



**Mula Export Limited v Alego Wheels Limited (Civil Appeal E055 of 2024)
[2025] KEHC 6175 (KLR) (Civ) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 6175 (KLR)

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

CIVIL

CIVIL APPEAL E055 OF 2024

JM OMIDO, J

MARCH 20, 2025

BETWEEN

MULA EXPORT LIMITED APPELLANT

AND

ALEGO WHEELS LIMITED RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. G.W. Kiamah Resident Magistrate/
Adjudicator delivered on 13th December, 2023 in Milimani SCCCOMM No. E7454 of 2023)*

JUDGMENT

1. The Appellant herein seeks to upset the judgment and decree rendered on 13th December, 2023 in Milimani SCCCOMM No. E7454 of 2023. The 19 grounds raised in the Memorandum of Appeal dated 12th January, 2024 as follows:
 - i. That the learned Adjudicator erred in law and in fact in entering judgement against the Appellant for Ksh.334,047/- without any evidentiary basis.
 - ii. That the learned Adjudicator erred in law and in fact and occasioned a serious miscarriage of justice in finding that there was delivery of the alleged goods to the Appellant by the Respondent on the basis of invoices without any evidence of delivery of goods allegedly invoiced for.
 - iii. That the learned Adjudicator erred in law and in fact in finding that there was enough evidence to prove that there were dealings between the Appellant and the Respondent.
 - iv. That the learned Adjudicator erred in fact in finding that the Appellant benefitted from the goods allegedly delivered to it by the Respondent.



- v. That the learned Adjudicator erred in fact in finding that the Appellant issued delivery notes and a goods delivery note to the Respondent.
 - vi. That the learned Adjudicator erred in fact in finding that the goods delivery note dated 28th May, 2023 was issued by the Appellant to the Respondent.
 - vii. That the learned Adjudicator erred in fact by failing to acknowledge that the goods delivery note dated 28th May, 2023 had many inconsistencies and gaps in information and was entirely unreliable.
 - viii. That the learned Adjudicator erred in fact in concluding that a goods delivery note can be issued by a recipient of goods as opposed to a goods receiving note.
 - ix. That the learned Adjudicator erred in law and in fact in finding that the Appellant received and resold goods/avocados to third parties on behalf of the Respondent without any evidence of any such transactions between the Appellant and those entities.
 - x. That the learned Adjudicator erred in law and in fact in finding that the relationship between Gabriel Kariuki and the Appellant was that of principal/agent as opposed to that of supplier/client.
 - xi. That the learned Adjudicator erred in law and in fact in failing to acknowledge the Respondent's admission in its submissions that goods worth Ksh.142,047/- out of the total claim of Ksh.334,047/- were allegedly delivered to third parties and not the Appellant.
 - xii. That the learned Adjudicator erred in law and in fact in finding that the Respondent's case was more probable than the Appellant's without any evidence of the same.
 - xiii. That the learned Adjudicator misdirected herself in giving undue weight to the Respondent's disjointed claims, witness statements and documents.
 - xiv. That the learned Adjudicator erred in law and in fact in failing to attach due weight to the Appellant's submissions and authorities attached thereto.
 - xv. That the learned Adjudicator erred in law and in fact by holding the Appellant to a higher standard of proof than she held the Respondent.
 - xvi. That the learned Adjudicator erred in law in requiring the Appellant to disprove negative facts.
 - xvii. That the learned Adjudicator erred in law in failing to require positive proof of delivery of goods to the Appellant by the Respondent.
 - xviii. That the learned Adjudicator erred in law in failing to find that the Respondent's claim against the Appellant had no prima facie case; did not disclose a reasonable, or any cause of action against the Appellant; was scandalous, frivolous and vexatious and an abuse of the process of the court; and was based on mala fides, malice and was aimed at unjust enrichment by the Respondent against the Appellant.
 - xix. That the learned Adjudicator's award lacked legal and factual basis.
2. The Appellant proposes that the appeal be allowed and the judgement of the trial court be set aside and be substituted with an order for the dismissal of the matter before the lower court with costs.



3. A first appellate court is mandated under Section 78 of the *Civil Procedure Act* 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.
4. This court is therefore 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. This duty was espoused in the case of *Selle v Associated Motor Boat Co. Ltd* [1969] E.A. 123 in which Sir Clement De Lestang observed that:

“This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.

However, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”
5. Going to the trial court’s record, the Appellant (the Claimant in the Small Claims Court), presented the suit vide a Statement of Claim dated 22nd September, 2023, seeking the following reliefs against the Respondent:
 - a. Judgement against the Respondent for the sum of Ksh.365,747/-.
 - b. Interest at court rates on (a) above from the date of filing suit or such other time as this Honourable Court may order until payment in full.
 - c. Costs of the suit.
 - d. Such further or other orders as this Honourable Court may deem fit and just to grant.
6. The Respondent filed its Response to the Statement of Claim dated 11th October, 2023. The Respondent wholly resisted the Appellant’s claim and sought that the same be dismissed, denying indebtedness and/or liability.
7. From the record of the trial court, the matter was slated for hearing on 23rd November, 2023 and the record bears it that the parties agreed to proceed under Section 30 of the Small Claims Courts Act. Parties thereafter filed their respective submissions and it was on the basis of the two sets of submissions and the respective filed witness statements and lists of documents that the court went ahead and rendered its judgement on 13th December, 2023.
8. The Respondent’s case (the Claimant in the lower court) was premised on the witness statements of Calvin Abondo Oyugi and Kenneth Ochieng Oluoch, CW1 and CW2 respectively.
9. In his statement, CW1 stated that on 26th April, 2023, a representative of the Appellant one Gabriel Kariuki entered into a verbal agreement with the Respondent to purchase fuerte avocados from the latter. An aggregate of 21,421kg of avocados was then delivered to the Appellant for export. Out of these, 4,800kg were repackaged whole for export while 16,621kg were sold for oil processing.
10. The total agreed purchase price for the fruits was Ksh.334,047/-which amount the Appellant failed to pay despite reminders and demands being made, necessitating the filing of the suit.
11. CW2 stated in his statement that he was a director at Habibi Vegetables Limited. He stated that on 26th April, 2023, the Respondent company engaged him to source for a market for their avocados. He



contacted one Gabriel Kariuki who agreed to purchase the fruits on behalf of the Appellant. On the same day, the Appellant's vehicle carried the fruits to Danka Parkhouse in Ruai where the fruits were offloaded, sorted and graded. The exercise was completed on 3rd May, 2023. On aggregate, 21,421kg of avocado was delivered to the Appellant at an agreed cost of Ksh.334,047/-.

12. The Respondent relied on the following documents: Invoice dated 3rd May, 2023. Demand letter dated 14th August, 2023 and delivery receipts. Fee note for issuing demand letter. Fee note for prosecuting the claim against the Appellant.
13. Edwin Ochieng' Alum's (RW1). He stated in his statement that he was the Managing Director of the Appellant and denied being indebted to the Respondent as claimed or at all as the Appellant never transacted with the Respondent.
14. He stated that the Appellant had no business or contractual relationship with the Respondent and denied that one Gabriel Kariuki was the Appellant's representative and stated that the said person was an independent supplier of the Appellant and that the Appellant was not indebted to him.
15. The parties filed their respective submissions.
16. After considering the material placed before it, the trial court reached the finding that the Respondent had proved its case against the Appellant on a balance of probabilities and proceeded to enter judgement in favour of the Respondent and against the Appellant in the following terms:

“Judgement is hereby entered in favour of the Claimant as against the Respondent for the amount of Ksh.334,047/-. The Claimant is also awarded costs of the claim and interest from the date of judgement till payment in full”.

1. It is noteworthy from the grounds of appeal reproduced above that what the Appellant is challenging is the trial court's findings upon analysis of the evidence that was presented through the documents that the parties filed.
18. This being an appeal from the Small Claims Court, the duty of this court is to determine issues of law only. Section 38 of the Small Claims Courts Act provides that:
 - 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.
 19. The question that then abounds is whether the appeal as filed has presented any issues of law to be addressed by this court.
 20. I have stated above that the parties agreed to proceed with the matter under Section 30 of the *Small Claims Court Act* which allows parties upon consensus to present their respective cases on the basis of documents, statements and written submissions. Let us read the said provision:
 30. Proceeding by documents only -

Subject to agreement of all parties to the proceedings, the Court may determine any claim and give such orders as it considers fit and just on the basis of documents and written submissions, statements or other submissions presented to the Court.
 21. It is clear from the reading of the above provision that the court can only apply the procedure provided for under the section when parties have reached an agreement that the same be applied.



22. Ordinarily, when a matter proceeds under the said provision, no witnesses orally testify. That then means that the contents of the statements and documents that are relied upon by the parties are not subjected to scrutiny or challenge by way of cross examination. In any event, under Section 32(1) of the Act, strict rules of evidence are excluded in proceedings before the Small Claims Courts and the court is not to be bound wholly by the rules of evidence.
23. That being the case, my view is that the resulting findings by the Adjudicator on such evidence are findings of fact. I say so because the documents so relied upon are not subjected to evidential questioning by the parties.
24. In my view then, the trial court's findings upon analysis of the evidence tendered under Section 30 of the *Small Claims Court Act* being findings of fact cannot be issues of law that are capable of being entertained on appeal under Section 38 of the same statute. All the 19 grounds listed in the Memorandum of Appeal are premised on such findings of fact.
25. The result that I then reach is that the appeal herein raises grounds that are purely points of fact and evidence. There is not a single issue of law that has been presented by the Appellant. The appeal must for that reason fail. I proceed to dismiss it with costs to the Respondent.
26. Orders accordingly.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 20TH DAY OF MARCH, 2025.

JOE M. OMIDO

JUDGE

For the Appellant: No appearance.

For the Respondent: Ms. Machasio.

Court Assistant: Mr. Ngoge & Mr. Juma.

