Lusoi Greens Limited v Tibi (Civil Appeal E530 of 2023)
[2025] KEHC 3307 (KLR) (Civ) (20 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3307 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E530 OF 2023

TW OUYA, J

MARCH 20, 2025

BETWEEN

LUSOI GREENS LIMITED ..... APPELLANT

AND

JANE TIBI ..... RESPONDENT

(Being an appeal against the judgement of Honorable C.W Ndumia, Senior Resident Magistrate delivered on 19/5/23 in NAIROBI CMCC E6811 of 2022)

JUDGMENT

1. This matter emanates from the judgement of Hon. C.W. Ndumia (SRM)delivered on 19th May 2022 in Nairobi CMCC E 6811 of 2022. The Respondent (then Plaintiff) instituted the suit before the trial Court through a Plaint dated 4th November 2022 claiming Breach of Contract for goods sold or delivered to the Defendant (now Appellant) on or about the 28th October 2022 to the value of Ksh.555,750.00.

2. In the proceedings before the trial Court, the Respondent claimed that she would supply consignments of herbs to the Appellant and in case of a problem with the herbs supplied, the Appellant would issue a notice of rejection together with photographic proof of the reason for rejecting the same within five (5) days from the date of delivery.

3. The respondent faulted the appellant's rejection notice dated 19th October 2022 for having been issued 41 days after the Respondent delivered the first batch of supplies on 8th September 2022 and 19 days following delivery of the final consignment by the Respondent on 30th September 2022.

4. At the trial Court, Judgment on admission was entered in favour of the claimant for the amount of Kshs.242,020.00 leaving a balance of Kshs.313,730.00. The trial Court determined that the

Appellant's statement indicating receipt of 445 Kgs of basil (herbs) from the respondent at Kshs.155,750 against a credit note for the sum of Ksh.263,340.00 was anomalous because a credit note cannot exceed the total value of the supplies delivered.

5. Further, the trial Court reasoned that a credit note could either be the equivalent to the total amount charged by the supplier in the event the entire consignment was rejected by the consignee, or, the credit note would equal that part of the consignment which was rejected.

6. In finding in favour of the respondent, the trial Court held that she had proved her case on a balance of probabilities. Furthermore, the appellant was found to have issued unsubstantiated credit notes to the Respondent in an attempt to reduce the debt owed.

7. Through the memorandum of appeal before the court dated 21st June 2023, the appellant is seeking the following orders from this court as against the Respondent;

   i. The Appeal be allowed

   ii. An order setting aside the Judgement and Decree of the Honourable Magistrate made on 26th May,2023

   iii. Such other and/or further orders as this court may deem just and expedient.

   iv. The costs of this appeal provided for."

8. The appeal is premised on the following grounds:

   i. That the trial magistrate erred in law in allowing the respondent's claim against the pleadings, evidence and submissions on record which was an erroneous action in consideration of the constitutional principles of exercise of judicial authority and power set out in Article 159 of *the Constitution* of Kenya, and the guiding principles in Section 3 of the small claims Act.

   ii. The trial Court erred in law by failing to appreciate that the jurisdiction of the trial court was time bound that ran out and ceased by effluxion of time on 3rd January 2023, being the date and day the court's time bound jurisdiction ceased to exist by dint of Section 34(1) of the Small Claims *Act No.2 of 2016*

   iii. That the trial Court erred in law by failing to take into account legal implication that the moment the sixty days ended, the jurisdiction of the court also ended.

   iv. That the trial Court erred in law by failing to recognize the legal fact that the judgement rendered and returned outside time was without jurisdiction therefore a nullity bereft of any force of law.

Submissions

9. The suit was dispensed by way of written submissions by counsel for the rival parties. The appellant filed written submissions dated 5th June 2024 and submitted that the deductions arising from the credit notes were not captured in the respondent's statements of accounts filed before the trial Court. Further, the trial Court ought to have relied on the statements of accounts supplied by the Appellant at the trial Court which statements were confirmed by the Respondent during cross-examination.

