



**Crossbridge Kenya Limited v Emerge Developments Limited (Appeal E195 of 2023)
[2025] KEHC 4355 (KLR) (Commercial and Tax) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
APPEAL E195 OF 2023
BK NJOROGE, J
APRIL 3, 2025**

BETWEEN

CROSSBRIDGE KENYA LIMITED APPELLANT

AND

EMERGE DEVELOPMENTS LIMITED RESPONDENT

JUDGMENT

1. This is a Judgement on Appeal arising out of the Ruling of Honourable B.J. Ofisi delivered on 29th July, 2023. It arises out of (Milimani) SCCOMM. No. 4480 of 2022.
2. The Learned Adjudicator dismissed the Appellant's Notice of Motion dated 21st February, 2023 as devoid of merits. There were no orders as to costs.
3. The Appellant is the original Respondent before the Small Claims Court. The Respondent herein was the original Claimant before the Small Claims Court.

Background Facts

4. The Respondent herein as a Claimant sued the Appellant before the Small Claims Court. This was on account of an unpaid debt arising out of consultancy services rendered to the Appellant by the Respondent. It was alleged by the Respondent that it had entered into a contract with the Appellant. This was to render consultancy services for a development project that the Appellant intended to undertake at tis Peponi Gardens Road Properties. The Respondent sued for what it claimed were outstanding professional consultancy fees, having rendered its services. The Respondent's claim was for Kshs.1,338,587.20, but owing to the limitation of the pecuniary jurisdiction of the Small Claims Court, it was restricted to the limit of Kshs.1,000,000.00 only.



5. The Appellant denied that it entered into a written contract with the Respondent for the consultancy work. It did state that it had paid a sum of Ksh.600,000 as a commitment fee. However, when the expected report on the consultancy came up, it fell far too short of what was expected. The Appellant therefore Counter-claimed for the refund of the Ksh.600,000 as no services were rendered.
6. The Learned Adjudicator heard the dispute and returned a verdict that there was no written agreement between the parties. The Learned Adjudicator stated as follows: -

“The Claimant herein relies on the undated draft agreement in support of its claim. The Court is unable to decipher the exact terms of the agreement if at all since, the same is not executed by parties. In light of the foregoing, I find that the parties have failed to prove the claim and Counter-claim to the required standard. Consequently, they are dismissed with each party to bear their own costs.”
7. The Appellant aggrieved by the decision filed an application by way of a Notice of Motion dated 24th February, 2023. It sought a review of the judgement delivered on 28th October, 2022. The application was opposed by the Respondent herein.
8. The Learned Adjudicator in the Ruling of 28th July, 2023 declined to review the earlier judgement. It is this decision that has triggered this Appeal.
9. The Appeal has been disposed of by way of written submissions. The Court has seen and read the Appellant’s written submissions dated 4th October, 2024 and authorities cited. The Court has also seen the written submissions filed by the Respondent dated 9th October, 2024 and the authorities cited.

Issues for Determination

10. Having read the Record of Appeal and the submissions filed herein, the Court frames two (2) issues for determination.
 - a. Whether the application for review was properly before the Learned Adjudicator.
 - b. Whether the appeal is meritorious

Analysis

11. This is an Appeal from the Small Claims Court. It is the first and final appeal. Appeals to this Court are provided for by Section 38 of the *Small Claims Court Act* which states as follows;
 38. Appeals
 - (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
12. It is therefore well settled that appeals to this Court are restricted to matters of law only.

Whether the Application for Review was Properly before the Learned Adjudicator.

13. The Ruling the subject matter of the Appeal was delivered on 28th August, 2023. The appellant submits that the application is hinged on Rule 29 of the Small Claims Court Rules, which provide as follows
 29. Power to review decree or order



