



**Kuria v Ndungu (Civil Appeal E802 of 2022)  
[2025] KEHC 3357 (KLR) (Civ) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3357 (KLR)

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

**CIVIL**

**CIVIL APPEAL E802 OF 2022**

**TW OUYA, J**

**MARCH 20, 2025**

**BETWEEN**

**JAMES NJUGUNA KURIA ..... APPELLANT**

**AND**

**ANTHONY KARUGA NDUNGU ..... RESPONDENT**

*(Being an appeal from the judgement and decree of Hon. J.W. Munene, Adjudicator, delivered on 13th October 2022 in Nairobi Small Claims Court No. SCC 3914 of 2022)*

**JUDGMENT**

1. The present appeal emanates from the judgment of the Small Claims Court at Milimani SCC 3914 of 2022 by Adjudicator, Hon. J.W. Munene. The claim was initiated in the Small Claims Court by the Appellant, following an agreement entered into by both parties on the 9<sup>th</sup> of April 2019, wherein the respondent was contracted to carry out plumbing works at the appellant's school in Molo, and he would in turn be paid after completion of the said works.
2. It is alleged that on the 29<sup>th</sup> of June 2021, the parties reviewed their agreement and it was agreed that the respondent would be paid a sum of Kshs. 67,500 after a satisfactory completion of the said work. It was the respondent's case at the small claims court that he satisfactorily completed the plumbing work sometime in May 2019; however, the appellant is yet to settle his dues, three (3) years down the line. The respondent then moved the court to recover the said dues.
3. The appellant in his Response to the statement of claim denied that he owed the respondent for the plumbing works that he had contracted him to do at his site in Molo. He instead alleged that he had fully performed his end of the contract by paying him the value of the works done despite the huge expenses that he had incurred in redoing the works assigned to the respondent.



4. The appellant alleged that he had incurred huge financial losses as some of his clients terminated their contracts with him as a result of the quality of work done by the respondent. The appellant then counterclaimed against the respondent a sum of Kshs. 244,000 for the repairs he allegedly had to do on the plumbing works that had been done by the respondent.
5. After considering the evidence adduced by both parties, the trial court dismissed the appellant's counterclaim and found in favor of the respondent thereby awarding him Kshs.67,500 plus costs and interest, as payment for the plumbing works that he allegedly carried out at the appellant's school premises in Molo.
6. The appellant was dissatisfied with the outcome of the trial court and proffered an appeal to this court vide a Memorandum of Appeal dated 11<sup>th</sup> October, 2022, citing five (5) grounds of appeal, which I have reproduced hereunder as follows:
  - i. That the learned adjudicator erred in law and in fact in directing that the appellant and the respondent should proceed on the basis of documents only, but failed to consider any issues raised in the appellant's response and counterclaim to the respondent's claim;
  - ii. That the learned adjudicator erred in law and in fact in considering the respondent's case and failing to consider the appellant's counter-claim, the weight of the evidence in support, the appellant's submissions and the principles of law applicable;
  - iii. That the learned adjudicator erred in law and in fact in considering the respondent's claim, which allegedly arose from a contract and dismissed the appellant's counter-claim with costs, despite the respondent not filing a defence or any response to the counter-claim;
  - iv. That the learned adjudicator erred both in law and fact in finding that the appellant was liable to the respondent's claim in Small Claims court at Nairobi no. SCC E3914 of 2022; Anthony Karuga Ndungu vs James Njuguna Kuria despite overwhelming documentary evidence produced by the appellant;
  - v. That the learned adjudicator erred both in law and in fact by proceeding on wrong principles of law as to arrive at an erroneous determination of the suit, a determination not supported in law and the evidence.
7. Based on the above grounds, the appellant urged this court to set aside the judgement order and decree of the learned adjudicator; that the claim before the lower court be heard before a different adjudicator and that the respondent to bear the cost of this appeal.
8. The appeal was canvassed by way of written submissions, by counsel for both parties following the directions issued by this court on the 5<sup>th</sup> of June, 2024. The appellant's submissions dated the 31<sup>st</sup> of May, 2024, were filed on his behalf by his learned counsel Njuguna J.K & Co. Advocates, whereas those by the respondent dated the 24<sup>th</sup> of June, 2024, were filed on his behalf by his learned counsel S.M Muhia & Co. Advocates.
9. In his written submissions, the appellant contended that he fully performed his obligation in the contract entered into between himself and the respondent by fully paying him for the works done, despite the respondent failing to perform his obligations as contracted, and which led to the appellant incurring immense financial loss in redoing the works assigned to the respondent in the aforesaid contracts.
10. He submitted that the learned adjudicator erred in allowing the respondent's statement of claim despite the fact that he adduced overwhelming evidence which was not rebutted by the respondent.



