



**Thomas & Piron Grand Lacs Limited v Kenya Builders & Concrete Company Limited
(Civil Appeal E855 of 2022) [2025] KEHC 10472 (KLR) (Civ) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10472 (KLR)

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

CIVIL

CIVIL APPEAL E855 OF 2022

REA OUGO, J

JULY 11, 2025

BETWEEN

THOMAS & PIRON GRAND LACS LIMITED APPELLANT

AND

KENYA BUILDERS & CONCRETE COMPANY LIMITED RESPONDENT

*(Being an appeal arising from the judgment and decree of C.A.Okumu at
the Small Claims Court of Kenya at Milimani delivered on 14/10/2022)*

JUDGMENT

1. This appeal is a contestation of the outcome of the small claims court, where Thomas & Piron Grand Lacs Limited-the Appellant herein was the Respondent, while Kenya Builders & Concrete Company Limited the Respondent was the Claimant.
2. The suit before the trial court was initiated by the Respondent through a statement of claim dated 11/05/2022. Their case was that the Appellant approached them between 21/11/2016 and 17/04/2020 for the supply of various construction materials. They delivered goods worth Kshs. 402,859/- to the Appellant, payable within 30 days of the delivery. The Appellant failed to honour the agreements, leading to various demands, which incurred costs of Kshs. 10,000/=. They therefore sought judgment against the Appellants for a total sum of Kshs. 412,859/=, plus compensation and costs of the claim.
3. Upon service of the said statement of claim, the Appellant submitted an amended response dated 27/07/2022, in which they contended that they owed no money to the Respondents. They stated that the purchase order no. 4163, 4163, 4163,3473, and 3560, which formed the basis of the Respondent's claim, although issued in their favour, were never fulfilled or honoured through the delivery of the specified goods, and that reception vouchers were therefore never issued as alleged. They further



clarified that Invoice No. 200010075 pertains to Purchase Order No. 4163, not 3473 and 3560, as claimed by the Respondents. Additionally, Invoice No. 200010085 pertains to Purchase Order No. 4163, not 3473 and 3560, which the Respondents assert it was based on. The Appellant further stated that Invoice No. 200022728 relates to Purchase Order No. 4724 and not 3473 and 3560. It was also their assertion that various delivery notes were not accompanied by reception vouchers, which would evidence receipt of the goods claimed to have been supplied. They mentioned that the parties involved have been communicating regarding the alleged claim, with the Appellants requesting supporting documents via multiple letters. These supporting documents were never provided, and as a result, they were unable to settle the claim. They urged the court to dismiss the Respondent's claim.

4. The matter proceeded by way of *viva voce* evidence. CW1 Mutua Maluku testified that he is the Sales Manager at Kenya Builders and adopted his witness statement dated 11/05/2022 as his evidence in chief. He relied on the list of documents filed alongside the claim, marking them as CExhibit 1 to CExhibit 6. He stated that the claim covers the period from 2016 to 2022 and that invoices were issued to the Appellants, with deliveries made in accordance with the LPOs and delivery notes issued by the Appellants. In cross-examination, he clarified that the claim arises from LPO No. 4163 dated 07/04/2017, which resulted in Invoice No. 200010075 and 200010085 for amounts Kshs. 271,716.48 and Kshs. 113,495/= respectively; LPO No. 3560 dated 02/12/2016, resulting in invoice no. 0088345465 for Kshs. 27,300/=; and LPO No. 4724 dated 23/08/2017 for invoice no. 200022728 for Kshs. 26,350/=. The witness confirmed that the claim was for Kshs. 325,590/= and that the goods were indeed delivered, with one delivery made to a site and checked and signed for by Viola.
5. RW Regina Gatuku testified that she was an accountant for the Appellant company. She adopted her witness statement, dated 22nd August 2022, as her evidence-in-chief and submitted her list of documents, in accordance with the list dated 20 June 2022. She stated that they dispute the invoices from the Respondents because they did not have all the supporting documents they required, such as the original invoice, original order, reception voucher, and measurement sheet. These documents were to be physically brought to their offices. The delivery voucher would ideally show the date the goods were received, time, carrier, name of the supplier, site where the materials were taken, driver's name, vehicle registration number, LPO number, a description of the goods supplied, and bear a reception delivery voucher. The original delivery voucher was to be attached to the invoice for processing payment. A measurement sheet was also provided to verify that what was delivered matched the order. They requested these supporting documents, which were not supplied; therefore, they could not settle the claim.
6. The trial court, in determining the suit, entered judgment in favour of the Respondent for the sum of Kshs. 325,390/= plus costs of the claim.
7. Being dissatisfied with the trial court's judgement, the Appellant preferred this appeal on the following grounds;
 - a. That the learned magistrate erred in law by applying an erroneous standard of proof and failed to appreciate that the Respondents had failed to discharge the burden of proof placed upon it as a matter of law.
 - b. That the learned magistrate erred in law by failing to take consideration the submissions made on behalf of the Appellant.
 - c. That the learned magistrate erred in law by finding and holding that the Respondent had proved the sum of Kshs. 325,390/= for the supply of goods.



8. The Appellant sought to have the appeal allowed with costs and the judgment of the learned magistrate dated 14/10/2022 set aside.
9. Directions were taken for the appeal to be canvassed by way of written submissions.
10. The Appellant filed submissions dated 04/03/2024. It was argued that the trial court applied an erroneous standard of proof and failed to recognize that the Respondents had not met the burden of proof required by law. Reliance was placed on the provisions of Section 107 of the *Evidence Act* and the case of *Miller v Minister of Pensions* (1942) 2 ALL ER 372. It was submitted that the Respondent failed to produce all the relevant documents necessary for payment, which therefore meant no goods were supplied as claimed.
11. The Respondent filed submissions dated 20/04/2024, arguing that the trial court properly applied the standard of proof, which they state they had met on a balance of probabilities. They also contended that the trial court correctly guided itself regarding the documents the Appellant claimed were necessary before making payment. Reliance was placed on the cases of *James Muniru Mucheru v National Bank of Kenya Ltd*, C.A Civil Appeal No. 365 of 2017 (2019) KLR, and *Boniface Ndigwa Mbogo v Jamleck Mwaniki* (2016) eKLR.

ANALYSIS AND DETERMINATION

12. I have considered the lower court proceedings, the rival written submissions filed by the parties, and in my view, the sole issue for determination is whether the trial court erred in law and fact in finding that the Respondent had proved its claim to the required standard.
13. Being the first appellate court, this court is enjoined to follow the case of *Selle vs Associated Motor Boat Co. Ltd* [1968] EA 123 where it was stated that:

“An appeal from the High Court is by way of a re-trial and the Court of Appeal is not bound to follow the trial judge’s findings of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of the demeanor of a witness is inconsistent with the evidence generally.”
14. The Appellant argued that the Respondent’s claim, which was premised on the alleged supply of goods for which payment remained outstanding, was not supported by documentary evidence sufficient to meet the required standard of proof.
15. Proof in claims of a civil nature is by way of evidence. Section 3 of the *Evidence Act* (Cap 80) defines evidence as denoting:

“--- the means by which an alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved, and without prejudice to the foregoing generally, includes statements by accused persons, admissions and observations by the court in its judicial capacity.”
16. In that regard, to prove or disprove a matter of fact, a claimant bears the burden of proof as in sections 107, 108 and 109 of the *Evidence Act*, which states as follows;

“ 107



(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either said.

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall be on any particular person.”

17. In civil cases, the measure of proof is a balance of probabilities, which means that where two parties give conflicting accounts, the court must be satisfied that the version given by the party bearing the burden of proof is truthful and that the opposing version is not. The key question is which of the two accounts is more likely to be true, considering all the evidence and the surrounding circumstances of the case. The South African Supreme Court in *Stellenbosch Farmers Winery Group Ltd & Another v Martell & Others* 2003 (1) SA 11 (SCA), the court emphasized that where versions collide, the three aspects of credibility, reliability and probability are intermixed, and all three must be examined.
18. In the present case, it is undisputed that a business relationship existed between the parties for the supply of building materials. The core of the dispute concerns whether the goods claimed to have been supplied by the Respondent were actually delivered. Regarding payment, it is clear that none was made, with the Appellant’s position being that no such deliveries took place, and therefore no obligation to pay arose.
19. The Respondent presented LPOs, invoices, and delivery notes in support of his claim. Typically, transactions of this type begin with the purchasing party issuing a Local Purchase Order (LPO) to the supplier as confirmation of the order. Upon delivery, an invoice is usually issued, and a delivery note acts as proof of the actual transfer or supply of the goods. The Appellant argued that the Respondent did not produce delivery vouchers which they claim specify the date the goods were received, the time, the carrier, the supplier’s name, the site where the materials were taken, the driver’s name, the registration number of the delivering vehicle, the LPO number, a description of the goods supplied, and bear a receipt delivery voucher.
20. However, this Court notes that the information in the impugned document is already included in the Local Purchase Order (LPO), invoice, and delivery notes submitted by the Respondent. It is therefore unclear what unique evidentiary value the additional document is meant to provide. In the circumstances, I am of the opinion that the LPO, invoice, and delivery notes are sufficient to prove the claim of debt.
21. Furthermore, the Appellant’s witness denied knowing anyone named Viola, who is said to have signed the delivery notes presented by the Respondent. However, upon examining the documents provided by the Appellant, specifically a reception voucher, the name "Viola" appears alongside a signature that closely resembles the one on the delivery notes produced by the Respondent. This inconsistency casts doubt on the credibility of the Appellant’s witness and supports the Respondent’s claim regarding the delivery of goods.
22. Upon review of the evidence on record, this Court notes that the Respondent’s claim as pleaded in the Statement of Claim was for Kshs. 402,859 in respect of goods supplied, although from the evidence



of CW1, he testified that their claim was for 325,590/=. As correctly observed by the trial court, it is my considered view that only the transactions outlined in the preceding paragraphs were substantiated to the required standard.

LPO No & Date	Invoice No.	Delivery date	Amount
4163 (07/04/2017)	200010075	19/04/2017	158,245.00
200010085	19/04/2017	113,495.00	
3560 (02/12/2016)	000883465	03/12/2016	27,300.00
4724 (25/08/2017)	200022728	23/08/2017	26,350.00

23. Overall, my assessment of the evidence and the relevant law relating to the facts of this case indicates that the learned trial magistrate reached the correct decision, and I see no reason to alter the trial court's finding.

24. In conclusion, I find no merit in the appellant's appeal and I dismiss it with costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 11TH DAY OF JULY 2025.

R.E OUGO

JUDGE

In the presence of:

Appellant - Absent

Mr. Wamae h/b Mr. Lusiola For the Respondent

Wilkister - C/A

