



**Philip Rumba, Principal, BOM, Bujwanga Secondary School & another v Anyango  
(Civil Appeal E046 of 2024) [2025] KEHC 10223 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10223 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E046 OF 2024  
WM MUSYOKA, J  
JULY 14, 2025**

**BETWEEN**

**PHILIP RUMBA, PRINCIPAL, BOM, BUJWANGA SECONDARY  
SCHOOL ..... 1<sup>ST</sup> APPELLANT  
BOARD OF MANAGEMENT, BUJWANGA SECONDARY SCHOOL .... 2<sup>ND</sup>  
APPELLANT**

**AND**

**CAROLYNE ANYANGO ..... RESPONDENT**

*(Being an appeal from the judgement of Hon. Kassim Akida, in  
Busia SCCC No. E047 of 2024, delivered on 2nd September 2024)*

**JUDGMENT**

1. The suit, at the primary court, was by the respondent, against the appellant. It was for recovery of moneys in respect of goods supplied but not paid for. The appellant denied owing any money to the respondent. The matter was disposed of vide section 30 of the *Small Claims Court Act*, Cap 10A, Laws of Kenya. Judgement was delivered on 2<sup>nd</sup> September 2024, in favour of the respondent, for Kshs. 600,000.00.
2. The respondent was aggrieved, hence the appeal herein. It lists seven grounds, around judgement being entered on admission, yet the appellant had denied the claim; the appellants pleadings and submissions not being considered; issues for determination not being drawn and no reasons being assigned for the award; misapplying the provisions of section 26(3) of the *Small Claims Court Act*; failing to find that the 1<sup>st</sup> appellant had been sued in his personal capacity; and failing to analyse pleadings and the facts of the case.



3. Directions, on the disposal of the appeal, were given on 29<sup>th</sup> April 2025, for canvassing by way of written submissions. Both sides have complied, by filing written submissions.
4. The appellant highlights three grounds: whether the appellant was sued in his personal capacity, whether the court misapplied section 26(3) of the *Small Claims Court Act*, and whether there was failure to acknowledge pleadings and the facts of the case.
5. On the first issue, it is submitted that the 1<sup>st</sup> appellant had been sued in his personal capacity, with respect to actions undertaken by the Board of Management. It is argued that there was nothing to establish that he acted outside his mandate, to warrant personal liability. Section 1 of the 4<sup>th</sup> schedule to the *Basic Education Act*, Cap 211, Laws of Kenya, made pursuant to section 56 of the *Act*, is cited to make the point that the Board of Management is a body corporate, with perpetual succession and a common seal, and its members are to be sued in their corporate names. It is submitted that the name of the 1<sup>st</sup> appellant ought to have been struck out at the trial court. It is submitted that that issue was raised at the trial but was ignored.
6. On section 26(3) of the *Small Claims Court Act* being misapplied, it is submitted that there was no express admission in writing, by the appellants, to warrant entry of judgment against them. It is submitted that it was expressly pleaded, in the response, that the appellants did not owe any money to the respondent, as it was not privy to the loan advanced by the women group.
7. On the failure to analyse the pleadings and submissions, it is submitted that, if the court had done so, it would have established that the only amount owed to the respondent was Kshs. 172,600.00, being the cost of the goods supplied to the appellant and not the Kshs. 600,000.00, being the loan the respondent took from the self-help group.
8. On her part, the respondent submits that the appellants offered two contradictory reactions in their response. On one hand, they denied owing any money to the respondent, while on the other they alleged there was something owing. It is submitted that there was evidence of supply of dry maize, valued at Kshs. 172,600.00, which was to be paid for, upon approval of funds from the Board of Management but, it never happened. It is further submitted that the respondent obtained the loan of Kshs. 600,000.00 on the instigation of the appellants, that she had been awarded a tender.
9. Before I analyse the case presented, my attention has been drawn to the matter of the validity of the judgement of the trial court and the appeal itself.
10. From the trial records, the statement of claim was lodged at the Small Claims Court on 7<sup>th</sup> May 2024. The judgement of the court was delivered on 2<sup>nd</sup> September 2024.
11. Section 34(1) of the *Small Claims Court Act* requires that proceedings under the *Act* be disposed of within sixty (60) days, that is from the filing of the claim to final determination. That would mean that once the claim is filed, the Small Claims Court must dispose of it in 60 days. It must hear or consider it and deliver a judgement within 60 days of its filing. To facilitate that, section 34(1) of the *Act* requires that the matter be heard and determined the same day, or on a day-to-day basis until final determination, within the 60 days of date of filing. Section 34(3) restricts grant of adjournments, save for existence of exceptional and unforeseen circumstances, to be recorded, and any adjournments to be limited to a maximum of three. Section 34(4) sets out the exceptional or unforeseen circumstances, upon which the court may grant adjournments.
12. When the proceedings herein are subjected to the law, at section 34 of the *Small Claims Court Act*, it would be clear that there was non-compliance. The cause should have been determined within 60 days, from 7<sup>th</sup> March 2024. 60 days, from that date, should have expired on or about 6<sup>th</sup> May 2024. The