11. It was the appellants submissions that the learned adjudicator failed to consider his counter claim, despite the fact that the same was undefended and despite there being uncontroverted documentary evidence to support the said counter-claim.
12. The respondent on the other hand submitted that the present appeal is devoid of merit and is an abuse of court process, given that the appellant failed to comply with the court orders which required him to deposit the decretal sum in court, within a stipulated time, as a condition for being granted a stay of execution of the decree of the trial court.
13. He contended that he performed all his work up to standard and was never called again to do any repairs. The respondent submitted that the documents adduced by the appellant, more so the letter from Sanya Plumbers provided no evidentiary value, as it does not demonstrate how the respondent performed his work in an unsatisfactory manner. He further submitted that the documents adduced by the appellant are not credible and he cannot purport to rely on them to seek justice. The respondent urged this court to dismiss the appeal with costs.
14. I have carefully considered the grounds of appeal, the rival written submissions by both parties as well as the judgement of the trial court. Having do so, I find that the substratum of the appeal rides on whether the present appeal is merited.
15. Before delving into the merits of the present appeal, I would first like to address the issue raised by the respondent in his written submissions, challenging the validity of the present appeal on grounds that the appellant deposited the decretal amount in court a year after this court had directed him to deposit the said amount.
16. I have perused the records of this court, and I have noted that on the 14<sup>th</sup> of November, 2022, Hon. Sergon, J, granted the appellant an order of stay of execution pending the hearing and final determination of this appeal, on condition that he deposits the decretal sum in court within 30 days.
17. It is evident from the Order of Sergon, J, that the appellant was granted a conditional stay, in that the stay of execution granted to him pending the hearing and determination of this appeal, had lapsed after a period of 30 days, as he had failed to deposit the decretal sum within the timeline that had been set by the court. The respondent was therefore free to commence execution of the decree after the lapse of the time that had been set by the court, which he did not do.
18. In my considered view, the failure by the appellant to deposit the decretal amount does not in any way affect the validity of the present appeal as alleged; given that the deposit of the decretal sum was a condition precedent to the appellant being granted a stay of execution of the decree of the trial court.
19. That being said, and considering that this is an appeal from the small claims court to the high court, Section 38 (1) of the *Small Claims Court Act*, makes it clear that appeals from the small claims court to the high court are on matters of law only. The said provision of law stipulates as follows: “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.”
20. It is therefore evident from the wordings of the aforementioned provision of law, that the duty of the high court in dealing with appeals from the small claims court is similar to that of the Court of Appeal in its capacity as a second appellate court.
21. The duty of a second appellate court was discussed in the court of appeal case of Kenya Breweries Ltd versus Godfrey Odoyo [2010] eKLR; where the court expressed itself as follows: “This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered



matters, they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

22. This duty was again reiterated by the Court of Appeal in the case of Charles Kipkoech Leting versus Express (K) Ltd & another [2018] eKLR; where the said court stated thus: “This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the Court. See Maina versus Mugiria [1983] KLR 78, Kenya Breweries Ltd versus Godfrey Odongo, Civil Appeal No. 127 of 2007, and Stanley N. Muriithi & Another versus Bernard Munene Ithiga [2016] eKLR, for the holdings inter alia that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the Courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. See also the English case of Martin versus Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511 where in, it was held inter alia that, where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.”
23. The Court of Appeal expressed itself in *Peter Gichuki King'ara v IEBC & 2 Others*, Nyeri Civil Appeal No. 31 Of 2013 as follows:

“...the whole question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanor – is an issue of law.”

Applying the above case law to the present appeal, it is evident that the appellant’s Memorandum of Appeal raises issues of law.

24. That being said, the appellant in his submissions had faulted the learned trial magistrate for failing to consider the issues raised in his response to the statement of claim as well as the issues raised in his counterclaim. I have however perused the judgement of the trial court, and contrary to the appellant’s assertions, the learned adjudicator captured and considered the issues that had been raised in the appellant’s response to statement of claim, as well as those raised in the counter claim when he was analysing his case.
25. The learned adjudicator then exercised his discretion after considering the evidence adduced by the appellant in the lower court and came to the conclusion that his responses to the issues raised by the respondent together with his counter claim were devoid of merit and proceeded to dismiss the same. It is therefore not true that the learned adjudicator failed to consider the appellant’s documents, response to statement of claim and counter-claim, as he would like this court to believe.
26. The other issue that had been raised by the appellant in his Memorandum of Appeal and submissions, is that the learned adjudicator had dismissed his counter-claim, despite the fact that the respondent did not file a response to the counter-claim. On my part, after perusing the records of the trial court, I have noted that the respondent filed a supplementary written submissions dated the 25<sup>th</sup> of August 2022, wherein he responded to all the issues that had been raised by the appellant in his written submissions. It is therefore not true that the respondent failed to respond to the issues raised by the appellant in his counter-claim as alleged.
27. Furthermore, I have carefully considered the documents adduced by both parties in support of their case, and I am of the considered view that the learned trial magistrate cannot be faulted for finding that



the appellant owed the respondent a sum of Kshs. 67,000 for the plumbing works that he carried out in his site at Molo.

