



REPUBLIC OF KENYA



KENYA LAW
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**Somotex (K) Limited v Powerstar Superstar Hyper Limited (Civil Appeal E231 of 2024)
[2025] KEHC 8497 (KLR) (Commercial and Tax) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8497 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E231 OF 2024**

F GIKONYO, J

JUNE 5, 2025

BETWEEN

SOMOTEX (K) LIMITED APPELLANT

AND

POWERSTAR SUPERSTAR HYPER LIMITED RESPONDENT

*(An appeal challenging the judgment of the Small Claims Court at
Milimani in SCCOMM No. 4965 of 2024 delivered on 19th July 2024)*

JUDGMENT

1. This appeal challenges the judgment of the Small Claims Court at Milimani in SCCOMM No. 4965 of 2024 delivered on 19th July 2024, in which the trial court gave the following orders:-
 1. Judgment in favour of the claimant as against the respondent in the sum of Kshs. 111,290/-.
 2. Costs of the claim assessed at Kshs. 25,000/-.
 3. Counterclaim dismissed with no order as to costs.
2. The appellant, being dissatisfied, instituted this appeal through a memorandum of appeal dated 7th August 2024 on the ground that the adjudicator erred in law by assessing the costs without regard to Schedule 7 of the Advocates Remuneration Order (ARO).

Background

3. The appellant's case before the SCC was that on 9th and 14th August 2023 and 5th and 7th September 2023, the respondent acquired electronic goods worth Kshs. 111,290/-.



4. The respondent opposed the suit through response dated 2nd July 2024. It stated that it had agreed to store the goods supplied for three to six months provided that more than half were sold. If they surpassed six months, they would discuss with the appellant whether to return the goods or adjust their prices through offers to promote sales.
5. The respondent claimed that after six months had passed, its attempt to discuss with the appellant's sales representative were not fruitful. It learned that the appellant was closing down its business. Therefore, it held the remaining unpaid invoices to minimize losses. It also stated that it incurred repair and maintenance costs from the goods that customers had issues with. It still holds the goods which occupy its space that could be utilized by another supplier. It counterclaimed for Kshs. 861,300 comprising of Kshs. 772,800/- for dead stock and Kshs. 88,500/- accrued storage charges.

Directions of the court

6. The appeal was admitted to hearing on 4th November 2024. It was canvassed through written submissions. However, the respondent did not file any submissions. During the mention of the matter on 18th March 2025, there was no appearance for the respondent.

Appellant's submissions

7. Through written submissions dated 20th November 2024, the appellant submitted that the adjudicator erred by not assessing costs per Schedule 7 of the ARO. It submitted that although there is a proposed schedule 13 for the costs of proceedings in the SCC, the draft has not been gazetted or enacted. It relied on *Kariuki v Mwabia* (Misc. Civil Appl. No. E156 of 2024) [2024] KEHC where it was held that in so far as the assessment of costs is concerned, the procedure set out under Order 21 Rule 9D is applicable to all magistrate's courts including the SCC.
8. The appellant relied on *Rosemary Wairimu Munene Ex-parte Applicant v Ihururu Party Farmers' Cooperative Society J. R. No. 4/2014* as cited in *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another* [2016] eKLR, *JMM v GNJ* (Civil Appeal (Application) E014 of 2022) 2023 eKLR and *Supermarine Handling Services Ltd v Kenya Revenue Authority*, Civil Appeal No. 85 of 2006 [2010] eKLR.

Analysis and Determination

Duty of court

9. I have considered the memorandum of appeal, the record of appeal and the submissions. The issue for determination is whether the trial court erred by assessing the costs of the claim without due regard to Schedule 7 of the Advocates Remuneration Order (ARO).
10. This is an appeal from a judgment of the Small Claims Court (SCC) Section 38 of the [*Small Claims Court Act*](#) provides that:-
 - “(1) 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.
 - (2) An appeal from any decision or order referred to in subsection (1) shall be final.”
11. From the above, it is deducible that the court's jurisdiction on an appeal from the SCC is limited to matters of law only. The court therefore, can only interfere with issues of fact if they are based on no



evidence or wrong principles. See *Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others* [2014] eKLR

12. It is within the court's discretion to assess and award costs in a suit before it. Section 27 of the *Civil Procedure Act*. *Mulwa v Malutu* (Miscellaneous Case 92 of 2021) [2021] KEHC 214 (KLR) (9 November 2021) (Ruling)
13. The appellant's claim in the SCC was for Kshs. 111,290/-. The adjudicator assessed the party and party costs of the claims as Kshs. 25,000/-. The appellant has argued that the adjudicator erred by assessing the costs without regard to principle and guidance by the ARO.
14. The Supreme Court in *Fredrick Otieno Outa v Jared Otieno Odoto 3 Others* (Petition No. 6 of 2014) (Ruling) (22nd September 2023) reshaped the principles for consideration in determining whether to set aside an assessment of costs as follows:-

“ [10] The principles of setting aside the decision of a Taxing Officer are now old hat, going by the numerous decisions of the superior courts below. As early as 1972 these principles were propounded by Spry VP, in the leading case of *Premchand Raichand Limited & Another v. Quarry Services of East Africa Limited and Another*; [1972] EA 162, which has been approved in a long line of subsequent rulings, for example, *First American Bank of Kenya v. Shah and Others*; (2002) EA 64 and *Joreth Ltd v. Kigano and Associates* (2002); 1 EA 92, to name but two.

- (11) A certificate of taxation will be set aside and a single Judge can only interfere with the taxing officer's decision on taxation if;
 - a. there is an error of principle committed by the taxing officer;
 - b. the fee awarded is shown to be manifestly excessive or is so high as to confine access to the court to the wealthy;(and I may add, conversely, if the award is so manifestly deficient as to amount to an injustice to one party).
 - c. the court is satisfied that the successful litigant is entitled to fair reimbursement for the costs he has incurred, (and I may add, the award must not be regarded as a punishment of the defeated party but as a recompense to the successful party for the expenses to which he had been subjected by the other party); and
 - d. the award proposed is so far as practicable, consistent with previous awards in similar cases.

To these general principles, I may add that;

- i. There is no mathematical formula to be used by the taxing officer to arrive at a precise figure because each case must be considered and decided on its own peculiar circumstances,
- ii. Although the taxing officer exercises unfettered judicial discretion in matters of taxation that discretion must be exercised judicially, not whimsically,
- iii. The single Judge will normally not interfere with the decision of the taxing officer merely because the Judge believes he would have awarded a different figure had he been in the taxing officer's shoes.”



15. From the above, I am not persuaded that the adjudicator's decision was based on an error of principle or that the costs are completely erroneous estimation. Hence, I find that the appeal is not merited.

Conclusion

16. In conclusion, the appeal is dismissed with no order as to costs as the respondent did not file a response.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 5TH DAY OF JUNE, 2025

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F. GIKONYO M

JUDGE

In the presence of: -

1. Otieno for Respondent
2. Ms Gathoni for Mbabu for Appellant
3. CA Kinyua

