



Werks Limited v Plumblin Hardware & 2 others (Civil Appeal E555 of 2022) [2025] KEHC 10408 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E555 OF 2022**

**JN MULWA, J
JULY 17, 2025**

BETWEEN

THE WERKS LIMITED APPELLANT

AND

PLUMBLINE HARDWARE 1ST RESPONDENT

HAZEL MWIHAKI GICHUNGWA 2ND RESPONDENT

ARNOLD KABENA MUKORA 3RD RESPONDENT

RULING

1. Before the Court for determination are two applications filed by the Appellant and Respondent, respectively.
2. The Application dated 24th September, 2024 is bought by Plumblin Hardware, the 1ST Respondent, under Section 1A, 1B, 3A, 63(e) and 978 of the *Civil Procedure Act* Cap 21 Laws of Kenya and Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of the law seeking orders:-
 1. Spent;
 2. That this Honourable court be pleased to issue an order directing the branch Manager of NCBA Bank, City Centre Branch to release to the firm of Kiamah Kibathi & Co. Advocates LLP, the initial deposit of Kshs. 967,460/- plus all the accrued interests in account number: xxx, account name: Shapley Barreta and Co Advocates, and Omuma Advocates LLP: Bank: NCBA Bank, branch: City Centre Branch.
 3. The costs of this application be borne by the firm of Shapley Barret & Co. Advocates.
3. The Application is premised on the grounds set out on its face and supported by the annexed affidavit sworn on 24th September, 2025 by Stella Nambalu, Advocate, wherein she deposes that the judgment



of the lower court, Milimani SCCCOMM No. E1003 of 2022 was delivered in favour of the Applicant on the 24th June, 2024 wherein an award of Kshs. 833,165/- as general damages and Kshs. 51,222/ as special damages were awarded with interest and costs of the suit assessed at Kshs. 81,800/-.

4. The Appellant/Applicant was dissatisfied with the judgment and preferred an appeal against it and by an application dated 19th September 2022, an order of stay of execution was granted on 15th December 2022 on condition that the Appellant deposits the decretal sum in an escrow account held in the parties names which parties complied with and opened the account on 15th December 2024 being: Account number:xxx, account name: Shapley Barret and Co. Adv and Omuma Advocates LLP and Kiamah, bank: NCBA Bank, branch: City Centre Branch the Appellant proceeded to deposit a sum of Kshs. 967,460/ on 3rd January, 2023.
5. It is posited that on 3rd September 2024, the court (Musyoka J) upon hearing the appeal dismissed it for lack of merit. Thereafter the Applicant/1st Respondent requested the 1st Respondent to release the money and send RTGS forms for its signature to facilitate release of the money from the bank but never signed the forms, thus necessitating filing of this application.
6. On the Notice of Motion dated 25th October, 2024 filed by the Appellant under Order 42 Rule 6 of the Civil Procedure Rules, section 3A of the Civil Procedure Act, the Appellant sought orders that-
 1. Spent;
 2. The pending hearing and determination of the intended appeal, there be a stay of execution.
 3. That costs of this application be provided for;

On the grounds set out on its face the supporting affidavit sworn on 25th October, 2024 by Mr. Desterio Oyatsi, Advocate in which he deponed that the Court declined to apply the provisions of the Sale of Goods Act in its determination of the Appeal, and further that the Appellant had already provided a cash deposit as security as a guarantee that if the Applicant's statutory right of appeal is unsuccessful, the Respondents will not suffer prejudice and the said security will be released to them.
7. In response to Notice of Motion dated 25th October 2024 the 2nd and 3rd Respondents filed Grounds of Opposition dated 22nd November, 2024. The parties argued the motion orally before the court.

Analysis and determination.

8. The Court has considered the pleadings and issues raised by both parties as well case law cited in their submissions.

Issues for determination

 - a. Whether the Appellants have a further right of appeal to the Court of Appeal from the decision of the Small Claims Court.
 - b. Which party shall bear costs of the applications.
9. This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the Small Claims Court Act provides for the jurisdiction of this court in determining appeals from the Small Claims Court thus; -
 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."



It therefore boils to the fact that once the High Court has rendered itself on an appeal from the small claims court judgment or ruling or order, the decision is final in terms of Section 38(2) of the Act.

10. The Appellants appeal before this court was heard and dismissed as aforesaid on 3rd September 2024.
11. The Appellant at paragraph 10 of its Supporting Affidavit advanced the argument that where a dispute arises under a contract for sale of goods such as the present one, the law to be applied and followed by the Courts in the fair determination of such disputes is contained in the *Sale of Goods Act* Cap 31 Laws of Kenya.
12. The Court has had the benefit of perusing the lower Court judgment dated 24th June, 2022. It is manifestly clear that the Appellant failed to bring out the provisions of the *Sale of Goods Act* and build up a case around it, which in the end would have aided the Court in determining the dispute before it.
13. A reading of the Judgment delivered by the Hon. Musyoka J delivered and dated 3rd September, 2024 points to the Appellant trying to lay a basis for its appeal on an issue that was not raised at the trial Court.
14. Section 38 of the Small Claims Act provides for appeals to be heard in the High Court on matters of law only, and the court's decision is final. In *Kenya Breweries Ltd v Godfrey Odoyo* [2010] eKLR the Court of Appeal distinguished between matters of law and matters of fact as follows: -

“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 analyze it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of a retrial and facts must be revisited and analyzed afresh, see *Selle and Another vs. Associated Motor Boat Company Ltd 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.”

15. In the instant case, the lower Court could not retreat to determine issues not raised by the Appellant. It is the parties to a case who are to succinctly raise their issues for the Court to arrive at a just and reasonable decision.
16. It is therefore the Court's finding that the express provisions of Section 38(2) of the *Small Claims Court Act* do not grant a further right of appeal to the Court of Appeal from a decision of the Small Claims Court. It is so expressed stated.
17. The upshot of the aforesaid is that the Appellant's Notice of Motion dated 25th October, 2024 lacks merit and is hereby dismissed. The 1st Respondent's Notice of Motion dated 24th September, 2024 is merited and is allowed in terms of prayer number 2.
18. In regard to prayer number 2, the court directs that the Branch manager, NCBA Bank, City Center Branch to strictly comply with the court order within 14 days of this ruling.
Costs of the application dated 24th September 2024 shall be borne by the Appellant.
19. The Appellant shall bear costs of the application dated 25/10/2025 to the 1st Respondent.
Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF JULY, 2025



.....
JANET MULWA.
JUDGE