- (1) The Court may review any decree passed or order given in proceedings under the Act on the written request of any party aggrieved by such decree or order where it is shown to the satisfaction of the Court that the decree or order sought to be reviewed—
 - (a) has an error apparent on the face of the record; or
 - (b) has a clerical or arithmetical mistake.
 - (2) A request for review of a decree or order under this rule shall be made within three (3) months of the passing of the decree or of the making of the order in issue, and may be made—
 - (a) orally in court; or
 - (b) in writing addressed to the Court and served on all parties to the proceedings.
 - (3) Nothing in this rule prevents the Court, of its own motion, from reviewing and making a correction of any clerical or arithmetical mistake within thirty days of passing the decree or making the order in issue.
14. The Appellant submits that it was wrong for the Court to dismiss the original Claim as well as its Counter-claim. That the Learned Adjudicator ought to have considered the Counter-claim separately and independently. That had that been done, judgment ought to have been entered on the Counter-claim. This was for the refund of Ksh.600,000 paid by the Appellant to the Respondent. That the Respondent did not supply the agreed consultancy services to the Appellant.
 15. The Court hears the Appellant to submit that failure to consider the Counter-claim separately and distinctively amounted to an error on the face of the record. It cited Hosea Nyandika Mosagwe & 2 others -vs- County Government of Nyamira [2022] eKLR and Ajit Kumar Rash -vs- State of Orisa & others 9 Supreme Court Cases 596 at page 608. That review can lie to correct a patent error of law or fact which stared in the face without any elaborate argument being needed for stabling it.
 16. That the application was filed timeously. The 90th day fell on 21st February, 2023, which is the date the application was filed.
 17. That there was delay by the Small Claims Court in availing a copy of the Ruling. This was done a month after its delivery. Hence to apply the provisions of Section 41 of the *Small Claims Court Act* would be harsh and result in an injustice. Section 41 limits the time for filing a review to Thirty (30) days.
 18. That on procedural timelines envisaged by the *Small Claims Court Act*, the same ought to be looked at purposively. The Court was referred to Biosystems Consultants -vs- Nyali Links Arcade [2023] KEHC 21068 (KLR). The Appellant also cited the provisions of Article 159 of *the Constitution* of Kenya.
 19. On the other hand, the Respondent submits that the application has been made outside the timelines for review, being thirty (30) days.
 20. It refers to Section 41 (2) of the Small claims Act, which states as follows;
 41. Review of orders or awards of the Court
 - (1) An Adjudicator may, on application by any aggrieved party or on his or her own motion, review any order of the Court on the ground that—
 - (a) the order was made ex-parte without notice to the applicant;
 - (b) the claim or order was outside the jurisdiction of the Court;



- (c) the order was obtained fraudulently;
- (d) there was an error of law on the face of the record; or
- (e) new facts previously not before the Court have been discovered by either of the parties.

(2) The application referred to under subsection (1) shall be made within thirty days of the order or award sought to be reviewed or such other period as the court may allow

21. It submitted that there was no application for extension of time. It cited *Salome Njoki Njuguna -vs- Jacob Muriungi Murea* [2018] eKLR and *Nzuki -vs- Muthengi & another* (Miscellaneous Civil Application E001 of 2021 & Miscellaneous Application E003 and E004 of 2021 (Consolidated) (2022) KEELC 2731 (KLR). That procedural requirements cannot be ignored by the parties.
22. The Court is called upon to determine whether a review lies to the Small Claims Court within thirty (30) days or it is within ninety (90) days.
23. To this Court, the substantive law being the Small Claim Act limits the time for filing an application for review to thirty (30) days. An application outside this timeline, has to be made with the leave of the Small Claims Court.
24. The Act lays out the five instances or grounds upon which an application for review can be made to the Small Claims Court. Looking at the facts before the Small Claims Court, the application for review had been filed outside the stated timelines of thirty (30) days.
25. The Small Claims Court Rules are made pursuant to Section 50 of the Small claims Act which states as follows;
 50. Power to make Rules
 - (1) The Chief Justice may make Rules of practice and procedure for the better functioning of the Court.
 - (2) For the purpose of Article 94(6) of *the Constitution*—
 - (a) the purpose and objective of the delegation under this section is to enable the Chief Justice to make rules to provide for the better carrying into effect the provisions of this Act;
 - (b) the authority of the Chief Justice to make Rules under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
 - (c) the principles and standards applicable to the Rules made under this section are those set out in the *Interpretation and General Provisions Act* (Cap. 2) and the *Statutory Instruments Act* (Cap. 2A).
26. The Court has contemplated as to whether the Act and the Rules are in conflict as to the timelines for filing application for review. To this Court the Rules cannot surpass or derogate from the parent Act. The time granted for filing applications for review remains thirty (30) days as set out in the Act. The Rules have not extended this period to ninety (90) days. The Rules cannot purport to do so.
27. A reading of Rule 29 of the Rules shows that what is contemplated is the review in the form of the general powers of the Court to correct clerical or arithmetical mistakes. A reading of the Rule 29 (3)



sheds more light to this and dispels any confusion. What is contemplated is the general powers to correct decisions or decrees but limited to a time period of three (3) months only. This is a power comparable to that donated by Section 99 of the Civil Procedure Act cap 21 of the Laws of Kenya.

28. The rationale being that there is a focus on expediting processes before the Small Claims Court. Whereas in the Civil Procedure Rules application for review must be made with a reasonable time, in Small Claims Act that reasonable time is limited to thirty (30) days. Any period outside this time frame has to be permitted by the Small Claims Court.
29. The Court reaches the conclusion that the application for review was filed outside the thirty (30) days without any leave to file out of time.

