



**Matete v Sasala Self Help Group (Civil Appeal E104 of 2023)
[2024] KEHC 2583 (KLR) (8 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E104 OF 2023
PJO OTIENO, J
MARCH 8, 2024**

BETWEEN

ANDREW MATETE APPELLANT

AND

SASALA SELF HELP GROUP RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. Sylvia Wayodi
(RM) in Kakamega SSCOM E217 of 2023 delivered on 23rd June, 2023)*

JUDGMENT

1. By way of a statement of claim dated 19th May, 2023, the respondent sued the claimant for damages in the sum of Kshs. 35,500/- and costs of the suit. The respondent's case was that on or about the 8th day of March, 2023 the appellant withdrew money from the bank without the consent of the members or the signatories' approval.
2. The respondent then, now appellant resisted the claim by an undated replying affidavit, and averred that he was the secretary of the respondent and that without his knowledge the respondent appointed another person as its secretary though maintaining him as a signatory. He claimed that on 8/3/2023 at the request of the respondent he withdrew a sum of Kshs. 10,500/- which he delivered to the group and resigned as a member of the respondent thereafter only to again receive a termination letter from the respondent informing him that they will pay him his dues of Kshs. 67,360/- in December of an unknown year.
3. After taking evidence, the court in a reserved judgment delivered on 23rd June, 2023, found for the claimant and awarded the respondent damages in the sum of Kshs. 24,764/-.
4. That decision aggrieved the appellant who instituted the appeal by the memorandum of appeal dated 13th July, 2023. The judgment of the court is faulted on the premises that the learned trial magistrate



erred in law and fact in; entering judgment in favour of the respondent for Kshs. 24,764/- being alleged withdrawal from the respondent's bank account when the respondent had not proved his claim to the standard required in law or at all; entering judgment against the appellant in the absence of any evidence or proof from the respondent; entering judgment in favour of the respondent as against the appellant against the evidence on record and considering irrelevant factors; failing to admit the defense offered by the appellant against the respondent's case; analyzing (sic) the evidence before herself and hence arrived at a wrong finding that occasioned a miscarriage of justice.

5. For those reasons in the grounds of appeal, the appellant prays that the appeal be allowed and that the judgment of the trial court be set aside with costs.
6. The appeal was directed to be canvassed by way of written submissions as below;

Appellant's Submissions

7. It is his submission that a member of the group need a soft loan and on 8/3/2023 vide a cheque No. 19 he was requested to withdraw a sum of Kshs. 10,500/- which he did and then forwarded the amount to the group chairman in the presence of members for onward transmission to the borrower. On 15/4/2023 he again withdrew a sum of Kshs. 15,000/- vide a cheque No. 18 which he again gave to the chairman. He contends that the respondent raised his claim only after appellant claimed his savings of Kshs. 67,360/-.

Respondent's Submissions

8. It is their submission that the trial court correctly applied the facts and the law in finding that the appellant, without the consent of the group, made withdrawals from equity Bank amounting to Kshs. 25,500/-. They further submit that the trial court was also correct in finding that the respondent owed the appellant as sum of Kshs. 736/- which were his total savings with the respondent. They argue that the appeal falls short of the provisions of section 38 of the *Small Claims Court Act* which demand that an appeal from the small claims court to the high court shall be on matters of law only and that the appellant has failed to deposit the decretal sum in an escrow account as directed by this court. Even though set as five separate and distinct ground, all challenge the judgment for having gone against the grain and weight of evidence.
9. The court in executing its mandate as a first appellate court has anxiously considered the grounds of appeal, the proceedings of the lower court and the judgment as well as the submissions by both the appellant and the respondent and discerns that only two issues arise for determination by the court. The issues are whether the appeal first of the two is not in the grounds of appeal but arises from the court's duty as a court of law to apply the law even, particularly the law on jurisdiction even before delving into the merits of the case. The second, which only arises when the court finds that the appeal lies, is whether the respondent led evidence to prove its case on a balance of probabilities to merit the judgment.
10. The first issue is indeed a threshold issue which must precede all others. It is grounded on section 38 of the *Small Claims Court Act* that limits the jurisdiction of the High Court on appeals from the Small Claims Court on matters of law only. To this court, an appeal to it must raise a question that points to an error of law committed by the trial court.



11. In *Momentum Credit Limited v Kabuiya* (Civil Appeal E035 of 2022) [2022] KEHC 13705 (KLR) (Commercial and Tax) (7 October 2022) (Judgment) the court in considering an appeal like this one did observe that:-

“In determining this appeal, I am cognizant of the fact that under section 38(1) of the *Small Claims Court Act*, 2016 an appeal to this court is limited to matters of law only. Accordingly, the court is not permitted to substitute the subordinate court’s decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (*John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR).”

12. It is thus pertinent and incumbent upon an appellant to this court from the Small Claims court to demonstrate that the court’s jurisdiction is properly invoked so that it does not entertain appeals other than those contemplated by the statute. To entertain an appeal that raises no question of law would be to usurp the jurisdiction not vested by law.

13. What constitutes a point of law has not been defined by the subject Act but has been the subject of interpretation by superior courts in this country and beyond. For example, in *Twaher Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others*, [2014] eKLR the court in following decisions in *Timamy Issa Abdalla v Swaleh Salim Swaleh Imu & 3 Others*, Malindi Civil Appeal No. 39 Of 2013 (Court of Appeal), (*Okwengu, Makhandia & Sichale, JJA*) of 13.01.2014 that “a decision is erroneous in law if it is one to which no court could reasonably come to.”

14. In this appeal, the court has perused the grounds of appeal and collectively they appear to touch on whether the appellant owed the respondent and how much the respondent owed the appellant. It centers on the appreciation of facts and not law. It challenges not the courts appreciation of the law but the facts of the case. It is thus to the court a matter in which the court has no jurisdiction to entertain. The appeal is thus truck out with costs.

15. If however I was wrong on that finding, and delve into the merits, the record at trial show that the appellant indeed effected drawings from the respondents account and he indeed admitted that fact bereft of merit and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 8TH DAY OF MARCH, 2024.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

The Appellant in person

Mr. Mwako for the Respondent

Court Assistant: Polycap Mukabwa