10. The appellant subscribed to the position that there was no formal agreement between the respondent and itself concerning the time-frame for the issuance of credit notes in regard to a rejected consignment. Reliance was placed in the holding of the court in the case of Kartar Singh Dhupar & Company Limited V ARM Cement PLC (in liquidation) (Civil Appeal 129 of 2022) [2023] KEHC 2417 (KLR)

(commercial and Tax) (23 March 2023)) (Judgment) to buttress the argument that a judgment entered outside the timelines provided for under Section 34 of the *Small Claims Court Act* is made without jurisdiction, therefore, such Judgment is a nullity.

11. The Respondent filed written submissions dated 24th September 2024 raising three (3) issues for resolution by the court identified, as follows:

    1. Whether the trial Court erred in assessing the credit notes and statements of accounts.

    2. Whether the trial Court's jurisdiction ended by effluxion of time under Section 34(1) of the *Small Claims Court Act*, rendering the judgment a nullity.

    3. Whether the trial Court wrongly delivered Judgment outside the statutory 60-day period.

12. The respondent faulted the appellant's submission that the trial court's judgment was a nullity on account of having been issued outside the statutory 60 days period and argued that Section 34(1) of the *Small Claims Court Act* is directory rather than mandatory. Reliance was placed in the reasoning of the Court in the case of Crown Beverages V MFI Document Solutions (2023) to anchor the foregoing proposition.

13. The respondent further submitted that the trial Court correctly relied upon the statements of accounts supplied by the respondent and that the appellant failed to produce the credit notes which it relied upon before the trial court.

14. The respondent argued that the appellant failed to demonstrate to the trial court that the Basil (herbs) delivered by the respondent was spoilt or of unmerchantable quality, which is a question of fact. In the event, the appellant failed to substantiate the allegations made before the trial Court.

Analysis

15. This court has considered the memorandum of appeal, affidavit and annextures by both parties together with the submissions by counsel for both parties. The court notes that the substratum of this appeal is premised on two issues namely:

    I. Whether the trial Court's judgment is a nullity on account of having been rendered outside statutory timelines

    II. Whether the appeal is merited

16. This being a first appeal, this court has a duty to revisit the evidence that was before the trial court, re-evaluate and analyze it and come to its own conclusion. Further, the Court is cognizant of the fact that unlike the trial court, it did not have the benefit of seeing the demeanour of the witnesses and the Appellant during the trial and should therefore make due allowance for that. This duty was well stated in Peters v Sunday Post Ltd (1958) as follows:

> "It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion."

17. Further, the Court is guided by the holding of the Court in the case of Mursal & another v Manese (suing as the legal administrator of Dalphine Kanini Manesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022) (Judgment), where the Court stated as follows:

> " A first appellate court is mandated to re-evaluate the 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. A first appellate court is empowered to subject the whole of the evidence 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."

The same principle is set out by the court of appeal in Selle v Associated Motor Boat Co. [1968] EA 123

18. On issue number one, the appellant argued that the trial court violated the mandatory provisions of the SCCA and as a result of the delay, the jurisdiction of the trial court lapsed hence the judgment ought to be set aside. The respondent, on her part, takes the view that the trial court's judgment is valid as the court conducted a full trial and the judgement should hold.

19. The appellate jurisdiction of this Court in relation to appeals from the Small Claims Court is circumscribed by section 38(1) of the *Small Claims Court Act*, 2016 ("the SCCA") which provides that "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. Section 34(1) of the *Small Claims Court Act*, provides as follows:

> " All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day-to-day basis until final determination of the matter which shall be within sixty days from the date of filing the claim."

21. On the question whether the judgment of the trial Court is a nullity as it offends the provisions of Section 34(1) of the *Small Claims Court Act*, the Court in the case of Lumumba v Rift Gas Limited (Civil Appeal E805 of 2022) [2023] KEHC 25998 (KLR) (Civ) (30 November 2023) (Judgment), held as follows:

> " ...it should not be lost that the SCCA granted the court flexibility to do justice to the parties and the said court had the right to impose any terms and conditions to ensure that the hearing could proceed within the time limited. The 60-day timeline in the SCCA was directory and not mandatory as it was not the intention of the SCCA to invalidate any proceedings that violate the statutory timelines. To adopt such a position would undermine the statutory objects and cause injustice to the parties as the case would have to be reheard afresh with attend costs to the parties."

