



REPUBLIC OF KENYA



KENYA LAW
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**Odeny v Nur & another (Civil Appeal E508 of 2023)
[2025] KEHC 8637 (KLR) (Civ) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8637 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E508 OF 2023

WM MUSYOKA, J

JUNE 19, 2025

BETWEEN

STEPHEN ODENY APPELLANT

AND

ABDI NUR 1ST RESPONDENT

SHAKUR NUR 2ND RESPONDENT

(Appeal from judgement and decree by Hon. Caroline Ndumia, Senior Resident Magistrate, SRM, of 26th May 2023, SCCC No. E7383 OF 2022)

JUDGMENT

1. The claim at the trial court was filed on 27th November 2022, by the appellant, against the respondents, claiming compensation, to the tune of Kshs. 100,000.00, for services rendered. The respondents responded, denying the claim, and counterclaiming for Kshs. 610,000.00, for services paid for but not rendered.
2. The matter was disposed of by way of, by way of section 30 of the *Small Claims Court Act*, Cap 10A, Laws of Keny, hence no formal hearing was conducted. Judgement was delivered on 26th May 2023. The claim and the counterclaim were dismissed.
3. The appellant was aggrieved. He filed the memorandum of appeal, dated 12th June 2023, on 16th June 2023. The grounds are that the judgment is null and void, for being delivered after the six-month time limitation, and, therefore, without jurisdiction. There are various other grounds raised.
4. Directions were given, for canvassing the appeal through written submissions. There has been compliance. Both sides have lodged submissions, which I have read through and noted the arguments made.



5. I will only deal with the one preliminary issue, whether the judgement of 26th May 2023 was valid.
6. Section 34(1) of the *Small Claims Court Act*, provides that suits filed under the *Small Claims Court Act*, in the Small Claims Court, are to be disposed of within sixty days of their filing.
7. The claim, the subject of this appeal, was filed on 27th November 2022. Sixty days, from 27th November 2023, expired on or about 27th January 2024. Judgement was delivered on 26th May 2024. That was outside the sixty days allowed by section 34(1), by one hundred and twenty days. The proceedings conducted outside the sixty days, that is from 28th January 2024, were without jurisdiction, and were null and void, including the judgement of 26th May 2024.
8. The High Court is conflicted on the effect of expiry of the sixty days allowed in section 34(1) of the *Small Claims Court Act*.
9. In *Kartar Singh Dhupar & Company Limited vs. ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J), following *Martha Wangari Karua vs. Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ) and *Aprim Consultant vs. Parliamentary Service Commission & 2 others* CACA No. E039 of 2021 (unreported), it was ruled that once the sixty days lapse, judgement delivered outside that period would be a nullity.
10. *Biosystems Consultants vs. Nyali Links Arcade* [2023] KEHC 21068 (Magare, J) and *Lumumba vs. Gift Gas Limited* [2023] KEHC 25998 (Majanja, J), took a different view, that the sixty days' limitation was not mandatory, but directory, and a judgement delivered outside that period would still be valid.
11. I will go by *Kartar Singh Dhupar & Company Limited vs. ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J). Section 34(1) of *Small Claims Court Act* is in mandatory terms. It is in the same language with section 75 of the *Elections Act*, Cap 7, Laws of Kenya, which sets a time limit of six months, and it was held in *Martha Wangari Karua vs. Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ), that proceedings conducted outside the six months would be invalid.
12. Section 175(3) of Public Procurement and Disposal Authority Act, Cap 412C, Laws of Kenya, similarly carries a time limit of forty five days, for disposal of suits, relating to procurement and disposal of assets, and in *Aprim Consultant vs. Parliamentary Service Commission & 2 others* CACA No. E039 of 2021 (unreported) it was held that a judgement delivered outside that period would be invalid.
13. The language, used in these three statutory provisions, is similar, in tone and character, and it serves the same end, expeditious disposal of matters.
14. As the judgement of 26th May 2023 was a nullity, pronounced by a court bereft of jurisdiction, it cannot provide a foundation for a valid appeal. This appeal is also, therefore, a nullity. The appellant in his memorandum of appeal, does recognise that the judgement was invalid. I am surprised that he appealed against it.
15. The final order shall be that the appeal herein is struck out. The respondent shall have the costs.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 19TH DAY OF JUNE 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.



Ms. Carolyn Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Odera, instructed by Anya Kalwa & Company, Advocates for the appellant.

Mr. Muriithi, instructed by Nzalu & Nzalu, Advocates for the respondent.

