



**Njoroge v Thika Farmers Group (Civil Appeal 132 of 2022)  
[2025] KEHC 6072 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6072 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 132 OF 2022  
TW OUYA, J  
MAY 15, 2025  
(FORMERLY KIAMBU HCCA 237 OF 2024)**

**BETWEEN**

**MICHAEL NJOROGE ..... APPELLANT**

**AND**

**THIKA FARMERS GROUP ..... RESPONDENT**

*(Appeal emanates from the judgement of the Chief Magistrate's Court at Thika of the Hon. M W Karumbu delivered on the 8th September 2022 in civil case no. 5 Of 2022)*

**JUDGMENT**

1. This appeal emanates from the judgement of the Chief Magistrate's Court at Thika of the Hon. M W Karumbu delivered on the 8<sup>th</sup> September 2022 in civil case no. 5 Of 2022. The suit in the Lower court was initiated by the respondent against the Appellant on 7<sup>th</sup> September 2019 vide plaint dated 6<sup>th</sup> October 2018. The claim arose out of a business deal where the plaintiff supplied various brands of chicken feed to the defendant on credit at the Defendant's request and instance worth Kshs. 238,805 which the appellant failed to pay for on demand despite invoices and demand notes being served upon him.
2. The matter proceeded for full trial and the trial court found in favor of the respondent. The appellant, being aggrieved with the judgement filed the instant appeal citing grounds that:
  - i. The Learned Trial Magistrate erred in fact and law in not appreciating there was no Board Resolution in support of the claim by Respondent hence the Respondent lacked capacity to sue, depone documents or instruct counsel.



- ii. The Learned Trial Magistrate erred in law and fact by holding that the verifying affidavit was properly on record yet no board resolution was availed authorising swearing of court documents on behalf of the Respondent or filing the case.
- iii. The Learned Trial Magistrate erred in law and fact in not considering the request of particulars by the Appellant which were not provided.
- iv. The Learned Trial Magistrate erred in law and fact in not considering the Preliminary objection to the suit as pleaded in the Defence.
- v. The Learned Trial Magistrate erred in Law and in fact in not appreciating that the respondent own documents the sum owed was identified as Kenya Shillings Two Hundred and Thirty Eight Thousand Eight Hundred and Five (Kshs 238,805 and in others Kenya Shillings Two Hundred and Seventy Four Thousand Six Hundred and Twenty Six (Kshs 274,626).
- vi. The Learned Trial Magistrate erred in law and fact by finding that the Appellant had a balance of Kenya Shillings Three Hundred and Eight Thousand Eight Hundred and Five (308,805/=) yet in the same breath holding that the parties dealt on credit basis without records.
- vii. The Learned Trial Magistrate erred in both law and fact in entering Judgement in favour of the respondent yet the documents in support of the claim were illegible and not supported by evidence and were all self authored.
- viii. The Learned Trial Magistrate erred in law and fact misdirected herself when she purported to rely on illegible documents in supports of Respondent's claim despite prior request for particulars.
- ix. The Learned Trial Magistrate erred in law in finding the Appellant was in breach of contract yet the same was not proved to the required standard.
- x. The Learned Trial Magistrate erred in law and fact in misapprehending the law on breach of contract by finding that the Respondent had proved his claim against the Appellant in absence of proper documentation and or formal contract of proper credit records.
- xi. The Learned Trial Magistrate erred in both law and fact in entering the Judgement in favour of Respondent without giving due consideration of the pleading and evidence before her.
- xii. The Learned Trial Magistrate erred in both law and fact by finding in favour of Respondent despite lacking evidence to support the claim whereas even in the Respondent's own documents the mode of payment was specified to be by pay bill.
- xiii. The Learned Trial Magistrate erred in law and fact by dismissing the Appellants counter-claims yet no goods were delivered for the Kenya Shillings Seventy Thousand (Kshs 70,000) deposited.
- xiv. The Learned Trial Magistrate erred in dismissing the Appellants counter-claim.