22. Similarly, the Court in the case of Wekesa v Karumbu (Civil Appeal E682 of 2022) [2024] KEHC 8283 (KLR) (28 June 2024) (Judgment) appreciated the meaning and import of Section 34(1) of the *Small Claims Court Act* as follows:

> " The court has to look into what the intention of the legislature was when it passed the section. I do not think that the legislature intended to mean that the court ceased to exercise jurisdiction over a matter filed in that court which was not finalized within 60 days. If that were the case, it would defeat the purpose of the whole Act. I thereby dismiss the argument that the judgment of the Adjudicator in this matter was a nullity."

23. In the case of Crown Beverages Ltd v MFI Document Solutions Ltd (2023) the Court reasoned that although Section 34(2) of the SCCA is couched on mandatory terms, the courts must look at the context of the provision in light of the guiding principles which include, inter alia, the timely disposal of all proceedings before the court using the least expensive method.

24. The Court in the case of articulated the basis of the statutory 60-days' time limit imposed by Section 34 of the SCCA as follows:

> "The purpose of the *Small Claims Court Act* is to facilitate expeditious disposal of the disputes while at the same time respecting the right to be heard. The net result is that balancing the two may result at times to overshooting the 60 days. The 60 days do not have penal consequences for good reason. They are aspirational. This is part of having access to justice over amounts that need not be in the normal system. Allowing the application will open floodgates that will eventually defeat the purpose of the Act."

25. The foregoing jurisprudence by the courts which clearly demonstrates a shift away from the position established by the court in the case of Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation) (Civil Appeal 129 of 2022; [2023] KEHC 2417 (KLR)), which decision was relied upon the Appellant, the Court holds and finds that the 60-days' time limit for delivery of Judgment as set out under Section 34 of the *Small Claims Court Act* is declaratory rather than mandatory. In the premises, it is the finding and holding of the Court that the trial Court's decision delivered on 26th May, 2023 did not become a nullity on account of having been entered outside the statutory timelines.

26. On the issue as to whether the subject appeal is merited, Section 38 of the *Small Claims Court Act* provides as follows;

> "(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."

27. In the appeal before the Court, the Appellant challenged the trial Court's finding upholding the respondent's statements of accounts, which is an issue of fact. Another issue of fact raised in the subject appeal concerns the quality of the basil (herbs) supplied to the appellant by the respondent.

28. In the case of Wanjiru *v Kiilu (Civil Appeal 90 of 2023*) [2024] KEHC 8881 (KLR) (19 July 2024) (Judgment), the High Court appreciated its appellate jurisdiction in respect of appeals emanating from decisions of the Small Claims Court as follows:

> "It therefore follows that appeals originating from the Small Claims Court to this court can only on the points of law. Consequently, this court cannot, in appeals emanating from that Court, entertain an invitation to interfere with the factual findings of the trial court. The duty of this court when dealing with such appeals, is therefore equivalent to that of the Court of Appeal in its capacity as a second appellate court."

29. In the case of Charles Kipkoech Leting v Express (K) Ltd & another [2018] eKLR, the Court of Appeal clarified that where a right of appeal is confined to questions of law only, an appellate court is duty bound to accept the findings of fact of the lower court and should not interfere with the decisions of the trial court on the factual issues "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".

30. The appellant argued and submitted that the trial Court misdirected itself in relying upon the statements of accounts supplied by the respondent. The court has carefully re-evaluated the factual issues in contention before the trial court. From a perusal of page two (2) of the decision of the trial court dated 26th May 2023, it is evident that the trial court compared the statements of account supplied by both the claimant (now Appellant) and the Respondent (then Respondent).

31. In the event, this Court is not persuaded that the trial Court disregarded the Appellant's evidence or relied single-handedly on the Respondent's evidence. In the premises, the Court is not minded to disturb the trial Court's findings on issues of fact and hereby upholds the same. In light of the foregoing, it must have become evident that the appeal before the Court is not merited. The same is hereby dismissed with costs to the Respondent being the successful party in the appeal, pursuant to the provisions of Section 27 of the *Civil Procedure Act*. It is so delivered.

Determination

32. This appeal is hereby dismissed. Judgement delivered in Nairobi CMCC E6811 of 2022 by Hon. C. W. Ndumia is hereby upheld. Costs to the respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF MARCH, 2025

HON. T. W. Ouya

JUDGE

For Appellant.....No appearance

For Respondent.....Ms Kamwana HB Karanja

Court Assistant.....Jackline