



REPUBLIC OF KENYA



KENYA LAW
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**Sukhman Kenya Limited v Relyon Medical Limited (Civil Appeal
E010 of 2024) [2025] KEHC 8925 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8925 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E010 OF 2024
FN MUCHEMI, J
JUNE 19, 2025**

BETWEEN

SUKHMAN KENYA LIMITED APPELLANT

AND

RELYON MEDICAL LIMITED RESPONDENT

*(Being an Appeal from the Judgment and Decree of Hon. Sylvia A. Wayodi (RM/Adjudicator)
delivered on 4th January 2024 in Thika Small Claims Court SCCCOMM No. E1146 of 2023)*

JUDGMENT

Brief facts

1. This appeal arises from the judgment of Thika Resident Magistrate/Adjudicator in SCCCOMM No. E1146 of 2023 whereby the court entered judgment in favour of the respondent as against the appellant for a sum of Kshs. 206,000/- and dismissed the appellant's counterclaim of Kshs. 126,000/-.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 3 grounds summarized as follows: -
 - a. The learned adjudicator erred in law and in fact in upholding the respondent's claim and dismissing the appellant's counterclaim.
 - b. The learned trial magistrate erred in law in dismissing the appellant's counterclaim thus offending the doctrine of quantum meruit.
3. Parties disposed of the appeal by way of written submissions.



The Appellant's Submissions

4. The appellant refers to Section 107, 108 and 109 of the *Evidence Act* and the case of Bryson Mangla Agot vs John Gikonyo Munge (2024) KEHC 11925 (KLR) and submits that the learned adjudicator erred in law as it wrongly awarded the respondent special damages of Kshs. 206,000/- whereas it had not specifically pleaded or proved the same.
5. The appellant further refers to the case of Stephen Kinini Wang'ondou vs The Ark Limited (2016) KEHC 3449 (KLR) and argues that it is entitled to Kshs. 126,000/- since it had performed 90% of the agreed upon aluminium partition works and only remained fixing some window glasses and locks. However since the respondent had not paid him, the said payment did not crystallize. The appellant further argues that it proved its counterclaim as it tendered evidence in the form of invoices and receipts showing that it paid for materials and labour using the deposit amount and it also tendered photographs showing the works completed. Those facts were not controverted by the respondent and neither did it file a defence or response. To support its contentions, the appellant relies on the case of Kalka Flowers Limited vs Equity Bank Limited & Another (2024) KEHC 10068 (KLR).

The Respondent's Submissions

6. The respondent relies on Section 107, 108 and 109 of the *Evidence Act* and submits that it proved its case on a balance of probabilities by providing the contract dated 1st October 2021 between the parties whereby the appellant was required to finish all works on payment of 80% of the contract amount. Despite the respondent paying Kshs. 420,000/- the appellant failed to honour its end of the agreement thus breaching the contract.
7. The respondent refers to the case of *Matumbawe Investment Limited vs Centofanti (Civil Appeal E100 of 2022)* [2024] KEHC 1646 (KLR) and submits that the doctrine of quantum meruit is inapplicable where a valid contract subsists between parties as the instant case. Further, a party who has failed to substantially perform its contractual obligations cannot rely on quantum meruit to escape liability or to claim further compensation. Additionally, the doctrine of quantum meruit is premised on the principle of unjust enrichment and in the instant case, there is no evidence that the respondent received a valuable benefit from the appellant's incomplete and defective performance. Rather, the respondent submits that it suffered financial loss including payment of Kshs.420,000/- in advance and further expenses to have the fabrication works done.
8. The respondent submits that the appellant's counterclaim relies on breach of a financial contract which the appellant did not prove. The respondent relies on the cases of Hydro Water Well (K) Ltd vs Sechere & 2 Others (Sued in their representative capacity as the officers of Chae Kenya Society) (Civil Suit E212 of 2019) [2021] KEHC 22 (KLR) (Commercial and Tax) (10 August 2021) and Photo Production Ltd vs Securicor Transport Ltd [1980] AC 827, 848-849 and submits that the principle remedy under common law for breach of contract is an award of damages whose purpose is to compensate the injured party for the loss suffered as a result of the breach. Due to the appellant's breach, the respondent submits that it had to have works completed by an independent contractor as captured in the invoice dated 22nd December 2021. Further the respondent incurred Kshs. 170,000/- for material to complete the works. Thus, the respondent prays that the court awards it Kshs. 198,000/- being the amount incurred as a result of breach of contract. Additionally, the respondent prays for Kshs. 28,000/- being the amount over 80% of the contract amount paid to the appellant. To support its contentions, the respondent relies on the cases of Capital Fish Kenya Limited vs Kenya Power & Lighting Company Limited (2016) eKLR and Kinakie Co-operative Society vs Green Hotel (1988) KLR 242.