28. I say so because, I have thoroughly scrutinized the document relied upon by the appellant at the lower court, as proof that he had paid the respondent his dues. The document which is titled as 'payments made year 2019 through year 2020 to Anthony Ndungu', shows that the appellant allegedly paid the respondent a cumulative sum of Kshs. 56,000 for the works done, which was in total contradiction to his earlier assertions made in his response to the statement of claim at the lower court that he paid the respondent 20,000 as full and final settlement for the first part of the works carried out in the said site.
29. Given that the respondent had in his supplementary submissions at the lower court, denied receiving any such payments from the appellant as tabulated in the said document or any payments whatsoever; the onus was on the appellant to produce proof of payments of the tabulated amounts as contained in the said document, for the lower court to determine whether or not the said amounts were paid to the respondent. This is so because the aforementioned document only shows the amounts the appellant claims to have paid the respondent, as such it cannot be considered as proof of payments made, and the learned trial magistrate cannot therefore be faulted for concluding that the respondent had not been paid the monies owed to him by the appellant.
30. The appellant had claimed in his counterclaim that the plumbing works carried out by the respondent were substandard, as such he suffered huge financial losses as he had to appoint another contractor to redo the works that had been done by the respondent. Despite making these allegations, the appellant did not adduce convincing evidence to prove this fact.
31. For instance, had the works been done below as claimed by the appellant, to the extent that the appellant lost his clients and was even forced to look for another contractor to re-do the works done by the respondent, the appellant could have clearly communicated his dissatisfaction to the respondent, which was not the case here.
32. The appellant had only attached a plumbing quotation from Sanya Plumbers dated the 1<sup>st</sup> of March, 2021, to show that he had contracted another person to re-do the work that had been done by the respondent. However, I am of the considered view that this does not in any way prove that Sanya Plumbers were contracted to re-do the plumbing work done by the appellant. I say so because, first, the appellant had alleged in paragraph (g) of his response to statement of claim, that the respondent was only contracted to do the plumbing work contained in the first part of the sub-contract dated the 9<sup>th</sup> of April, 2019, it is therefore not clear whether this quotation from Sanya Plumbers was for the remaining plumbing works in the sub-contract dated the 9<sup>th</sup> of April, 2019.
33. Furthermore, there is no evidence that the said Sanya Plumbers ever did the plumbing works as per the said quotation or even that they were contracted for purposes of repairing the works done by the respondent.
34. I have also noted that the appellant had stated in his response that he incurred a lot of financial expenses repairing the works that had been done by the respondent, notwithstanding the fact that the respondent had been fully paid for the said works. I have thoroughly scrutinized the quotations from Sanya Plumbers that the appellant relied on to support this claim, and I have noted that from the said quotations contained in the appellant's list of documents from the lower court, more so the ones numbered 6-8, had writings to the effect that the amounts in the said quotations were to be deducted from Anthony Ndungu, the quotation labelled 8 has writings to the effect that the amount is to be recovered from Ndungu.



35. Assuming that the Anthony Ndungu referred to in the said quotations is the respondent, then if the said monies were actually deducted from his account, it is evident that the appellant did not incur any financial loss as the respondent was made to pay for the said repairs from his account.
36. Having carefully considered the counter-claim, and the evidence adduced by the appellant in support of his counter claim, I am of the view that the same is not sufficient to prove that the appellant went at a loss of Kshs. 244,000 as a result of the respondent's negligence. I therefore support the learned trial magistrate's findings that the appellant has not demonstrated that the said transactions are as a result of the plumbing works carried out by the respondent.
37. Based on the above, I am of the considered view that the learned adjudicator's findings were sound and proper. I am therefore of the considered view that the present appeal is devoid of merit, the same should be dismissed with costs to the respondent.

#### **Determination**

38. The appeal is hereby dismissed with costs to the respondent. The judgement of Hon. J.W. Munene delivered on 13<sup>th</sup> October 2022 in SCCC No.3914 of 2022 is upheld.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF MARCH, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Appellant.....Njuguna

For Respondent.....Njoroge

Court Assistant.....Jackline

