



Smartpark General Supplies Limited & another v Base Limited (Civil Appeal E270 of 2021) [2025] KEHC 5750 (KLR) (Commercial and Tax) (9 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5750 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E270 OF 2021**

BM MUSYOKI, J

MAY 9, 2025

BETWEEN

SMARTPARK GENERAL SUPPLIES LIMITED 1ST APPELLANT

PHILIP OMBIRI 2ND APPELLANT

AND

BASE LIMITED RESPONDENT

(Being appeal from judgment and decree of the Small Claims Court at Nairobi (Hon. C.A. Okumu) delivered on 15th September 2023)

JUDGMENT

1. A short background of this matter is that the 1st appellant, the respondent and one Talent Graphics Limited executed a short and simple agreement on 28-02-2020 whose relevant part was in the following terms;

‘We Smartpark General Supplies Limited buying off the arrears of the Base Limited (Godown No. g 15) which currently is (Kshs 1,215,127 KSH) we have written cheque of -215,127 Kshs to Base Limited cheque No. 66 dated 28-02-2020. The difference of the arrears is 1,000,000 Kshs which will be paid double of the rent until we clear. The agreement is made in between three people namely:- Smartpark Limited, Base Limited And Talent Graphics Limited.’

2. The agreement was executed by the 2nd appellant for the 1st appellant, Kennedy Oduru for the seller and two witnesses, Fredrick Omondi and Joseph Juma Oduor. The claim in the lower court was filed by the respondent herein after the 1st appellant failed to pay the acknowledged balance of Kshs 1,000,000.00. After reproducing the summarised evidence of the parties, the adjudicator in her



judgment cited Section 120 of the Evidence Act and without stating how that was applicable to the claim, she entered judgment for the respondent against the appellants for Kshs 1,000,000.00, costs of the claim and interest. Although the judgment is not clear whether it was against both appellants, as the same indicates the word 'respondent' in singular form, this court takes it that it was against the two appellants.

3. In their memorandum of appeal, the appellants have raised the following grounds;
 1. That the learned Magistrate erred in law and in fact in assuming jurisdiction over a dispute emanating from rental arrears between the Respondent and a third party (not party to the suit) contrary to the express provision of the Small Claims Act.
 2. That the learned Magistrate erred in law and in fact in failing to have due regard, and to take into account and appreciate the substantive issues of law and fact raised and adduced by the Appellant during the hearing of the claim, thus arriving at an erroneous conclusion.
 3. That the learned Magistrate erred in law and in fact by failing to strike out the claim as against the 1st Appellant despite the Respondent abandoning the claim in his submissions before judgment and thereby entering judgment against a party who is no longer a party to the suit.
 4. That the learned magistrate erred in law and in fact in failing to find that the 2nd Appellant was improperly enjoined in the claim in his capacity as a Director of the 1st Appellant despite the Respondent not even making an attempt at lifting the corporate veil thereby wrongfully finding the 2nd Appellant liable.
 5. That the learned Magistrate erred in law and in fact by finding that there was a valid contract between the Appellants and the Respondent despite there not being an agreement either oral or written between the Appellants and the Respondent thus enforcing an agreement that was between the Respondent and a third party.
 6. That the learned Magistrate erred in law and in fact by failing to find that there was privity of contract between the 1st Appellant and Talent Graphics and that the Respondent could not rely on an agreement it was not party to.
 7. That the learned Magistrate erred in law and in fact by failing to find that the agreement between the 1st Appellant and Talent Graphics was not valid as it was not signed by the Appellants.
 8. That the learned Magistrate erred in law and in fact by placing reliance on Section 120 of the Evidence Act which relates to general estoppel without appreciating the evidence and testimony adduced by the Appellants which was to the contrary.
 9. That the learned Magistrate erred in law and in fact in completely ignoring and disregarding the fact that the 1st Appellant was only to pay the rental arrears owed on condition that the machines were in good working condition which they were not. A fact admitted by the Respondent.
 10. That the learned Magistrate erred in law and in fact by finding that the Respondent had proved his case as against the Appellants without the Respondent adducing any appropriate and admissible evidence in support thereof.
 11. That the learned Magistrate erred in law and in fact in failing to appreciate the totality of the submissions filed on behalf of the Appellants and the list of authorities in support thereof.



