



**Njenga v Soludel Enterprises Limited (Civil Appeal E784 of 2023)
[2025] KEHC 999 (KLR) (Civ) (21 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 999 (KLR)

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

CIVIL

CIVIL APPEAL E784 OF 2023

AM MUTETI, J

JANUARY 21, 2025

BETWEEN

DAVID NJOROGE NJENGA APPELLANT

AND

SOLUDEL ENTERPRISES LIMITED RESPONDENT

*(Appeal from the judgment at Nairobi Small Claims by the Honorable C.W NDUMIA
delivered on the 5th day of July, 2023 in Small Claim Case No. E2076 of 2023)*

JUDGMENT

Introduction

1. The appellant being aggrieved by the decision of the learned Honorable C.W Ndumia delivered on 5th July 2023 has appealed to this court on the following grounds :-
 - i. The Learned Trial Magistrate erred in Law and fact by misdirecting herself on several matters of law.
 - ii. The Learned trial Magistrate erred in law and fact by finding that the Appellant owed Respondent Kenya Shillings One Hundred Thousand(Kshs.100,000/=while no monies were due or Advance as Admitted by the Respondent as received.
 - iii. The Learned Trial Magistrate erred in law and fact by failing to appreciate the Jurisdiction of trial court was time bound and ceased by affluxion of time on the 6th date of April 2022, being the last date and day the courts by dint of section 34(1) of the Small Claims, court act No. 2 of 2016.



- iv. The Learned Trial Magistrate erred in law and fact that the moment Sixty (60) days ended the Jurisdiction of the court also ended.
 - v. The Learned Trial Magistrate erred in law and fact by failing to take cognizance of the legal fact that the Judgment rendered and returned outside times was without jurisdiction ergo a nullity benefit of any force of law.
2. The claim giving rise to the judgment arose out of a credit facility said to have been advanced on the 24th June 2023 to the appellant by the respondent.
 3. A statement of claim was filed in the Small Claims Court on the 21st March 2023 and the proceedings commenced before that court on 7th April 2023.
 4. Judgment in the matter was rendered on 14th July 2023 a clear 113 days from the date of the statement of the claim.
 5. In ground 3 of the appellant's memorandum of appeal, the appellant seeks to have the judgment set aside on the basis that after the 6th day of April 2022 the Small Claims ceased to have jurisdiction over the matter and could not therefore entertain any further proceedings under Section 34 (1) of the Small Court Claims [Act No. 2 of 2016](#) in connection with the respondent's claim.

Analysis And Determination

6. The appeal by the appellant is incurably defective on the face of it for several reasons :-
 - i. Firstly, the memorandum of appeal seeks to challenge a judgment delivered on 5th July 2023 by the learned Honorable C.W Ndumia in Small Claim Case No. E2076 of 2023. I have persuaded the record of appeal and there is no judgment in the record delivered by Honorable C. W. Ndumia on 5th of July 2023 as claimed by the appellant on the face of his memorandum of appeal.
 - ii. Secondly, the ground on attack of the judgment on the ground of jurisdiction states that the last date by which the learned Honorable Small Claims Court could have entertained the claim was 6th April 2022 which date falls almost a year before the filing of the claim the subject matter of the appeal. It follows therefore that the ground on jurisdiction is improperly taken since the record of appeal contains a statement of claim dated on 21st March 2023.
 - iii. Thirdly, the judgment appearing at page 7 and 8 of the record of appeal is a judgement delivered on 14th July 2023 in respect of the Small Claims Court Case No. E2076 of 2023.
 - iv. Lastly on the face of the index of the memorandum of appeal the appellant has indicated the record to be in respect of an appeal against a judgment delivered on 9th June 2023 by Honorable V.M Mochache at the Nairobi Small Claims Court in Small Claim Case No. 669 of 2022
7. In view of the reasons set out above the court takes the view that the appeal by the appellant is incompetent as presented for it is not clear to this court what judgment it is that the appellant is seeking to challenge. There is no judgment dated 5th July 2023 or 5th July in the record of appeal.
8. Order 42, rule 13 of Civil Procedure Rules provides:-
Directions before hearing [Order 42, rule 13]



