Regus Kenya Limited v Dessein Design Studio Limited (Civil Appeal E222 of 2024) [2025] KEHC 115 (KLR) (Civ) (17 January 2025) (Judgment)

Neutral citation: [2025] KEHC 115 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E222 OF 2024

RC RUTTO, J

JANUARY 17, 2025

BETWEEN

REGUS KENYA LIMITED .... APPELLANT

AND

DESSEIN DESIGN STUDIO LIMITED .... RESPONDENT

(An appeal from the judgment and decree of the Small Claims Court at Nairobi (C.O. Omondi, RM/Adjudicator) delivered on 19th January 2024 in SCCCOMM No. E6775 of 2023)

JUDGMENT

1. This is an appeal against the judgment of the Small Claims Court delivered on 19th January 2024 dismissing the claim for want of jurisdiction. In that claim the Appellant, by statement of claim dated 17th April 2023, averred that it entered into a contract with the respondent to provide office services and goods on a recurring basis. Its position was that while it performed its obligations, the respondent failed to honor its duty by failing to settle several invoices that fell due leading to the termination of the contract. As a result of the breach of contract, the appellant suffered loss of USD 6870.70. The appellant sought for liquidated damages in the sum of USD 6870.70, interests on the sum and costs of the suit.

2. The respondent entered appearance and filed its response on 9th November 2023 denying the averments set out in the statement of claim. The respondent's position was that the tenancy agreement ran smoothly until the appellant raised its payment notice. They acknowledged an outstanding arrears of Kshs. 72,211.95. Further they stated that on 1st July 2020, the appellant terminated the tenancy agreement in favor of a new tenant. Thus, they stated that the appellants claim was unfounded and frivolous since the contract having been terminated the appellant cannot seek payments for the remaining two years of the contract.

3. In its judgment dated 19th January 2024, the trial court found that the claim fell outside the scope of section 12 (1) of the *Small Claims Court Act* hence it lacked jurisdiction to hear and determine the dispute. The adjudicator proceeded to down its tools and dismissed the claim with each party bearing its own costs.

4. The appellant being aggrieved with the finding of the adjudicator proffered this appeal on eight grounds as follows;

   a. the learned magistrate erred in law in raising the issue of jurisdiction suo moto and proceeding to rule on it without hearing the parties on the issue;

   b. the learned magistrate erred in law in pleading the respondent's defence on jurisdiction and proceeding to determine the defence raised by the court;

   c. the learned magistrate erred in law by arriving at a decision unsupported by the pleadings thus failing to be bound by the parties' pleadings;

   d. the learned magistrate erred in law in relying on case law that had distinguishable features which are exceptions to the rules;

   e. the learned magistrate erred in law in failing to apply itself to the parties' agreement that specifically stated that the agreement was not a lease and created no tenancy relationship;

   f. the learned magistrate erred in law in rewriting the parties' contract;

   g. the learned magistrate erred in law by ignoring partial admission by the respondent;

   h. the learned magistrate erred in law by arriving at a finding unsupported by the evidence presented to it.

5. In light of the foregoing, the appellant urged this court to allow the appeal by setting aside the judgment of the trial court and substitute it with an order awarding the Appellant the remedies claimed in the statement of claim dated 17th April 2023.

6. The appeal was heard on the basis of the parties' written submissions. In its written submissions dated 30th May 2024,the appellant submitted that that the trial court breached the rules of natural justice when it raised the issue of jurisdiction suo moto and addressed it without giving the parties an opportunity to address the court on the issue. It faulted the trial court for overstepping its mandate by pleading the respondent's defence on jurisdiction and finding that its jurisdiction was ousted by dint of the nature of the claim. It further submitted that the decision was not supported by any averments in the pleadings and the case law relied on by the trial court was distinguishable from the present dispute. It added that the agreement was not a tenancy relationship and the court erred in rewriting the contract. It was their submission that, the court ought to have considered that the respondent partially admitted indebtedness. It prayed that the appeal be allowed.

7. As at the time of writing this Judgment the respondent's submission were not on file or on the court tracking system (CTS) portal.

8. I have considered the judgment, examined the memorandum of appeal, the record of appeal and the parties' written submissions and analyzed the law. To begin with, the duty of this court as the appellate court is well prescribed under Section 38 of the *Small Claims Court Act* (the Act) which limits the jurisdiction of this court to matters of law only. Thus, in this instance the issue of law arising for determination is whether the erred in dismissing the appellant claim for want of jurisdiction.

9. This court notes that in dismissing the claim, the adjudicator in its judgment made reference to the Civil case No E036 of 2022 Christoffersen v Kavneet Kaur Sehmi t/a The Random Shop (Civil Appeal E036 of 2022)(2022) JEHC 14035 (KLR) and held that the claimant sought rent arrears due out of an agreement labelled internal office agreement, which claim does not fall within any of the five limbs of section 12(1) of the SCCA or any other provision of the Act.

