



**Owiti v Budi (Civil Appeal E133 of 2024) [2025] KEHC 6138 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6138 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E133 OF 2024**

**A MABEYA, J**

**MAY 16, 2025**

**BETWEEN**

**BENARD ODHIAMBO OWITI ..... APPELLANT**

**AND**

**GEOFFREY LITHE BUDI ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. G. Serem PM delivered on the 6/6/2024 in the Ksm Small Claims Court No. E549 of 2023, Benard Odhiambo Owiti v Geoffrey Lithe Budi)*

**JUDGMENT**

1. This appeal emanates from the judgment and decree delivered on the 6/6/2024 in the Kisumu Small Claims Court No. E549 of 2023, Benard Odhiambo Owiti v Geoffrey Lithe Budi.
2. The appellant sued the respondent vide a statement of claim seeking judgment in the sum of Kshs. 634,600/=, which claim was based on alleged breach of contract emanating from a motor vehicle sale agreement between the appellant and respondent for motor vehicle registration number KCA 757C, a Toyota Probox that was allegedly owned by the respondent.
3. The respondent denied owing the appellant any money and stated that the appellant purchased the said vehicle well aware that he, the respondent, did not own the same.
4. In its judgment, the trial court held that the appellant failed to prove any double registration and whereas the respondent had the onus to transfer the suit vehicle or ensure that the same is transferable to the appellant, the same was not pleaded by the appellant and as such, the trial court proceeded to dismiss the appellant's claim with costs of Kshs. 10,000/- to the respondent
5. Dissatisfied with that decision, the appellant filed his memorandum of appeal dated 4/7/2024 raising five (5) grounds of appeal as follows: -
  - a. The learned magistrate completely misunderstood the evidence before her, wrongly analysed the evidence thus dismissing the plaintiff's case with costs to the respondent.



- b. The learned magistrate erred in law and fact by failing to appreciate the totality of the evidence before her and the submissions made on behalf of the appellant thus reaching a conclusion that was contrary to the evidence before her.
  - c. The learned magistrate erred in law in failing to follow the law as established through judicial precedent.
  - d. The learned magistrate erred in law and in fact by basing her judgment on facts not pleaded in court.
  - e. The learned magistrate totally misunderstood and wrongly evaluated the evidence before her and therefore arrived at a wrong conclusion.
6. The appellant filed submissions in support of his appeal stating that the respondent breached the agreement between them and failed to meet the obligations set out therein by fraudulently representing that he was in a position to transfer the title to the motor vehicle. That he was entitled to damages as he had been unable to use the suit vehicle since 2022 and further by virtue of clause 6 of the sale agreement which had provided that a party in breach is condemned to pay 50% of the consideration to the aggrieved party.
  7. On his part, the respondent opposed the appeal and filed submissions. He contended that the appeal ought to be dismissed on the grounds that; the appeal did not raise points of law as required by section 38 of the *Small Claims Court Act*; that the trial court rightly executed its duty as the appellant failed to discharge the burden of proof as to the existence of facts he sought the court to believe and act on.
  8. That the trial court rightly discharged its judicial functions bound by the pleadings and evidence presented before it and that it lacked the jurisdiction to handle the claim. That the court ought to have set down its tools as the matter was determined beyond the mandatory 60 days within which claims before the court ought to be concluded.
  9. This being an appeal from the Small Claims Court, it is paramount to consider Section 38 of the *Small Claims Court Act* under which appeals from the Small Claims Court ought to be considered. It 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.”
  10. From the foregoing, appeals originating from the Small Claims Court to this court can only be on points of law. In this regard, the Court is in agreement with the respondent’s submissions that this Court cannot, in appeals emanating from that court, entertain an invitation to interfere with the factual findings of that court unless it is arrived without evidence.
  11. The duty of this Court when dealing with such appeals is to accept the findings of fact arrived by the trial court unless it is shown that the court below considered matters it should not have considered or failed to consider matters it should have considered or looking at the entire decision, it is perverse.