1. Upon notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the registrar shall cause the appeal to be listed for the giving of directions by a judge in chambers.
2. Any objection to the jurisdiction of the appellate court shall be raised before the judge before he gives directions under this rule.
3. The judge in chambers may give directions concerning the appeal generally and in particular directions as to the manner in which the evidence and exhibits presented to the court below shall be put before the appellate court and as to the typing of any record or part thereof and any exhibits or other necessary documents and the payment of the costs of such typing whether in advance or otherwise.
4. Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—
 - a. the memorandum of appeal;
 - b. the pleadings;
 - c. the notes of the trial magistrate made at the hearing;
 - d. the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
 - e. all affidavits, maps and other documents whatsoever put in evidence before the magistrate;
 - f. the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal: Provided that—
 - i. a translation into English shall be provided of any document not in that language;
 - ii. the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).
9. The highlighted provisions of Rule 13 directly address the importance of the memorandum of appeal, judgment, Order and or decree before an appeal proceeds to hearing. It should be noted that these documents are so crucial that the court is not left at liberty to exclude them or dispense with any of them at the hearing of an appeal. The importance of a decree or the judgment of the court is that the decree forms the formal expression of the adjudicated outcome while the judgment provides the court's reasoning and the basis of the decision.
10. The memorandum of appeal on the other hand initiates the appeal and lays out the ground upon which an appellant seeks to challenge the decision of the court. Needless to say, the three documents must directly address the same matter and any contradictions would render an appeal incurably defective.
11. The memorandum of appeal in the instant matter indicates that the appeal is intended to challenge a judgment delivered on 5th July 2023 yet there is no such judgment included in the record of appeal.
12. The memorandum serves to inform the appellate court and the respondent the specific errors alleged to have been committed by the Lower court in arriving at its decision so as to enable the court effectively



address each of the grievances raised by the appellant. Further, the memorandum defines the scope of the appeal and therefore it must be concise and precise.

13. The memorandum of appeal in this matter therefore does not assist this court in any way in addressing the appeal since it is clearly indicated thereon that the appellant is aggrieved by a decision made on 5th July 2023.
14. As pointed out earlier, there is no such decision in the record of appeal.
15. Further, the memorandum of appeal in the proposed orders seeks to have the judgment delivered on 14th July 2023 quashed or set aside. It is plainly clear that the appellant prepared the memorandum of appeal without keeping an eye on details thus making it difficult for the court to come to his aid.
16. For instance, even if the court were to assume for a moment that the appellant herein intended to challenge the judgment of 14th July 2023 which he has annexed, what then could be the explanation for him raising ground number three in the memorandum of appeal which reads:- “The Learned Trial Magistrate erred in law and fact by failing to appreciate the Jurisdiction of trial court was time bound and ceased by effluxion of time on the 6th date of April 2022, being the last date and day the courts by dint of section 34(1) of the Small Claims, court act No. 2 of 2016” since as at the 6th day of April 2022 the suit giving rise to the judgment of 14th July 2023 had not even been filed?
17. The view of this court is that this is not one of those cases where errors by counsel in drafting can be excused for the, memorandum of appeal is the seminal document from which the appeal springs and must therefore be concise and not open to speculation. The errors go to the foundation of the appeal thus rendering it incurably defective and or incompetent.
18. In *Robinson Kiplagat Tuwei v Felix Kipchoge Limo Langat* [2020] eKLR: - the Court of Appeal held;-

“We are yet again confronted with an appeal founded on a memorandum of appeal that is drawn in total disregard of rule 86 of the Court of Appeal Rules. That rule demands that a memorandum of appeal must set forth concisely, without argument or narrative, the grounds upon which a judgment is impugned. What we have before us are some 18 grounds of appeal that lack focus and are repetitively tedious. It is certainly not edifying for counsel to present two dozen grounds of appeal, and end up arguing only two or three issues, on the myth that he has condensed the grounds of appeal. This Court has repeatedly stated that counsel must take time to draw the memoranda of appeal in strict compliance with the rules of the Court. (See *Abdi Ali Dere v. Firoz Hussein Tundal & 2 Others* [2013] eKLR) and *Nasri Ibrahim v. IEBC & 2 Others* [2018] eKLR. In the latter case, this Court lamented: “We must reiterate that counsel must strive to make drafting of grounds of appeal an art, not an exercise in verbosity, repetition, or empty rhetoric...A surfeit of prolixious grounds of appeal do not in anyway enhance the chances of success of an appeal. If they achieve anything, it is only to obfuscate the real issues in dispute, vex and irritate the opposite parties, waste valuable judicial time, and increase costs.” The 18 grounds of appeal presented by the appellant, *Robinson Kiplagat Tuwei* against the judgment of the Environment and Land Court at Eldoret (Odeny, J.) dated 19th September 2018 raise only two issues...”
19. It is this kind of precision that this court finds lacking in the instant appeal. The memorandum of appeal as well as the record of appeal are marred with errors that only serve to confuse the court and render it impossible for one to determine whether the judgment under challenge is one delivered by Honorable V.M Mochache on 9th June 2023 in Small Claims Case No.669 of 2022 or the judgment of Honorable C.W. Ndumia delivered on 5th July 2023 and another judgment delivered by the said C.W



Ndumia on 14th July 2023 that is the magnitude of the confusion that the appellant has created through this appeal. As I have said elsewhere in this judgment the mistakes are inexcusable thus rendering the appeal incompetent.

20. In the end, this court finds that the appeal is incurably defective and is hereby struck out with costs to the respondent.
21. It is so ordered.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT AT NAIROBI THIS 21ST DAY OF JANUARY, 2025.

A. M. MUTETI

JUDGE

In the presence of:

Kiptoo: Court Assistant

Kahutue for the Appellant

Waithera for the Respondent

