



**Wanjiku v Kuhia t/a Glorius Merchants (Civil Appeal E005 of 2024)  
[2025] KEHC 6372 (KLR) (14 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6372 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL E005 OF 2024  
DKN MAGARE, J  
MAY 14, 2025**

**BETWEEN**

**JANE MUMBI WANJIKU ..... APPELLANT**

**AND**

**JOSEPH MWANGI KUHIA T/A GLORIUS MERCHANTS ..... RESPONDENT**

*(Appeal from the Judgment and decree of the Hon. I.S. Imoleit  
(RM) given on 7.05.2024 in Nyeri SCC COMM. E073 of 2024.)*

**JUDGMENT**

1. This is an appeal from the Judgment and decree of the Hon. I.S. Imoleit (RM) given on 7.05.2024 in Nyeri SCC COMM. E073 of 2024. The Appellant was the Claimant in the Small Claims Court. The claim was dismissed for lack of merit.
2. The Appellant filed a claim dated 27.02.2024 for a sum of Ksh. 250,000/=. The said sum was increased to Ksh. 275,835/=, which was claimed. There is no link between the claim of Ksh. 250,000/= and Ksh. 275,835/=. There is nothing showing how this transaction arose. The Respondent stated that he was given Ksh. 200,000/= which he paid.
3. The court heard the matter and found the claim was unfounded. The same was dismissed in limine with costs.

**Analysis**

4. This being an appeal from the Small Claims Court, the duty of the court is circumscribed under Section 38 of the *Small Claims Court Act* which provides as doth:
  - (1) A person aggrieved by the decision or an order Appeals, 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.
5. However, an appeal of this nature is on matters of law. It can be pure points of law or mixed points of law, but matters of law. An appeal on points of law is akin to a second appeal to the Court of Appeal. The duty of a second appeal was set out in the case of *M/s Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited* [2020] eKLR: -

“This is a second appeal. I am alive to my duty as a second appellate court to determine 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: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).”

6. Then what constitutes a matter of law? In *Twaher Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others*, (2014) eKLR, the court stated as doth: -

“4. Although the phrase ‘a matter of law’ has not been defined by the *Elections Act*, it has been held in *Timamy Issa Abdalla Vs Swaleh Salim Swaleh Imu & 3 Others*, Malindi Civil Appeal No. 39 Of 2013 (Court Of Appeal), (Okwengu, Makhandia & Sichale, JJA) of 13.01.2014 that a decision is erroneous in law if it is one to which no court could reasonably come to, citing *Bracegirdle vs Oxney* (1947) 1 All ER 126. See also *Khatib Abdalla Mwashetani Vs Gedion Mwangangi Wambua & 3 Others*, Malindi Civil Appeal No. 39 of 2013 (Court Of Appeal), (Okwengu, M’inoti & Sichale, JJA) of 23.01.2014 following *AG vs David Marakaru* (1960) EA 484.”

7. In *Peter Gichuki King'ara Vs Iebc & 2 Others*, Nyeri Civil Appeal No. 31 Of 2013 (Court Of Appeal) (Visram, Koome & Odek, JJA) Of 13.02.2014, the Court of Appeal held as follows: -

“It was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanour – is an issue of law.”

8. The main issue for determination in this case is whether the trial court erred in law in dismissing the Appellant’s case. A matter of law is similar to a preliminary point of law but has a broader meaning. Justice Prof. J.B. Ojwang J (as he then was) succinctly addressed the issue of preliminary objection in the case of *Oraro vs Mbaja* [2005] eKLR:

I think the principle is abundantly clear. A preliminary objection as correctly understood is now well settled. It is identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow



to proceed. I am in agreement that where a court needs to investigate facts, a matter cannot be raised as a preliminary point.

9. The court was duty bound to read the documents and interpret them as such. The documents filed by the Appellant support the Appellant's case. The court cannot add evidence to documents. In *Fidelity & Commercial Bank Ltd V Kenya Grange Vehicle Industries Ltd* (2017) eKLR, the Court of Appeal, Ouko, Kiage and Murgor JJA held as doth:-

“Courts adopt the objective theory of contract interpretation and profess to have overriding view sometimes called Four Corners of an Instrument, which insists that a documents meaning should be derived from the document itself, without reference to anything outside of the document, extrinsic reversed...”

10. The court is bound by Section 32 of the Small Claims Act on the evidential aspects of the case. There is no error in the judgment. There is no question or matter of law raised. Award of costs in this court is governed by Section 27 of the *Civil Procedure Act*. They are discretionally. The supreme court has set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or Appellant will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

11. Since costs follow the event, the Respondents are entitled to costs of the appeal. A sum of Ksh. 55,000/= will be right and just.

### **Determination**

12. In the upshot, I make the following orders:
- a. The appeal lacks merit and is consequently dismissed.
  - b. The Respondent shall have the cost of this appeal of Ksh. 55,000/= payable within 30 days. In default, execution do issue.
  - c. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 14<sup>TH</sup> DAY OF MAY, 2025.**

Judgment delivered through Microsoft Teams Online Platform.



**KIZITO MAGARE**

**JUDGE**

In the presence of:-

No appearance for the Appellant

Ms. Ngari for the Respondent

Court Assistant – Michael