Issues for determination

9. The main issues for determination are:-
 - a. Whether the appeal is properly before the court.
 - b. If not, whether the appellant proved its counterclaim as against the respondent.

The Law

10. The Court of Appeal while referring to a second appeal, which is essentially on points of law and thus similar to the duty of this court under Section 38 of the *Small Claims Court Act*, set out the duty of the second appellate court in the case of Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited [2020] eKLR as follows:-

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 that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

11. In distinguishing between matters of law and fact the Court of Appeal stated in Kenya Breweries Ltd vs Godfrey Odoyo [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the

submissions of the learned counsel as well as the authorities to which we were referred. 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 retrial and facts must be revisited and analysed a fresh. See *Selle and Another vs Associated Motor Boat Company Limited 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.

12. Section 38 of the Act provides:-

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.

13. I have perused the grounds in the memorandum of appeal and noted that the grounds relate primarily to questions of fact. The appellant is aggrieved that the learned adjudicator found that the respondent had proved its case and dismissed its counterclaim against the respondent. The grounds as raised by the appellant touch on matters of fact which will require this court to scrutinize and re-evaluate the evidence once more. However, that is outside the jurisdiction of this court sitting as an appellate court pursuant to Section 38 of the *Small Claims Court Act* which provides for appeals only on matters of law.



14. The only ground of law that the appellant has raised is the applicability of the doctrine of quantum meruit. The doctrine of quantum meruit was expounded in the case of Stephen Kinini Wang'ondou vs The Ark Limited [2016] eKLR where Mativo J(as he then was) stated:-

Quantum meruit is a Latin phrase meaning “what one has earned.” In the context of contract law, it means something along the lines of “reasonable value of services.” The elements of quantum meruit are determined by the common law. For example, a plaintiff must allege that (1) the defendant was enriched; (2) the enrichment was at the plaintiff’s expense; and (3) the circumstances were such that equity and good conscience require defendants to make restitution.

Quantum meruit is the measure of damages where an express contract is mutually modified by the implied agreement of the parties or not completed. The concept of quantum meruit applies in (but is not limited to) the following situations:-

- a. When a person hires another to do work for him, and the contract is either not completed or is otherwise rendered un-performable, the person performing may sue for the value of the improvements made or the services rendered to the defendant. The law implies a promise from the employer to the workman that he will pay him for services, as much as he may deserve on merit.
 - b. The measure of value set forth in a contract may be submitted to the court as evidence of the value of the improvements or services, but the court is NOT required to use the contract’s terms when calculating a quantum meruit award. (This is because the values set forth in the contract are rebuttable, meaning the one who ultimately may have to pay the award can contest the value of services set in the contract.)
 - c. When there is an express contract for a stipulated amount and mode of compensation for services, the plaintiff cannot abandon the contract and resort to an action for a quantum meruit on an implied assumpsit. However, if there is a total failure of consideration, the plaintiff has a right to elect to repudiate the contract and may then seek compensation on a quantum meruit basis.
15. On perusal of the record, it is evident that the appellant did not raise the said doctrine in its pleadings or in the lower court during the hearing. The same has been raised on appeal. Thus the lower court did not have an opportunity to address the said issue and give its opinion on it that would entitle this court to analyze it on appeal.
16. The only ground on matters of law having failed. I hereby find that this appeal lacks merit and is hereby dismissed with costs.
17. The respondent shall have the costs of this appeal.
18. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF JUNE 2025.

HON. F. MUCHEMI

JUDGE