3. The Appellant prays for orders that:

- i. The Appeal be allowed.
- ii. The judgement delivered on 8<sup>th</sup> September 2022 be set aside.
- iii. The suit in the lower court be dismissed.
- iv. Costs be in the cause.



4. The appeal was canvassed by way of written submissions by counsel for the rival parties.
5. Counsel for the appellant argued various issues which can be summarised as follows: The appellant argues that the respondent's suit was filed as an amorphous body without the board resolution or authority. That against this argument, the appellant raised a preliminary objection alongside their defence and counterclaim. He argues that the respondent's suit was totally defective for failure to properly define the Defendant (now appellant) and should have been struck out by the lower court. The argues that the respondents' documents were self-generated and/or authored from their offices with no ETR or tax receipts hence they were false and should not have been relied upon. That the documents were not accompanied by delivery notes or invoices. He argues further that the trial court wrongly dismissed his counterclaim of Kshs. 70,000 paid in expectation of supply of goods which were never supplied but was me with self-authored documents by the respondent.
6. The respondent on the other hand has identified and argued around four areas namely:
  - i. The Appeal be allowed.
  - ii. The judgement delivered on 8<sup>th</sup> September 2022 be set aside.
  - iii. The suit in the lower court be dismissed.
  - iv. Costs be in the cause.
7. The respondent holds that the trial court did not err in disregarding the issue of board resolution but relied on article 259(2) of the COA which enjoins the court to exercise judicial authority without undue regard to procedural technicalities. The court also relied on order 4 Rule 1(4) of the civil procedure rules which provides that where the plaintiff is a state corporation, the verifying affidavit shall be sworn by an officer of the company duly authorised under the seal of the company to do so. The section does not require stipulate a resolution but provides that an officer authorised can swear the verifying affidavit. Counsel relies on several authorities including:
8. Counsel contends that the court rightly held that the appellant was in breach of the contract between him and the respondent company. He pointed out that the court relied on bank statements and invoices among other documents produced by the respondent proving that the appellant had been paying the respondent. That the court inferred an oral agreement from the conduct of the parties. He cites and relies on several authorities to support this argument.
9. Regarding the appellant's counterclaim, counsel holds that the same was dismissed by the trial court on the basis that the appellant having been in arrears of Kshs. 308,805 the Kshs. 70,000 which was paid and feeds not supplied was used to offset part of the balance.
10. Lastly, the respondent points out that the appellant failed to take any action to prosecute his preliminary objection but the same was addressed by the trial court citing article 159(2) of the [\*constitution\*](#) of Kenya.
11. The court has perused the original record, the record of appeal and considered the material canvassed in respect of the appeal. I find that the issues arising for my determination are: Whether there was merit in the appellant's preliminary objection; Whether there was a binding contract between the appellant and the respondent; whether this appeal has merit and who bears the cost of this appeal.
12. The duty of this court as a first appellate court is to re-evaluate the evidence adduced in the lower court and to draw its own conclusions, but always bearing in mind that it did not have the opportunity to see or hear the witnesses testify. See *Kenya Ports Authority v Kusthon (Kenya) Limited (2000) 2EA 212*,



Peters v Sunday Post Ltd (1958) EA 424; Selle and Anor. v Associated Motor Boat Co. Ltd and Others (1968) EA 123; William Diamonds Ltd v Brown [1970] EA 11 and Ephantus Mwangi and Another v Duncan Mwangi Wambugu (1982) – 88) 1 KAR 278.

