of Kshs 276,040/=.

The appellant through written submissions sets out three issues for determination. The issues are:

- i) That the learned Honourable Magistrate based his decision on a quotation and complementary slip without allowing the Appellants an opportunity to cross examine the Respondent on the contents of the documents.
- ii) The learned Honourable Magistrate shifted the burden of proof to the Appellant contrary to the law.
- iii) The learned Honourable Magistrate erred in law by failing to find that the handwritten complementary slip was not a valid agreement/contract that bound the appellant.



Analysis And Determination

On the first issue:-

2. On reliance on documents without allowing the Appellant an opportunity to cross examine on the same, this court finds that the contention by the Appellant is not sustainable.
3. The *Small Claims Court Act* Cap 10A of the laws of Kenya adopts a very simplified way of conducting trials.

The Act under Section 30 states:-

“Subject to Agreement of all parties to the proceedings, the court may determine any claim and give such orders as it considers fit and just on the basis of documents and written submissions presented to the court”.

4. The record of the lower court shows that the parties appeared before the learned Honourable Resident Magistrate on 31st May 2023. The two were represented by Mr. Ochieng and Mr. Okanga advocates,
5. It is clear from the record that Mr Ochieng for the claimant prayed that they proceed to have the matter disposed off under Section 30 of the Small Claims Act.
Mr. Okanga for the Defendant agreed to the proposal by Mr. Ochieng and the court ordered that the matter would proceed under Section 30 of the act as per the Agreement.
6. It is thus not clear to this court what then is the basis of the allegation by the Appellant that he was denied a fair hearing.
7. The parties having agreed to dispose of the matter that way, it was not necessary for the court to have the makers of the documents summoned to produce the documents in court.
8. If the Appellant for some reason did not want any of the documents intended to be relied on by the Respondent admitted in evidence, it would thus have been his duty to indicate so to the court.
9. It must be remembered that the spirit of Section 30 of the small Claims Court is to avoid unnecessary procedures that contribute to the overall delay in conclusion of cases. Any party who is not minded to adopt that procedure has the option to decline at the stage when the other party proposes-the mode.
10. In the present case the Appellant did not object thus the court was within the law to proceed and deliver judgment based on the documents only.
11. Further, the court reserved the matter for mention on 12th June 2023 and it appears that the Appellant and his advocate were absent when the matter came up.
12. The Respondent's counsel indicated on 12th June 2023 that they had filed submissions and the court reserved the matter for judgment.
13. The trial court therefore cannot be faulted for relying on the law in delivering Judgment since even after reserving the matter for judgment on 30th June 2023, the appellant did not approach the court either to seek reopening of the matter to challenge the documents filed by the respondent or request for the calling of the makers.
14. This court is therefore not persuaded by the Appellants arguments on this issue and the same must fail. It is clear there was no misdirection by the trial court to warrant intervention by this court.



15. The submission that the Appellant has put before this court on the authenticity and reliability of the documents would have served them best if they were raised before the trial court.
16. The contention now being raised in the grounds is with tremendous respect a belated attempt to deny the Respondent the fruits of the judgment which he lawfully secured.
17. The Appellant has included in the record of appeal documents filed in the lower court. Notably, the Appellant did not file any submissions before that court thus the honourable magistrate relied only on the documents by the Respondent.
18. This takes me to the second issue by the Appellant that the Honourable court shifted the burden of proof.
19. The contention is not based on any tangible evidence. To the contrary, the learned honourable magistrate was very balanced in her assessment of the documentary evidence.
20. The trial court stated: -

“On the face of it, the Respondent is an entity which has been sued in its own name. If the complementary slip was intended to be binding upon the Respondent, then it ought to have been properly executed and attested to by the Respondent's authorised representatives. Evidence in this respect was not led and on that account, I am unable to find in the claimant's favour in terms of the interest alleged to have been agreed upon”.
21. The statement reproduced above indicates that the honourable court appreciated the Evidence on record and even without any submissions on the sufficiency of evidence by the Appellant, the court *Suo Moto* proceed to dismiss certain aspects of the claimant's claim and The court did not shift the burden to the Appellant as alleged.
22. Like in all civil proceedings, the standard of proof is on a balance of probabilities. The claimants having filed their documents and submissions, I find that they discharged the burden of proof on their part.
23. The appellant did not file any document to counter the claimant's case thus the evidence on record was unchallenged. I therefore reject the argument that the burden proof was shifted.
24. On the final issue resting on the validity of the contract between the parties, the learned honourable magistrate. Considered among other evidence the WhatsApp message correspondences signifying the representative's admission of indebtedness to the claimant while further relying on the complimentary slip depicting that a sum of Kshs 50,000/= was paid. The court also considered the quotation dated 10th November 2020 for provision of services.
25. The use of WhatsApp chats as evidence was in my view proper. The Courts in this country have recognized service of Court documents and orders as proper service. The Courts by parity of reason cannot exclude Whatsapp evidence in determining a matter. Technology has caught up with us and we must not shy away from it. The only consideration that a Court must bear in mind is relevance of Whatsapp message and its authenticity.
26. The claimant in this matter produced a certificate of Electronic Print in accordance with Section 106 B(4) and 78 (A) of the [Evidence Act](#) of the Laws of Kenya.
27. The certificated was not challenged thus in my considered view the Evidence passed the authenticity test. The uniqueness of WhatsApp messages lies in its encryption thus making such messages only



readable by the sender and the recipient. This feature obviates the danger of distortion of a WhatsApp message.

28. If the WhatsApp message is the best evidence that a person adducing evidence can lay hands on, that evidence should be readily received and admitted in evidence. This is where technology has taken us and we cannot resist the technological change any more. In our daily lives WhatsApp has been put into use in official communication. It has so far served us well.
29. The Respondent having complied with the provisions of Section 106 B (4) of the *Evidence Act* the evidence was properly before court and in relying on the same the court did not violate the law. The practice directions issued by the Honourable Chief Justice during the Corona virus pandemic allowed the use of WhatsApp as recognised mode of have service. Parties in their daily business dealings may at times use this mode of communication to hasten the business processes. It would be a great hindrance for courts to reject documents proving such correspondence in resolving disputes.
30. I therefore find that the trial court was within the law in placing reliance on those messages and other documents. The appeal by the appellant is hereby dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024.

A.M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Chobika for the Appellant

Nakel for the Respondent