Whether the Appeal is Meritorious

30. An Appeal to this Court has to be on matters of law only. Appeals from the Small Claims Court do not lie on matters of fact.
31. This court notes that the Appeal is against the decision of the Small Claims Court, declining to review its orders. There was no Appeal filed against that decision of the Small Claims Court.
32. The Court notes that the issues raised in this Appeal, are issues that ought to have been raised on Appeal against the substantive decision of the Small Claims Court. That is to say, the Judgement delivered on 28th October, 2022. However, no such Appeal was filed. Even if such an Appeal had been filed, the Court would not have considered the grounds challenging the decision on facts.
33. The Learned Adjudicator stated that there was not agreement in writing signed by the parties. There was a draft agreement but it had not been signed. The terms on the draft agreement could not be said to be the terms that bound the parties, especially since there was a disagreement on the terms. That is a factual matter and a finding by the Learned Adjudicator. It cannot be the basis of an Appeal or an application for review. That there was no certainty as to the terms of the contract between the parties. Had the agreement been duly signed, the Learned Adjudicator would have looked at the document for the terms and given an interpretation or enforced its terms.
34. To fault the Learned Adjudicator for this kind of reasoning is to invite this Court to delve into facts and on the substantive appeal. An application for review cannot be used to challenge facts or points of law that can only be the subject of an Appeal. It therefore follows that if an application for review fails, an appeal against such a decision cannot be used to advance the substantive Appeal that was never filed, against the initial decision.
35. To question the reasons behind the Appellant making the payment of Ksh.600,000/= to the Respondent is to delve into facts.
36. The Court is not persuaded that there was an error apparent on the face of the record of the Learned Adjudicator.
37. The Respondent submits that Rule 14 (1) of the Small Claims Court Rules limits the pecuniary jurisdiction of a Counter-claim to Ksh.200,000. The Rule states as follows;
 14. Respondent may abandon part of counterclaim
 - (1) A respondent who has a counterclaim exceeding two hundred thousand shillings may —
 - (a) abandon that part of the counterclaim exceeding two hundred thousand shillings;



- (b) pursue his or her counterclaim in the proceedings and recover an amount not exceeding two hundred thousand shillings; or
- (c) file a separate claim in the Magistrates' Court to recover the whole of the amount counterclaimed.

- (2) A respondent who abandons that part of the counterclaim exceeding two hundred thousand shilling shall state in his or her response that the amount in question is abandoned.
- (3) A respondent who abandons any part of a counterclaim or set-off in accordance with this rule shall not be entitled to file a subsequent claim in any court to recover the amount stated as abandoned.

38. This Court is not persuaded by that line of submission. A Counter-claim is a separate suit and once filed can exist distinctively apart from the initial Claim. Such that if the Claimant withdraws his Claim, the Respondent would be free to pursue the Counter-claim. To this Court the pecuniary limit for a claim before the Small Claims Court is Ksh.1 million. The same would apply to a Counter-claim. It is limited to Ksh.1 million. Rule 14 (1) should be read alongside Rule 3 (1) (5) and (6) which states as follows;

A claimant who has a claim of more than one million shillings may abandon that part of the claim that is in excess of two hundred thousand shillings.

- (5) Where a claimant abandons part of a claim, he or she shall state in the Statement of Claim that the amount in excess of one million shillings has been abandoned.
- (6) A claimant who abandons part of a claim shall not subsequently sue for recovery of that part of the claim that has been abandoned, unless the claimant withdraws the entire claim in accordance with rule 14 (1) (c) and subsequently pursues the entire claim in a Magistrates Court.

39. Hence in the same manner Rule 14 (1) is seen as limiting the excess claim in a Counter-claim to Ksh.200,000. This is the extent to which a Counter-claim can be abandoned. Hence a Claimant with a claim for Ksh.1,200,000/- can abandon the Ksh.200,000 and claim Ksh.1 million only. The same with a Counter-claim. A Claimant with a claim for Ksh.2million cannot abandon Ksh.800,000/- and Counter-claim for Ksh.1million only.

40. Having said so, the Court is not persuaded that the appeal has any merits.

41. As to costs, the same are awarded to the successful Respondent.

Determination

42. The Appeal is dismissed in its entirety.

43. The costs are awarded to the Respondent.

44. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF APRIL, 2025

NJOROGE BENJAMIN K



JUDGE

In the presence of;

Mr. Orwenyo for the Appellant for the Appellant

Mr. Onyancha for the Respondent

Mr. Luyai – Court Assistant