- delivery of judgement, on 2<sup>nd</sup> September 2024, came 100 days after the 60 days had expired. As section 34(1) gives the court only 60 days to determine the matter, a determination that comes 160 days, after the filing of the matter, would be inconsistent with what the law requires.
13. Section 34(1), and the *Small Claims Court Act* in general, does not address the issue of what should become of a matter that is determined outside the 60 days. Put differently, about what should become of a matter that cannot be disposed of within 60 days. Should the trial court continue with it, and determine it outside that period, or should it down its tools? There is no provision, in the *Small Claims Court Act*, for extension of that period, either by the Small Claims Court itself, or by a higher court, the High Court in this case, which has jurisdiction to supervise the Small Claims Court, as a subordinate court, in view of Article 165(6) of the *Constitution*.
  14. The High Court is conflicted on the interpretation or construction that ought to be given to section 34(1) of the *Small Claims Court Act*. One section of the High Court, represented by the decision in *Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation)* [2023] KEHC2417 (Gichohi, J), takes the position that section 34(1) confers a limited jurisdiction, in time or duration, to the Small Claims Court, to hear and determine any matter filed under the *Small Claims Court Act*, of 60 days. Once the 60 days limitation period is exhausted, jurisdiction is lost, and anything done outside that limitation period would be null and invalid. That provision is in mandatory terms; hence the limitation period is strict.
  15. The other part, represented by *Crown Beverages Limited v MFI Documents Solutions Limited* [2023] KEHC 58 (KLR) (Majanja, J), *Biosystems Consultants v Nyali Links Arcade* [2023] KEHC 21068 (Magare, J) and *Lumumba v Gift Gas Limited* [2023] KEHC 25998 (Majanja, J), takes the position that that provision does not limit exercise of jurisdiction, by a Small Claims Court, to a matter filed under the *Small Claims Court Act*, to the period of 60 days. The provision is not mandatory, but directory. The court should still have jurisdiction to determine the matter outside the 60 days, and the determination would still be valid.
  16. I lean towards *Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J), rather than *Crown Beverages Limited v MFI Documents Solutions Limited* [2023] KEHC 58 (KLR) (Majanja, J), *Biosystems Consultants v Nyali Links Arcade* [2023] KEHC 21068 (Magare, J) and *Lumumba v Gift Gas Limited* [2023] KEHC 25998 (Majanja, J).
  17. *Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation)* [2023] KEHC 2417 (Gichohi, J), was guided by decisions from higher courts, in *Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ) and *Aprim Consultant v Parliamentary Service Commission & 2 others* CACA No. E039 of 2021 (unreported), where provisions, in other statutes, in similar terms with section 34(1), were in contention, and it was held that, in such cases, jurisdiction is only exercised over the period of time fixed in those statutes. In *Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others* [2019] eKLR [2019] KESC 26 (KLR) (Maraga, CJ&P, Ibrahim, Wanjala, Ndungu & Lenaola, SCJJ), the jurisdiction, with respect electoral disputes in a gubernatorial election, is for 6 months, under the *Elections Act*, Cap 7, Laws of Kenya, and it was held that proceedings conducted outside the 6 months were invalid and incompetent. In *Aprim Consultant v Parliamentary Service Commission & 2 others CACA No. E039 of 2021* (unreported), it was about the 45-day jurisdiction, with respect to proceedings under the *Public Procurement and Asset Disposal Act*, Cap 412C, Laws of Kenya, and it was held that a judgement delivered outside that period was invalid.
  18. The entire section 34 of the *Small Claims Court Act* is framed in language tailored to reinforce the 60-day jurisdiction conferred by section 34(1). The purpose, objective, intent and design of section



34(1) is like that of section 75(1) of the *Elections Act* and section 175(3) of the *Public Procurement and Asset Disposal Act*. All these provisions are in mandatory terms. I see no basis for creating a distinction between them, to say that section 34(1) of the *Small Claims Court Act* is directory, while sections 75(1) of the *Elections Act* and 175(3) of the *Public Procurement and Asset Disposal Act* are mandatory.

19. In view of the above, the trial court lost jurisdiction on or about 6<sup>th</sup> May 2024, when the 60 days lapsed, and the proceedings conducted thereafter were without jurisdiction, and invalid, hence the judgment of 2<sup>nd</sup> September 2024 was invalid, null and of no effect. A null judgement cannot possibly provide foundation for the mounting of an appeal on the merits. Such appeal would also be null and incompetent. The judgement of 2<sup>nd</sup> September 2024 amounts to no judgement, as it was rendered without jurisdiction. There is nothing for me to review on merits.
20. Consequently, the appeal herein has no foundation, for the judgement it challenges cannot be evaluated on its merits, for it is null and void. The appeal is hereby dismissed. Each party shall bear its own costs. Orders accordingly

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 14<sup>TH</sup> DAY OF JULY 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Gilbert Tarus, instructed by the Attorney General, for the appellants.

Mr. Muyala, instructed by Wambo Muyala & Company, Advocates for the respondent.

