



**Aesthetics Limited v Times and Seasons Chemicals (Civil Appeal  
E027 of 2023) [2025] KEHC 2483 (KLR) (Civ) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2483 (KLR)

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

**CIVIL**

**CIVIL APPEAL E027 OF 2023**

**AB MWAMUYE, J**

**FEBRUARY 13, 2025**

**BETWEEN**

**AESTHETICS LIMITED ..... APPELLANT**

**AND**

**TIMES AND SEASONS CHEMICALS ..... RESPONDENT**

*(Being an Appeal from the whole of the Judgment and Order of the Small Claims Court at Nairobi delivered by Hon. S.G Gitonga (Senior Resident Magistrate/ Adjudicator) on 16th December 2022 in SCCCOMM No. E5172 of 2022)*

**JUDGMENT**

1. The Appellant herein has approached this Court aggrieved by the judgment of the Trial Court delivered on 16<sup>th</sup> December, 2022 in Milimani SCCCOMM No. E5172 of 2022. The Memorandum of Appeal dated 17<sup>th</sup> January, 2023 has four (4) Grounds of Appeal namely:
  - i. That the Learned Trial Magistrate fundamentally erred in law and in fact in holding that the delivery notes of 4<sup>th</sup> and 8<sup>th</sup> December 2020 whereas the said delivery notes clearly contained the Appellant's letter head, details and stamp as the supplier of the goods listed therein;
  - ii. That the Learned Trial Magistrate further erred in law and in fact in holding that the delivery notes dated 4<sup>th</sup> and 8<sup>th</sup> December 2020 were not signed Respondent as required while in fact, the said delivery notes were not only stamped by the Respondent but also signed;
  - iii. That the Learned Trial Magistrate gravely erred in law and in fact in holding that the Appellant had not produced a stamped, signed and approved order in relation to the delivery notes of 4<sup>th</sup> and 8<sup>th</sup> December whereas the Appellant and produced evidence of the same and the said order was stamped, signed and approved by the Appellant company; and



- iv. Having correctly found that the 2015 delivery note duly indicated the name and signature of the person supplying the goods, the Learned Trial Magistrate fundamentally erred in law and in fact in failing to hold that that part of the Appellant's claim of Kshs. 4,289.99/- was due and owing to the Appellant.
2. The Appellant filed written submissions dated 21<sup>st</sup> November 2024 in support of the Appeal. The Appellant stated that its claim arose from a series of transactions whereby it supplied goods to the Respondent but the Respondent failed to honour payment of the full amount. The Appellant submitted that the trial court erred by overlooking tendered evidence that indicated the Appellant's letterhead, stamp details and signature, which clearly pointed towards the veracity of the order placed by the Respondent. It further stated the delivery notes were properly stamped and signed with the signature appearing circumscribed within the seal of the Appellant's stamp. On delivery of goods, the Appellant submitted that the delivery note was marked with the Respondent's stamp signifying approval by the Respondent.
3. In addition, the Appellant stated that the Respondent gave the order to the Appellant's sales person who indicated it in the order book that takes the place of a Local Purchase Order (L.P.O) and upon delivery of goods, the Respondent would receive a delivery note indicating the details of the goods delivered for which payment was expected within the allowable credit period. It was their submission that the trial court also erred by not addressing part of the claim of Kes. 4,289.99 leaving the issue without explanation or direction.
4. The Respondent on the other hand filed written submissions dated 13<sup>th</sup> December 2024 where it was submitted that based on Section 38 of the *Small Claims Court Act*, this appellate court has jurisdiction to deal with appeals purely based on matters of law. The Respondent further stated that in the event this Honourable court finds the appeal to have raised issues of law, it should be guided by the evidence adduced at the lower court showing that the Appellant's own procedure was flouted.

### **Analysis and determination**

5. The appeal from Small Claims Court is on issues of law only. This is pursuant to Section 38 of the Small Claims Court which provides as follows:

“ 38.

- (1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High court on matters of law.
- (2) An appeal from any decision or order referred to in subsection (1) shall be final.”

6. What constitutes points of law, has been settled by the Court of Appeal in the case of Peter Gichuki King'ara v IEBC & 2 Others, Nyeri Civil Appeal No. 31 of 2013 where the Court stated as follows:

“It was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that



is supported by law of evidence with the caveat that the appeal court did not see the witness demeanor- is an issue of law”

7. It is evident that the question of whether the Trial Court properly considered and/ or evaluated the evidence on record and arrived at a correct determination is a question of law not fact. The four grounds of appeal are to the effect that the Trial Court failed to properly consider the evidence adduced by the Appellant during trial.
8. This Appeal is solely anchored on issues of evidence. Section 32 of the Small Claims Act expressly provides that the Small Claims Court shall not be bound wholly by rules of evidence. It states as follows:
  - “ 32. 32. Exclusion of strict Rules of evidence
    1. The Court shall not be bound wholly by the Rules of evidence.
    2. Without prejudice to the generality of subsection (1), the Court may admit as evidence in any proceedings before it, any oral or written testimony, record or other material that the Court considers credible or trustworthy even though the testimony, record or other material is not admissible in evidence in any other Court under the law of evidence.”
    3. Evidence tendered to the court by or on behalf of a party to any proceedings may not be given on oath but that court may, at any stage of the proceedings, require that such evidence or any part thereof be given on oath whether orally or in writing.
    4. The Court may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it may require...”
9. The nature of the Small Claims Court is such that it is intended to ensure that small claim matters are dealt with efficiently without the burden of strict rules at a minimum cost to the parties as stated by E.K Ogola J in the case of Mombasa Law Society v Attorney General & another [2021] eKLR.
10. I agree with the findings of Kizito Magare J in the case of Directline Assurance Co Ltd v Onyango (Civil Appeal 153 of 2022) [2023] KEHC 20460 (KLR) (22 June 2023) (Judgment) where he stated:

“It is an appeal on points of law. This then takes the same turn as an appeal in the court of appeal, where the court gives difference to finding of fact. Only when the findings are based on no evidence will that be seen as a point of law.”
11. The Trial Court stated in its analysis and determination that after examining the documents relied on by the Appellant, the 2 delivery notes dated 4<sup>th</sup> and 8<sup>th</sup> December 2020 respectively it noted that the delivery notes have been stamped by the Respondent’s official stamp but are not signed. It further stated that it is peculiar that the name of the supplier has not been indicated on the delivery notes for 2020 yet the previous delivery notes produced in the year 2015 have a signature and the name of the person who supplied. The Trial Court thus found that the Appellant had not discharged its burden of proving its case against the Respondent on a balance of probability. I have reevaluated the same and noted that the Trial Court exercised its discretion correctly.



12. It is my finding that the Adjudicator at the Trial Court properly considered and evaluated the evidence and arrived at a correct determination that is supported by the law of evidence. I therefore find no legal issue raised by the Appellant in the circumstances, I hereby dismiss the Appeal with costs to the Respondent.

**DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 13TH DAY OF FEBRUARY, 2025.**

.....

**BAHATI MWAMUYE**

**JUDGE**

