



**Nderitu v Ochola (Civil Appeal E053 of 2024)  
[2025] KEHC 12897 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12897 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL APPEAL E053 OF 2024  
M THANDE, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**GABRIEL THUMI NDERITU ..... APPELLANT**

**AND**

**WILLIAM OCHOLA ..... RESPONDENT**

*(An appeal arising from SCCCOMM No. E020 of 2024 delivered on 7.5.24)*

**JUDGMENT**

1. This appeal arises from SCCCOMM No. E020 of 2024 delivered on 7.5.24 in which judgment was entered in favour of the Respondent in the sum of Kshs. 40,000/=.
2. Dissatisfied with the said decision, the Appellant lodged this appeal citing the following grounds of appeal:
  1. That the Learned Magistrate erred in fact and in law in drawing wrong inferences and making the wrong conclusions in the context of the pleadings, evidence and submissions made.
  2. That the Learned Magistrate erred in fact and in law in wrongfully applying and interpreting the principles applicable in determining a suit on a basis of fair hearing as per natural justice.
  3. That the Learned Magistrate erred in law and in fact by entertaining extraneous considerations in arriving at her verdict.
  4. That the Learned Magistrate erred in law and in fact in failing to find that the Claimant had lied to Court that he had provided the TV in his statement of Claim.
  5. That the Learned Magistrate erred in law by failing to consider that there was no specific date in the agreement when the TV was to be provided and the date the claimant requested to deliver the Defendant was in Nairobi so he could have not accepted without his presence and



acknowledgement hence the date the Claimant was requested to deliver the TV he refused to deliver.

6. That the Learned Trial Magistrate erred in law to award the Claimant Kshs. 40,000/= yet upon hearing the Claimant admitted the TV was not provided.
  7. That the Learned Trial Magistrate erred in law to award the Claimant Kshs. 10,000/= by failing to appreciate the money paid to the agents, rent arrears which was paid to the Landlord's Account and Toshiba as per verbal agreement which was not denied by the Claimant upon hearing.
  8. That the Learned Trial Magistrate erred in law to award the Claimant Kshs. 40,000/= allowing the Claimant to reap where he has not planted.
  9. That the Learned Trial Magistrate erred in law by failing to appreciate the M-PESA statements provide by the respondent.
  10. That the Learned Trial Magistrate erred in law by failing to consider that there was no any proof of any TV existing, for the Claimant never attached any receipt of the TV or its photograph HISENSE 50" purported to have been delivered.
3. The jurisdiction of this Court to hear appeals from a Small Claims Court is set out in Section 38 of the [Small Claims Court Act](#) which provides:
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.
4. The claim before the trial court arose from breach of an agreement dated 10.1.24 for the sale of a bar in Mtwapa for the sum of Kshs. 150,000/=. The Appellant made a down payment of Kshs. 60,000/=. It was agreed that Kshs. 70,000/= would be paid on 1.2.24 and Kshs. 20,000/= would be paid upon delivery by the Respondent of a TV set to the Appellant. The Respondent claimed that in spite of fulfilling his part of the agreement, the Appellant failed and refused to pay a balance of Kshs. 40,000/=. The Respondent thus filed the claim for the said amount of Kshs. 40,000/= from the Appellant. In her judgment, the Adjudicator found that the Appellant breached the agreement and entered judgment in favour of the Respondent in the sum of Kshs. 40,000/= plus costs and interest.
5. Although in his grounds of appeal, the Appellant faults the Adjudicator for erring in law, it is quite obvious from a reading of the grounds that the issues raised are all factual. The questions whether the TV was delivered and whether the Adjudicator erred in awarding the sum of Kshs. 40,000/=; whether the Adjudicator failed to appreciate the M-PESA statements provided by the Respondent; whether the Adjudicator was wrong in awarding the Claimant Kshs. 10,000/= by disregarding the money paid to the agents, rent arrears which was paid to the Landlord's Account and Toshiba as per verbal agreement which was not denied by the Claimant, are all matters of fact. The Appellant seeks that this Court re-evaluates the evidence and reach a contrary conclusion on those facts, which are not matters of law.
6. This Court is by dint of Section 38 of the [Small Claims Court Act](#) barred from delving into factual findings of the trial court. In this regard, I associate with Majanja, J. who in *Omundi v Lama Fresh Produce Limited (Civil Appeal E040 of 2022) [2022] KEHC 13681 (KLR) (Civ) (14 October 2022)* (Judgment) stated:

In dealing with matters of law, the Court is not permitted to re-evaluate the entire record of evidence and come to its own conclusion as required in ordinary appeals (see *Selle*



and Another v Associated Motor Boat Co., Ltd and Others [1968] EA 123). In Charles Kipkoech Leting v Express (K) Ltd & Another NKU CA Civil Appeal No. 40 of 2016 [2018] eKLR, the Court of Appeal in relation to its jurisdiction on second appeals to determine matters of law observed as follows:

This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the Court. See Maina versus Mugiria [1983] KLR 78, Kenya Breweries Ltd versus Godfrey Odongo, Civil Appeal No. 127 of 2007, and Stanley N. Muriithi & Another versus Bernard Munene Ithiga [2016] eKLR, for the holdings inter alia that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the 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. See also the English case of Martin versus Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511 where in, it was held inter alia that, where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.

7. As the jurisdiction of this Court is limited to matters of law, the Court cannot as in ordinary appeals, re-evaluate the entire record of evidence and come to its own conclusion.
8. The appeal herein which challenges the decision of the Adjudicator on matters of fact is thus dismissed with costs to the Respondent.

**DATED SIGNED AND DELIVERED IN MALINDI THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025**

**M. THANDE**

**JUDGE**

