



REPUBLIC OF KENYA



**Mutabi v Manaar Motors Limited (Civil Appeal E061 of 2023)  
[2025] KEHC 392 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 392 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E061 OF 2023  
JM OMIDO, J  
JANUARY 23, 2025**

**BETWEEN**

**JESSE MUTABI ..... APPELLANT**

**AND**

**MANAAR MOTORS LIMITED ..... RESPONDENT**

*(Being an Appeal from the Judgement and Decree of Hon. L.W. Maina, Resident Magistrate/  
Adjudicator delivered on 18th January, 2023 in Nairobi Meru MSCCC No. E004 of 2022)*

**JUDGMENT**

1. This judgment determines the Appellant’s appeal filed on 2<sup>nd</sup> May, 2023 vide the Memorandum of Appeal dated 19<sup>th</sup> April, 2023.
2. The Respondent who was the Claimant before the Small Claims Court sitting at Meru (hereinafter referred to as “the trial court”) presented the before the lower court vide a Statement of Claim dated 24<sup>th</sup> November, 2022. The claim before the lower court was based on breach of contract. The Respondent sought the following reliefs:
  - i. Damages for breach of contract.
  - ii. An order for the Respondent to pay the sum of Ksh.90,000/- to the Claimant.
  - iii. Interest on (ii) above from the date of instruction.
  - iv. Any other better relief (sic) that the court may deem fit and just to grant.
3. The Respondent’s suit was resisted by the Appellant who filed a Response to Statement of Claim and Counterclaim dated 7<sup>th</sup> November, 2022 and sought that the suit be dismissed with costs and that judgement be entered for the Appellant on the counterclaim for Ksh.56,000/- which amount he pleaded was owed to him by the Respondent.



4. In the trial court's judgement rendered on 18<sup>th</sup> January, 2023, judgement was entered in favour of the Respondent for Ksh.90,000/-. The court went on to dismiss the Appellant's counterclaim and ordered that the Appellant bears the costs of the suit.
5. It is that judgment that gave rise to this appeal where the Appellant now complains in his Memorandum of Appeal that:
  1. The learned Adjudicator erred in law in making a finding that was not based on evidence.
  2. The learned Adjudicator erred in law in making a finding that was based on a misapprehension of the evidence.
  3. The learned Adjudicator erred in law in by acting on wrong principles in reaching the finding that the Appellant ought to have paid the Respondent Ksh.90,000/- plus costs and interest.
  4. The learned Adjudicator erred in law by acting on wrong principles in reaching the finding that the Appellant's counterclaim ought to be dismissed.
  5. The learned Adjudicator erred in law in making a finding that was not based on evidence by finding that the Appellant ought to have paid the Respondent Ksh.90,000/- plus costs and interest whilst dismissing the Appellant's counterclaim.
  6. The learned Adjudicator erred in law in making a finding that was based on a misapprehension of the evidence by finding that the Appellant ought to have paid the Respondent Ksh.90,000/- plus costs and interest whilst dismissing the Appellant's counterclaim.
  7. The learned Adjudicator erred in law by failing to take into account evidence that the Appellant had actually overpaid amounts on the contract and therefore the Appellant's counterclaim ought to have been allowed whilst the claim being dismissed with costs.
  8. The learned Adjudicator misdirected herself into applying unknown and/or wrong principles of law in arriving at the said decision which influenced her into arriving at an erroneous award.
6. The Appellant proposes that the judgement of the learned Adjudicator be set aside and the same be replaced with an order dismissing the Respondent's case and an award on the counterclaim for Ksh.56,000/- in favour of the Appellant plus costs and interest at court rates.
7. A first appellate court is mandated under Section 78 of the *Civil Procedure Act* to re-evaluate the relevant evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal.
8. This court is therefore empowered to subject the evidence before the trial court to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was espoused in the case of *Selle v Associated Motor Boat Co. Ltd* [1969] E.A. 123 in which Sir Clement De Lestang observed that:

“This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.

However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”