12. In *Kenya Breweries Ltd v Godfrey Odoyo* [2010] eKLR, the Court of Appeal distinguished between matters of law and matters of fact and stated that: -

“First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of a retrial and facts must be revisited and analysed afresh, - see *Selle and Another vs. Associated Motor Boat Company Ltd and Others* (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. 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.” [Emphasis added].

13. Similarly, in *Charles Kipkoech Leting v Express (K) Ltd & another* [2018] eKLR, the Court of Appeal further 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 trial court.

14. The appellate Court should not interfere with the decision of a 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’. The court stated that; -

“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.”

15. In this regard, a point of law must clearly arise out of the pleadings. In case of appeal, it should arise out of the Memorandum of Appeal vis-à-vis the pleadings in the court below.

16. In the present case therefore, the issue raised must as of necessity arise out of the pleadings. They must hold true to the law or implication of the law. This includes deciding a matter on the basis of no evidence, based on a nullity, failing to exercise discretion which the court clearly has. Or, failing to take up jurisdiction which the court has or taking up jurisdiction which the court does not have or otherwise reaching a decision which no reasonable tribunal could have reached given the evidence and pleadings.

17. Applying the above principles to the instant appeal, it is therefore clear that when dealing with this appeal, this Court will only confine itself to the issues of law as raised in the memorandum of appeal. That the findings of the trial court are not to be accepted, unless it becomes apparent, on evidence, that the conclusions on facts reached by the trial court were so unreasonable that no reasonable court or tribunal could arrive at the same conclusion.



18. Turning to the grounds of appeal raised by the appellant, grounds 1, 2, 4 & 5 all relate to the evidence presented before the trial court and the trial court's failure to properly analyse the same. The aforementioned grounds enjoin this court to revisit the evidence that was before the trial court and analyze the same and come into its own independent conclusions.
19. The Court has considered the record. The appellant's case was that he entered into an agreement for the purchase of a Motor Vehicle Registration No. KAC 757C, Probox for Kshs.380,000/-. A log book was supplied and ID Card. He later found that there was double registration for the vehicle. However, he had been in possession of the vehicle for 3 years. That the respondent had agreed to refund him. Finally, that the agreement between the two required the guilty party to pay damages of 50%.
20. The respondent admitted to entering into the agreement. He admitted to receiving the purchase price and to handing over possession of the vehicle and registration document. He stated that the appellant had not proved that the vehicle had double registration.
21. The trial court analyzed the evidence and found that while there was an agreement between the two, the appellant had failed to prove that the transfer could not be effected due to double registration. That indeed the agreement had indicated that the respondent was only a beneficial owner. That meant that the Motor Vehicle was not in the name of the respondent.
22. Having considered the record, this Court finds that the trial court neither misapprehended the evidence nor made a decision on extraneous matters. It properly considered the documentary and oral evidence before it to arrive at its decision. It's conclusion that the appellant did not prove double registration cannot be faulted. Its decision was based on the evidence before Court.
23. In the premises, those grounds are of no basis and are dismissed.
24. Ground No. 3 was that the trial court erred in law in failing to follow the law as established through judicial precedent. The appellant's contention was that the trial court erred by not awarding damages and relied on the case of Hydro Water Well (K) Ltd vs Sechene & 2 Others [2021] KEHC 22(KLR) (Commercial & Tax) (10<sup>th</sup> August, 2021) (Judgment).
25. Apart from the foregoing authority, the appellant did not specify how the trial court failed to follow judicial precedent. A simple answer to the appellant's contention is that, having failed to prove his case against the respondent, no damages could follow. Accordingly, that ground also fails.
26. Accordingly, in view of the foregoing, I find the appeal to be without merit and proceed to dismiss it with costs to the respondent assessed at Kshs.20,000/-.

It is so decreed.

**DATED AND DELIVERED AT KISUMU THIS 16<sup>TH</sup> DAY OF MAY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

