



**Greenlife Crop Protection Africa Limited v Trovic Ventures Limited & 2 others (Civil Appeal E148 of 2023) [2023] KEHC 27359 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27359 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E148 OF 2023  
PJO OTIENO, J  
DECEMBER 19, 2023**

**BETWEEN**

**GREENLIFE CROP PROTECTION AFRICA LIMITED ..... APPELLANT**

**AND**

**TROVIC VENTURES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JOHN OCHIENG WERE ..... 2<sup>ND</sup> RESPONDENT**

**AGGREY OKETCH ROGO ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the Ruling and Order of Small Claims Court at Kakamega (The Honourable Caroline Cheruiyot) delivered on 29th September, 2023 in Small Claims Court Civil case No.E447 of 2023)*

**JUDGMENT**

1. By a ruling dated 29/9/2023, rendered by the Small Claims Court, the court dismissed a notice of preliminary objection challenging its jurisdiction thus paving way for an application to bring a derivative action by the defendant/respondent.
2. That decision has aggrieved the appellant, who was the plaintiff before the trial court. The only issue for determination is whether the Small Claims Court, as established under the [Small Claims Court Act](#), is vested with jurisdiction to entertain an application by a party seeking to bring a derivative action as defined and known in law under the [companies Act](#).
3. The court has perused submissions by both sides as highlighted by counsel for both parties before the court.
4. The determination of this appeal needs not look further than the provisions of Sections 3 and Part XI of the [Companies Act](#) 2015. Section 3 defines the court to mean the High court, unless some other court is specified. No provision of any law was cited before the trial court and none has been cited here to



qualify the definition of the court under the Companies Act. Section, 13(5) of the Small Claims Court cannot be interpreted to mean, as counsel for the respondent argued before the trial court, that what is not excluded is included. Such interpretation would pervert the plain meaning of Section 12.

5. The small claims court is a creature of the Small Claims Court Act and its limited jurisdiction is vested by section 12 to be: -

- “(1) subject to this Act, the rules and any law, the Court has jurisdiction to determine any civil claim relating to-
- a. a contract for sale and supply of goods or services;
  - b. a contract relating to money held and received;
  - c. liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
  - d. compensation for personal injuries; and
  - e. set-off and counterclaim under any contract.”

6. In coming to its determination on the preliminary objection, the court said:

The Claim as filed seeks compensation for breach of contract which is within the court’s jurisdiction hence the derivative action is on the basis of a claim within the court’s jurisdiction. It is therefore the courts finding that this court has requisite jurisdiction”

7. While the Small Claims Court is clearly vested with jurisdiction to determine cases on breach of contract, for sale of goods and supply of goods and services, the court definitely is not the court envisaged and defined by the companies act to determine the intricate corporate dispute in the nature of derivative actions. Nothing in sections 12 and 13 of Small Claims Court Act and Section 239 of the companies Act, and no amount of stretched interpretation of those provisions can reasonably be found to vest in Small Claims Court the jurisdiction to entertain applications for leave to bring or continue derivative actions. To this court, Small Claims Court as conceived and established in law should be a court for straight forward disputes to meet the tight timelines.

8. On that basis, the court finds that the trial court’s decision is marred by an incorrect exposition of the law for which reason the same is set aside. Having so set aside the decision, it becomes axiomatic that the application dated 14.9.2023 was brought before a court without jurisdiction. It is ordered that it be struck out with costs.

9. For that reason, the appeal, is wholly merited and is thus allowed with costs to the appellant. Let the trial court now proceed with the matter in the usual manner.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF DECEMBER, 2023**

**PATRICK J O OTIENO**

**JUDGE**