12. That the learned Magistrate erred in law and in fact by disregarding and failing to take into account credible and reliable evidence adduced by the Appellants thereby arriving at a wrong decision.
4. The memorandum of appeal raises both issues of law and facts but this court is limited by Section 38(1) of the Small Claims Courts Act to issues of law only. In my view, the issues of law raised in this appeal are.
 - a. Whether the adjudicator had jurisdiction over the claim.
 - b. Whether judgment was entered against a person who was no longer a party to the claim.
 - c. Whether the 2nd appellant was a proper party to the claim.
 - d. Whether there was a valid contract between the parties.
5. On the first issue, the appellant claims that the small claims court did not possess jurisdiction over the claim because it was about tenancy dispute. The agreement which was the basis for the claim was very clear that the 1st appellant was buying out a tenant's debts. It therefore follows that the claim was for money held pursuant to an agreement and there was at the time of the execution, no tenant/landlord relationship between the appellants and the respondent. At no point did the parties sign a tenancy agreement neither was the money that was paid or was payable rent due from the appellant. The same was a commercial transaction. In my view, the small claims court had jurisdiction under section 12(b) of the *Small Claims Court Act*.
6. The appellants have argued that the adjudicator was wrong for failing to appreciate that the 1st respondent had abandoned its claim against the 1st appellant. I have looked at the submissions by the parties in the lower court and it is true that the submissions by the respondent had indicated that it was abandoning its claim against the appellant. In response to the submissions on abandonment, the appellants vehemently submitted against it. At that point, they took stand that there was no formal notice of withdrawal or an oral application which the court could allow. In my view, a withdraw of a suit should either be in writing or through an oral application and there must be a court order allowing or endorsing the withdrawal. Actually, this was the submission of the appellants in the trial court. The appellants cannot blow hot and cold at the same time. They opposed the intention to abandon the suit in the lower court and the court though silent on the same, took their path. They cannot now turn around on appeal and take a different stand. The second issue is therefore found answered in favour of the respondent.
7. On whether the 2nd appellant was a proper party in the claim, the answer to that falls under simple and well-established basic principle of company law that directors are different and separate entities from their company. The agreement has the signature of the 2nd appellant under the rubber stamp of the 1st appellant. The fact that a director executes documents made for their company does not make the director personally liable for the liabilities arising from the document or instrument unless the company's corporate veil is procedurally lifted against the said director or the director had executed a personal guarantee binding him to the performance of the contract.
8. Limited liability *companies act* through natural persons be they directors or authorised employees. It was not indicated in the agreement or pleaded in the statement of claim whether the 2nd appellant was signing as a director or a senior management or authorised staff of the 1st appellant. In Post Bank Credit



Limited (In Liquidation) v Nyamangu Holdings Limited (2015) KEHC 5964 (KLR) Honourable Justice F. Gikonyo held that;

‘Because of its artificial nature, a company acts through human persons, namely, the directors, officers, shareholders, and corporate managers, etc., for its management and day to day running. But these individuals represent the company and accordingly whatever they do within the scope of the ostensible or authority conferred upon them by the Memorandum and Articles of Association, in the name and on behalf of the company, they bind the company and not themselves. Thus, the Directors, Members or shareholders of a limited liability company are not liable for the debts or liabilities of the company; the company is.’

9. The adjudicator though not clear in her judgement seemed to impute the doctrine of estoppel against the appellants. There is nothing in the conduct of the parties and nothing was led to establish circumstances that could justify application of the doctrine against the 2nd appellant.
10. In view of the above, it is my finding and I hold so that the 2nd appellant had not contracted with the respondent in his personal capacity. He did not give a personal undertaking or guarantee in respect of the performance of the contract by the 1st appellant and in the circumstances, I find that the entry of judgment against the 2nd appellant was an error in law and should be set aside.
11. The last issue is whether there was a valid contract between the parties. I understand the appellants as saying that the beneficiaries of the contract were the 1st appellant and Talent Graphics Limited because they are the ones who executed the agreement. They submit that the respondent did not execute the agreement and could therefore not benefit from it. It is true that the respondent’s signature or seal does not appear in the agreement. However, it must be noted that the first cheque for Kshs 215,127.00 was in favour of the respondent. The agreement also indicated that the agreement was tripartite and the respondent was part of it. It is also not denied that the 1st appellant took possession of the godown after paying the deposit. Perhaps this is where the doctrine of estoppel was applicable.
12. I have not seen anything in the appellant’s submissions or documents filed in court which may invalidate the contract. The appellants have not pointed to this court what factor they believe may have invalidated or vitiated the contract. The last issue as identified above therefore goes in favour of the respondent.
13. The resultant conclusion from the above analysis is that this appeal succeeds in part and I proceed to give orders as follows;
 - a. Judgment dated 15th September 2023 in the small claims court claim number E650 of 2023 as against the 1st appellant is upheld.
 - b. Judgement dated 15th September 2023 in the small claims court claim number E650 of 2023 as against the 2nd appellant is hereby set aside and the same substituted for an order dismissing the claim against the 2nd appellant with no orders as to costs.
 - c. Each party shall bear their own costs of this appeal.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MAY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Miss Wairimu for Mr. Okulo for the appellant and in absence of the respondent.

