



REPUBLIC OF KENYA



KENYA LAW
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Bhumi Distributors Limited v Kanamba t/a Kanamba Enterprises (Civil Suit E125 of 2024) [2025] KEHC 12121 (KLR) (23 June 2025) (Judgment)

Neutral citation: [2025] KEHC 12121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E125 OF 2024**

**F WANGARI, J
JUNE 23, 2025**

BETWEEN

BHUMI DISTRIBUTORS LIMITED APPELLANT

AND

**EUNICE MUKAMI KANAMBA T/A KANAMBA
ENTERPRISES RESPONDENT**

JUDGMENT

1. The Claimant/ Appellant through the Amended Statement of Claim dated 26/01/2024 sued the Respondent for Kshs. 950,000/= being the outstanding payment for good delivered to the Respondent, which the Respondent had failed to settle. It was stated that the Respondent had been supplied with goods for its shop and the Respondent was to pay the consideration in full. The Respondent paid for the goods supplied but had a balance of Kshs. 1,041,476/=. The Appellant gave a discount for the outstanding amount and what was due and payable was Kshs. 950,000/=.
2. The Respondent issued cheques as payment but the same were dishonored. The matter was reported to Makupa Police station vide O.B. No. 16/9/5/23. That is when the Respondent acknowledged owing the amount and promised to pay. Despite several reminders, the Respondent failed to pay hence the filing of the claim.
3. In its Amended Statement of Response dated 19/02/2024, the Respondent denied owing the Claimant any money. The Respondent stated that payment of goods was only done after sale. Due to challenges in business, there sales were poor. The Appellant came and collected her goods, ending their business transaction. She said the undated cheques were issued as security. The Appellant just wanted to enrich itself with this claim.
4. The matter proceeded by way of oral hearing. The trial court thereafter proceeded to render Judgement on 11/04/2024 where the Appellant was found to have come to court with dirty hands as it was



claiming compensation for goods already recovered, the claim was 'struck out' with each party bearing its own costs.

5. Aggrieved by the finding of the Trial Court, the Appellant lodged a Memorandum of Appeal dated 29/04/2024 hence this Appeal. The Appellant prayed to have the judgment of the lower court set aside and this court do enter judgment as per the Statement of Claim.
6. Upon filing this appeal, this court directed that the appeal be disposed of by way of written submissions. Both parties complied and filed their rival submissions in support of their case.

Analysis

7. Having considered the pleadings on record, the written submissions and the evidence on record, the issues for determination are;
 - a. Whether the appeal has merits
 - b. Who bears the costs
8. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (see *Peters vs Sunday Post Limited* [1958] EA 424 and *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123)
9. The Respondent submitted that the appeal was on issues of law and facts hence contradicting the provisions of section 38 (1) of the *Small Claims Court Act*. the appeal is based on the finding that the Appellant failed to prove its case. The issue of burden of proof is an issue of fact but the standard of proof is an issue of law. This court is to determine whether the evidence on record met the standard of proof in civil cases.
10. The Appellant claimed that it had supplied the Respondent with goods and Kshs. 950,000/= remained outstanding. the Appellant produced documents in support of the claim, that is the bounced cheques, the letter by the Respondent admitting the debt and the report to the police.
11. It is interesting to note that the Respondent at first denied that there were goods that supplied and put to strict proof thereof. The Respondent also denied admitting that there was debt owing to the Appellant. There was no mention of the good being repossessed by the Appellant. It is until when the Appellant amended its Statement of Claim that the Respondent brought up the issue of the goods having been repossessed.
12. I have perused through the documents relied on by the parties. The Appellant produced proof that the cheques had bounced. The letter dated 06/05/2023 though denied by the Respondent, its witness admitted on cross examination that it came from the Respondent and it had been signed. Nothing in the letter shows that the Respondent had paid the debt.
13. In respect to the claim that the goods were returned, the Appellant denied repossessing the goods. The Respondent relied on the statement by one Hassanali Taibali as proof that the goods were repossessed by the Appellant. Though the counsel for the Appellant objected to the production of the said statement, the court allowed its production by virtue of section 32 of the *Small Claims Court Act* as the court was not strictly bound by the rules of evidence.
14. I consider that the repossession having been denied by the Appellant, the burden of proof shifted to the Respondent. The maker of the document having not been called as a witness for purposes of



cross examination, I find that the said document had no evidential value. The court relied on the said evidence to make a finding that the goods had already been returned and the Appellant wanted to have a second bite at the cherry.

15. From the evidence on record, I find that the Appellant's evidence had met the standard of proof and the claim ought to have been allowed as prayed. The appeal has merits and the lower court judgment is hereby set aside.
16. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the Civil Procedure Act. The Appellant being the successful party, costs are hereby awarded.

Determination

17. In the upshot, I make the following orders: -
 - a. The Appeal has merits and is allowed on the following terms;
 - i. Judgment of the lower court is hereby set aside.
 - ii. That the same is substituted with judgment in favour of the Appellant for Kshs. 950,000/= with interest from date of filing suit.
 - b. The costs awarded to the Appellant. It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 23RD DAY OF JUNE, 2025.

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F. WANGARI

JUDGE

In the presence of;

Mr. Kings Advocate for the Appellant

Ms. Gatimu Advocate h/b for Mwanzia Advocate for the Respondent

Ms. Getrude, Court Assistant