9. Going to the trial court's record, the Respondent called Hasham Abida Aarafat as its witness. The witness testified and adopted the contents of her statement dated 24<sup>th</sup> November, 2022.
10. In her statement, the witness stated that she was a director of the Respondent. She explained that the Appellant's motor vehicle was involved in a road traffic accident and damaged. The Appellant then instructed the Respondent to tow it to its garage and repair the same, which the Respondent did.
11. The witness stated that the comprehensive repairs of the motor vehicle, which included the purchase of a new engine and other parts cost Ksh.524,600/- which was discounted to Ksh.510,000/-. Out of the said amount, the Appellant paid Ksh.415,000/- leaving a balance of Ksh.90,000/-, which the Appellant failed to pay, despite several verbal and written demands, necessitating the suit before the trial court.
12. The Respondent produced the following documents in support of her case before the lower court: Demand letter. Certificate of incorporation of the Respondent. A tabulation of the amounts paid and amounts owed. Mpesa statements.
13. Upon being cross-examined, the witness denied that the Respondent owed the Appellant Ksh.56,000/-. She stated that the Appellant took his vehicle from the garage in 2021.
14. The Appellant testified and admitted that he took his car to the Respondent's garage for repairs and instructed the Respondent to replace its engine and give it a fresh coat of paint at an agreed cost of Ksh.510,000/-. The Appellant stated that he paid a total of Ksh.566,000/- and therefore overpaid by Ksh.56,000/-.
15. The Appellant produced the following documents in support of his case: Mpesa statements.
16. I have perused the Memorandum and Record of Appeal, the submissions filed by the parties and the record of the trial court. The twin issues for determination is whether the trial court fell into error in allowing the Respondent's claim and entering judgement for the Respondent for Ksh.90,000/- and in dismissing the Appellant's counterclaim.
17. Under Section 38 of the *Small Claims Court Act*, a person aggrieved by the decision or an order of the court may appeal against that decision or order to this court only on matters of law and such an appeal to the High Court shall be final.
18. The argument that the Appellant proffers is that the conclusions by the trial court were erroneous as they were not supported by the evidence on record and the law. I am in agreement with the Appellant that if an erroneous determination is reached by a court, say one that is not based or supported by the evidence provided by the parties, or one where the trial court misapprehends the evidence, such a determination can be challenged on appeal as a point of law.
19. In the matter before the trial court, both parties were in agreement that they entered into a contract for the Respondent to repair the Appellant's motor vehicle at an agreed cost of Ksh.510,000/- and that the Respondent undertook the repairs.
20. The only point of departure between the two is that while the Respondent took the position that the Appellant failed to pay an outstanding balance of Ksh.90,000/-, the Appellant stated that he paid in excess by Ksh.56,000/- and sought to recover the same from the Respondent.
21. In the trial court's judgement, the learned trial Adjudicator/Magistrate observed as follows:

“From the statement of Claimant “CEx1” indeed from 1<sup>st</sup> March, 2021 to 24<sup>th</sup> November, 2021, through both Prime Bank and Mpesa, the Respondent did transfer Ksh.410,262/-



and particularly, the Mpesa statement from March to June, the Respondent did pay Ksh.151,350/-.

From the statement of the Respondent “REx1” and upon tabulation which statements are from March to June, the Respondent did pay Kshs. 151,350/-.

From both statements, the Respondent started paying the amounts in March, not July, hence the said amount is indeed accounted for contrary to the Respondent’s assertions.

.....

Indeed, a party is bound by its pleadings and any underlying contract. The claim by the Respondent that he overpaid the sum has not been supported by any evidence and from the evidence adduced, it is quite clear that the total sum paid by the Respondent was Ksh.410,262/- out of a sum of Ksh.510,000/- that is indeed a deficit balance of Ksh.101,738/-.

The Claimant however seeks the sum of Ksh.90,000/- which sum the court shall award.”

22. I have gone through the Mpesa statements that the Respondent produced and relied upon. My calculation of the amounts transferred to the Respondent by the Appellant through Mpesa gives a total amount of Ksh.398,000/-. The amount paid through Prime Bank, as per the statement that was produced by the Respondent was Ksh.2,000/-. That made a total of Ksh.400,000/-.
23. The Mpesa statements that were produced by the Appellant are in my view unreliable as the same, for unexplained reasons were incomplete and had gaps of periods that were not covered. In any event, if one was to calculate the amounts in the Appellant’s Mpesa statements, the same would total to Ksh.151,350/-, which is way below the amount that the parties agreed upon of Ksh.510,000/-. The documents produced by the Appellant were therefore not of much help to the trial court and did not support the Appellant’s defence and counterclaim.
24. From the above calculation, the Appellant owed the Respondent Ksh.110,000/- and the trial court, despite reaching the finding that the unpaid balance was Ksh.101,738/- was correct in limiting the judgement sum to Ksh.90,000/- as that was the amount that was claimed by the Respondent in the suit before the lower court.
25. Being of the foregoing findings, I will reach the conclusion that the appeal before me lacks merit. I proceed to dismiss it with costs to the Respondent, which I assess at Ksh.40,000/-.

**DELIVERED (VIRTUALLY), DATED & SIGNED THIS 23<sup>RD</sup> DAY OF JANUARY, 2025.**

**JOE M. OMIDO**

**JUDGE**

For the Appellant: No appearance.

For the Respondent: No appearance.

Court Assistant: Mr. Ngoge & Mr. Juma.

