



**Global Brother Ltd v Red Dot Distribution Ltd (Civil Appeal E079 of 2021)  
[2022] KEHC 15970 (KLR) (Commercial and Tax) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15970 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL E079 OF 2021  
DAS MAJANJA, J  
NOVEMBER 30, 2022**

**BETWEEN**

**GLOBAL BROTHER LIMITED ..... APPELLANT**

**AND**

**RED DOT DISTRIBUTION LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. J. Ofisi, RM/Adjudicator delivered  
12th August 2021 at the Small Claims Court, Milimani in SCC COMM E229 of 2021)*

**JUDGMENT**

1. This is an appeal against the judgment of the Small Claims Court dated August 12, 2021 dismissing the appellant's claim for USD 7,076.00.
2. The appellant's case, set out in its statement of claim dated June 7, 2021, is that on or about August 3, 2020 it ordered a 20 kVA uninterruptible power supply (UPS) from the respondent which was to be used in a lift at Unilever PLC. The appellant paid USD 7,076.00 for the UPS but then later claimed that what was delivered was of the wrong specification and that batteries were missing from it. It therefore sought a refund of the USD 7,076.00 together with interest and costs.
3. In its defence, the respondent prayed for the suit to be dismissed. It denied any obligation on its part whether express or implied on the fitness of purpose of the UPS ordered and that it was not privy to any dealings between the appellant, Unilever PLC and third party contractors. The respondent added that the proforma invoice issued was interim and not final, was not signed or stamped and thus could not form the basis of the appellant's claim. The respondent asserted that the appellant received the UPS through its agent on August 7, 2020 and that the UPS delivered was in accordance with the contract which constituted the invoice dated August 6, 2020 and contained the description, terms of sale, warranties and acceptance. That having accepted the UPS without any reservations, the appellant



- waived its right to return it. In any case, the respondent stated that the UPS included internal batteries specified in the invoice issued on August 6, 2020.
4. After hearing the suit where each party called one witness and considering the written submissions, the court rendered its judgment on August 11, 2021. It found that the appellant was under a duty to reject the goods supplied if they did not meet the required specifications. Consequently, the court dismissed the suit on the ground that the appellant had not proved its claim to the required standard. It is this decision that is the subject of the instant appeal grounded in the appellant's memorandum of appeal dated September 9, 2021. The parties have also filed written submissions in support of their respective positions.
  5. As submitted by the respondent, this court's jurisdiction is limited to matters of law as provided for under section 38(1) of the *Small Claims Court Act, 2016*. A court limited to matters of law is not permitted to substitute the subordinate court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (*John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR).
  6. From the record, more so the proforma invoice dated August 3, 2020, the appellant ordered the UPS described as 'easy UPS 20 kVA 400 V 3:3 UPS with internal batteries – 15 minutes runtime, E3S parallel, E3S tempsensor, white colour, 400V 3PH input voltage: 380/400/415V(three-phase + neutral) input power factor > double conversation made up to 96% communication interface: RS232,RS485, USB, dry contact, modbus TCP/IP, optional network card control panel: multi-function LCD, status and display console.' On February 11, 2021, the appellant raised issue that the UPS so delivered was 3-phase input but single phase output and yet what they had ordered was a 3-phase UPS in and out. As such, the appellant stated that Unilever PLC had not commissioned it.
  7. On March 11, 2021, the appellant stated that it had spoken to a representative of the respondent who had agreed to send a technician to Unilever PLC to verify and inspect the UPS. On March 18, 2021, the appellant confirmed that it was in possession of the UPS and that the respondent could send its representative for inspection, which inspection happened as confirmed by the appellant through its email of March 29, 2021. The appellant sought a way forward and suggested that the matter could be resolved by exchanging the goods. In response, the respondent stated that the appellant could return the UPS with the complete packing and the appellant was requested to procure the UPS from a different vendor as the respondent did not have it in stock. The respondent also suggested contacts of partners the appellant could check and confirm availability of the required UPS. In a further email of May 26, 2021, the respondent stated that it was ready to refund the appellant the amount paid for the UPS less \$4,476 but that the appellant was to return the UPS back to the respondent before the payment was released.
  8. From the record, the UPS was received and accepted by the appellant through the representative it ordered the UPS from as having been in good order and condition as evidenced by his acceptance and signature on the invoice dated August 6, 2020. The appellant had accepted the UPS as delivered but then rejected the it once the third party, Unilever PLC raised issue with its description and failed to commission it. The adjudicator found that the appellant examined the UPS and intimated to the respondent that it had accepted it as having been in good order and condition. Based on totality of the evidence, I cannot say that the decision is perverse to warrant intervention by this court.
  9. The appeal lacks merit. It is dismissed with costs assessed to the respondent at Kshs 20,000.00 only.

**DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF NOVEMBER 2022.**



**D. S. MAJANJA**

**JUDGE**

Court Assistant: Mr M. Onyango.

Mr Kamwaro instructed by Kamwaro and Associates Advocates for the Appellant

Ms Paula Atukunda, Advocate instructed by the Respondent.