10. The appellant herein faults the finding of the adjudicator on the basis that the parties were not granted an opportunity to be heard on the issue of jurisdiction and that the adjudicator relied on a case law that is distinguishable from the present dispute.

11. This court notes that the jurisdiction of the Small Claims Court is anchored on the Small Claims Act, which is the statute governing the jurisdiction and procedures of the court. Section 12 of the *Small Claims Court Act* provides:

    1. Subject to this Act, the Rules and any other 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.

    2. Without prejudice to the generality of subsection (1), the Court may exercise any other civil jurisdiction as may be conferred under any other written law."

12. In the trial court, the evidence of the appellant was that it provided services to the respondent pursuant to an agreement dated 29th May 2019. The services were offered from 1st June 2019 to 31st May 2021. According to the erms of agreement, the respondent was to pay USD 360.40 per month. However, its stopped making payments and which amounts accrued to the sum of USD 6870.70. PW1 observed that the respondent admitted that it owed the sum of Kshs. 72,211.95. Consequently, it sought judgment on the admitted sum.

13. The respondent called DW1 Mary Oballa, its CEO. Her evidence was that the appellant was her landlord. That she had leased property for a period of three years between 1st June 2019 and 31st May 2021 paying USD 350.00 per month However, the period of the tenancy was marred with challenges. DW1 admitted that the respondent delayed in payment of rent arrears on two occasions and later on, the tenancy agreement terminated and it was asked to vacate the premises in July 2020. She admitted that the sums due to the appellant was Kshs. 72,211.95. Finally, she testified that while she gave the appellant a two-month deposit sum, the same was never refunded to the respondent upon the appellant's termination of the tenancy. She asserted that the appellant and the respondent were in a landlord–tenancy agreement.

14. This court has considered the evidence of the parties as well as the documents adduced in evidence. This court finds that although the appellant's position that the nature of the agreement was not a tenancy agreement, the evidence on record speaks to the contrary. Firstly, the respondent's witness, who was considerably cross examined by the appellant's counsel, affirmed that the appellant and the respondent enjoyed a tenancy relationship. Secondly, a probe into the agreement adduced by the appellant in

evidence reveals that the nature of the agreement was indeed one of provision of accommodation in exchange for a payment sum on a monthly basis. It provides for the house rules which include taking care of the property, keys and security, service obligations and termination notice period. Although the appellant asserts that the agreement is not a tenancy agreement, this court notes that the agreement as per clause 28 is one for taking a serviced office and not a lease and that the appellant retains the overall control of the business center. Clearly, the rights and obligations accruing therein speak to tenancy. Finally, although the appellant appeared to suggest that it provided certain services and goods, none of those were disclosed to the court. If indeed goods and services were provided, wouldn't it have been prudent for the appellant to state in certain terms what those goods and services were?

15. Taking into account the above, I do agree with the trial court that the nature of the relationship between the appellant and the respondent was that of a tenancy relationship. In view of this, the question to be addressed is whether the adjudicator had jurisdiction to determine the claim. It is trite law that jurisdiction is everything and without it, a court must down its tools. In addition, contrary to what the appellant contended, the aspect of jurisdiction can also be raised by the court and determined on its own motion. This was the holding of the Court of Appeal in Kenya Ports Authority vs. Modern Holding [EA] Limited [2017] eKLR that held as follows:

> " We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the court itself provided that where the court raises it suo motu parties are to be accorded the opportunity to be heard."

16. The above position was also captured in the case of Christoffersen v Kavneet Kaur Sehmi t/a The Random Shop (Civil Appeal E036 of 2022)(2022) JEHC 14035 (KLR) . In the circumstances, I find that the learned magistrate arrived at a proper finding that it did not have the jurisdiction to hear and determine the claim. Having established that the small claims court lacked jurisdiction, I do fault the adjudicator for the consequential order dismissing the claim. This is because in dismissing the claim, the adjudicator went beyond downing tools as expected in the absence of jurisdiction and instead made a finding on the merits. It is noted that the appellant herein had established a cause of action against the respondent for breach, the respondent admits owing part of the claimed amount, and further makes a claim that it was not refunded part of the deposit it made to the appellant. This called for a determination of the substantive issues and thus, by dismissing the suit, the doors of justice would have been shut to the parties who would still have unresolved issues between themselves.

17. The case having turned on the issue of jurisdiction without the determination of any of the substantive issues, the appropriate remedy for the parties was to have the claim struck out and not dismissed. Consequently, I do find that the adjudicator erred to the extent that it dismissed the suit. The upshot of the above is that the adjudicator finding that it lacked jurisdiction is upheld, and the order for dismissal of the claim with no orders as to cost is substituted with the order that the claim before the adjudicator is struck out with costs to the respondent. As an appellate court, I am unable to determine the merits of the case emanating from a court that has no jurisdiction. I therefore find that the present appeal partially succeeds with no orders as to costs since the respondent did not participate in the appeal.

It is so ordered.

RHODA RUTTO

JUDGE

Delivered, Dated and Signed this 17th day of January 2025

For Appellant:

For Respondent:

Court Assistant: