



Lyntonns Pharmacy Limited v Eldoshop Pharmaceuticals Limited (Civil Appeal E703 of 2024) [2025] KEHC 12791 (KLR) (Civ) (18 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12791 (KLR)

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

**CIVIL
CIVIL APPEAL E703 OF 2024**

AC MRIMA, J

SEPTEMBER 18, 2025

BETWEEN

LYNTONNS PHARMACY LIMITED APPELLANT

AND

ELDOSHOP PHARMACEUTICALS LIMITED RESPONDENT

(Being an appeal from the judgment and decree of Hon. Becky Cheloti Mulemia (PM) in Nairobi Chief Magistrates Court Civil Suit No. E7669 of 20 17 delivered on 29 th May 2024)

JUDGMENT

Background:

1. By a judgment rendered on 29th May 2024 in Nairobi Chief Magistrates Commercial Court Civil Suit No. E7669 of 2017 [hereinafter referred to as ‘the suit’], Lyntonns Pharmacy Limited, the Appellant herein and the then Defendant, was decreed to pay Kshs. 821,845/26 to Eldoshop Pharmaceuticals Limited, the Respondent herein and then Plaintiff, together with interest on account of unpaid supply of pharmaceutical goods. Each party was to bear its own costs.
2. Both parties were aggrieved by the decision. Lyntonns Pharmacy Limited filed the instant appeal and Eldoshop Pharmaceuticals Limited filed a Counter-Appeal [Cross-Appeal]. Whereas the Appellant herein prayed that the judgment be reviewed to an admitted sum of Kshs. 45,238/45, the Respondent prayed for costs of the suit.
3. By the directions of this Court, parties were to file and exchange their respective written submissions. The Appellant obliged, but the Respondent did not. This judgement is, hence, on both appeals.



The Appeals:

4. Through a Memorandum of Appeal dated 12th June 2024, the Appellant preferred the following grounds of appeal: -
 1. That the learned trial magistrate erred in law and fact by failing to properly scrutinize and evaluate the evidence and submissions tendered by the Appellant in court.
 2. That the learned trial magistrate erred in law and in fact by making conclusions not supported by evidence/facts in finding that the Appellant was liable to pay the Respondent a sum of Ksh. 821,845.26.
 3. That the learned trial magistrate erred in law and in fact by misapprehending the rules of evidence on burden of proof and by ignoring the evidence on record as adduced by the Appellants.
 4. That the learned trial magistrate erred in law and in fact by failing to appreciate that the Appellant had no control of the trial court on what it chose to record during the proceedings and cannot be held responsible where the trial court failed to record vital evidence or witness's evidence in the course of proceedings.
 5. That the judgment of Honourable B.M. Cheloti delivered on 28th May 2024 in Milimani MCC 7669 of 2017 has no legal or factual basis and ought to be set aside.
5. On its part, the Respondent filed a Counter-Appeal [Read: Cross-Appeal] dated 18th July 2024 and preferred the following two grounds of appeal: -
 1. The learned magistrate erred both in law and in fact and acted injudiciously in refusing to award cost of the suit to the Respondent despite wholly succeeding in its claim against the a Appellant.
 2. The learned magistrate erred in law and in fact in denying the Respondent interest on the decretal sum despite the claim being a commercial transaction.
6. In its written submission dated 12th May 2025, the Appellant argued that save for the admitted sum of Kshs. 45,238/45, the rest of the claim was not proved since the trial Court did not reconcile the discrepancies between the evidence produced by the parties. Having pointed out some of the deficiencies and referred to decisions, the Appellant prayed that the appeal be allowed as prayed.
7. The Respondent did not file any submissions despite enlargement of time to do so.

Analysis:

8. This Court's role, as a first appellate Court, is well established. In *Susan Munyi -vs- Keshar Shiani* [2013] eKLR, the Court observed that a first appellate Court is duty bound to objectively re-assess the evidence presented before the trial Court afresh. The Court observed: -

..... As a first appellate Court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.
9. Similarly, in *Abok James Odera t/a A.J. Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR the Court set out the role of the first appellate Court in the following terms: -



... This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way. See the case of Kenya Ports Authority vs Kustron (Kenya) Limited [2000] 2 EA 212.

10. Before venturing into a consideration of the main appeal, I will first deal with the Cross-Appeal. This Court directed that the appeals be heard by way of written submissions and accorded parties time to do so. At the time of fixing a judgment date in this matter, the Respondent had not complied and this Court extended time for it to so oblige. However, the Respondent is yet to do so to date. Therefore, since the cross-appeal was not prosecuted, the same stands dismissed with no order as to costs as the Appellant did not tender any submissions on the cross-appeal.
11. Having dealt with the cross-appeal, I now venture into the main appeal. From the record of appeal, the submissions and the decisions referred to therein, the only issue for consideration is whether the suit was proved. In determining the issue, this Court has carefully combed through the record with a keen eye into details. In instituting the suit, the Respondent filed a Plaint alongside a List of Documents. The documents included a Statement of Accounts, a Witness Statement, Invoices and delivery notes as well as letters before the action.
12. Upon service, the Appellant entered appearance and filed a Statement of Defence dated 27th November 2017 where it denied the claim save for the sum of Kshs. 45,283/45. In a statement by Dr. Lucy Njogu-Muturi who was the Appellant's Director, the Appellant reiterated that there were differences in the amounts tendered which matter would have been amicably settled had the Appellant been informed before the filing of the suit. To that end, the Appellant filed copies of payment receipts, payment cheques and vouchers made to the Respondent and its affiliates.
13. The suit was heard by way of viva voce evidence. The Respondent called its Credit Control Manager one Esther Muonyonyo [PW1] who adopted her written statement dated 5th August 2022 as evidence. She also produced all the documents in the Respondent's List of Documents as exhibits. On cross-examination, PW1 stated that the Respondent had been a long-time client to the Respondent and she confirmed that the Respondent supplied all pharmaceutical drugs the Appellant ordered for. She affirmed that the Respondent carefully documented all the transactions between the parties which documents were all before Court including the Appellant's bounced cheques. She urged that the suit be allowed as prayed.
14. Dr. Lucy Njogu-Muturi testified on behalf of the Appellant as DW1 also adopted her statement dated 14th November 2017. She produced the documents in the Appellant's List of Documents as exhibits. In her evidence, DW1 confirmed that some of the cheques issued by the Appellant were dishonored and that there was no reconciliation of accounts which was undertaken. She further confirmed that the statement of accounts filed by the Appellant was internally generated. Through the statement of account, the Appellant indicated that some payments were made in cash to riders who delivered the supplies and that some MPESA payments had not been captured in the computation. It was also alleged that the cheques issued by the Appellant preceded any supply and as such nothing turned on the said cheques.
15. This Court has carefully considered the documents on record tendered by both parties. In a suit of this nature, when the Respondent tendered the Statement of Accounts, the invoices, the delivery notes and the demand letters, the Appellant was duty bound to scrutinize them with care and to specifically respond to each one of them. For instance, the Appellant was to identify any questionable invoices and delivery notes, if any. It was also to produce proof of payment for the invoices which it had no issue with. By doing so, the Appellant would have delineated the claim and identified the areas of contention.



This Court has perused the statement of accounts prepared by the Appellant. The statement indicates that on several times payment was done to riders. However, there was no evidence to that end. There is also a Cheque Statement which indicates that there were bounced cheques. The explanation by the Appellant that the cheques had to first clear in the bank before delivery was made was opposed to by the Respondent. The Appellant did not tender any further evidence to counter the opposition. The Appellant's position is, hence, for rejection and this Court finds that the bounced cheques were not redeemed. The Appellant's position is also contrary to the email correspondences of January 2017 by DW1 to the Respondent on the bounced cheques.

16. On the MPESA transactions, there is one where the code is missing. No explanation was given for such a lacuna. Further, the account statement by the Respondent covers the period 1st December 2010 to 1st December 2017 whereas that by the Appellant only covers the period September 2016 to March 2017. Likewise, the Appellant's MPESA statement is for the same period. The Appellant's Cheque Schedule covers September 2015 and October 2016. It is, therefore, clear that the Appellant did not sufficient tender an explanation on the transactions and payments between 1st December 2010 to 1st December 2017 as demanded by the Respondent, but only restricted itself to the period between September 2015 and March 2017. The Appellant cannot, hence, allege not to be indebted to the Respondent. The Appellant failed to discharge the evidentiary burden of proof and as such judgment had to be entered in favour of the Respondent. [See the discussion on the evidential burden of proof by the Supreme Court of Kenya in the Presidential Election Petition No. 1 of 2017 Raila Amolo Odinga & Another vs. IEBC & 2 Others (2017) eKLR].
17. It is on the above rendition that this Court finds and hold that the main appeal is unmerited.

Disposition:

18. Drawing from the foregoing, this Court hereby makes the following final orders: -
 - (a) The main appeal is dismissed.
 - (b) The Counter-Appeal [Cross-Appeal] is also dismissed.
 - (c) Since both appeals have failed, each party shall bear their costs.Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Kimanyo, Learned Counsel for the Appellant.

Michael/Amina – Court Assistants.