13. The appellant's preliminary objection at the trial court was premised on the argument that the respondent was not properly defined in the in the suit and lacked locus standi for want of board resolution or company seal. The trial court invoked the overarching principle of article 159(2) of the constitution of Kenya which enjoins the court to exercise judicial authority without undue regard to procedural technicalities. The court also relied on order 4 Rule 1(4) of the civil procedure rules which provides that where the plaintiff is a state corporation, the verifying affidavit shall be sworn by an officer of the company duly authorised under the seal of the company to do so. The section does not require or stipulate a resolution but provides that an officer authorised can swear the verifying affidavit. This court finds no basis to interfere with this position as it is in line with sound principle.
14. From the record, the respondent adduced at the trial a bundle of invoices, demand letter and statement of account comprising of bank statements which reveal a series of transactions suggesting that the appellant and the respondent were in a business arrangement. Over and above the respondent's evidence, the appellant was able to demonstrate in support of his counterclaim that he made a payment of Kshs. 70,000 to the respondent. The totality of the parties' actions can be rightly inferred to derive rights and obligations upon the parties and confirms their intention. Based on the above, the trial court proceeded to make a finding that there was an implied contract between the parties.
15. On implied contracts, the Court of Appeal in Ali Abdi Mohamed vs. Kenya Shell & Company Limited (2017) eKLR referred to the following persuasive decisions: -

... In Lamb v. Evans [1893]1 Ch 218, Bowen LJ stated:

The common law, it is true, treats the matter from the point of view of an implied contract, and assumes that there is a promise to do that which is part of the bargain, or which can be fairly implied as part of the good faith which is necessary to make the bargain effectual. What is an implied contract or an implied promise in law? It is that promise which the law implies and authorizes u to infer in order to give the transaction that effect which the parties must have intended it to have, and without which it would be futile."

Bingham LJ in The Aramis [1989] 1 Lloyd's Rep 213 made some general observations about the circumstances in which a contract might be implied. At p.224 col. 1, he said:

"As the question whether or not any such contract is to be implied is one of fact, its answer must depend upon the circumstances of each particular case - and the different sets of facts which arise for consideration in these cases are legion. However, I also agree that no such contract should be implied on the facts of any given cases unless it is necessary to do so; necessary that is to say, in order to give business reality to a transaction and to create enforceable obligations between parties who are dealing with the one another in circumstances in which one would expect that business reality and those enforceable obligations to exist."

16. In the instant case, the trial court inferred a valid contract from the conduct of the parties the appellant's ground that there was no valid contract between the parties must therefore fail.
17. As indicated above the appellant had included in his defence a counterclaim of Kshs. 70,000 which he allegedly paid for feeds which were not delivered. It is apparent from the record that the same was proved to have been paid on 29<sup>th</sup> July 2019 but no feeds were supplied. However, the parties were in



agreement that since the appellant owed the respondent Kshs. 308,805, the same was to be used offset part of the balance. In effect, the counterclaim was dismissed and judgement entered in favor of the respondent for Kshs. 238,805 together with costs. This court finds no basis to interfere with the above finding of the trial court.

18. Instances when an appellate court can interfere with trial court's decision were well enunciated in *Attorney General of Kenya V Anyang' Nyong'o & 10 others* (2010) RC 1 (KLR), the court enunciated on principles under which an appellate court can interfere with the exercise of a discretion by a trial court. That the presiding judge;
  - i. Took into accounts some irrelevant factor(s)
  - ii. Failed to take into account some irrelevant factor(s)
  - iii. Did not apply a correct principle to the issue (such as misdirection on a point of law, or misappropriation of facts)
  - iv. Taking into account all the circumstances of the case, the judge's decision is plainly wrong.
19. Similarly, in *Mohammed Eltaff & 3 others, Vs Dream Camp Kenya limited* (2005) Eklr, it was observed that the appellate court has mandate to interfere where a trial court has left certain issues unresolved.
20. This court finds no basis to interfere with the trial court finding. This appeal therefore fails.

#### **Determination**

21. The appeal is dismissed with costs to the respondent. The judgement of the Chief Magistrate's Court at Thika delivered on the 8<sup>th</sup> September 2022 in Civil Case no. 5 Of 2022 is hereby upheld. Stay of execution orders granted for 30 days.m m

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**HON. T. W. OUYA**

**JUDGE**

