



**Wamuyu v Inspire Luxe Limited (Civil Appeal E163 of 2022)  
[2024] KEHC 2040 (KLR) (Commercial and Tax) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2040 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL E163 OF 2022  
FG MUGAMBI, J  
MARCH 1, 2024**

**BETWEEN**

**RUTH WAMUYU ..... APPELLANT**

**AND**

**INSPIRE LUXE LIMITED ..... RESPONDENT**

*(Being an appeal from the judgment of the Small Claims Court at Nairobi (Hon. D.S Aswani, RM/Adjudicator) dated 2nd day of November 2022 in SCC COMM No. E2820 of 2022)*

**RULING**

**Brief Facts**

1. The appellant filed a Memorandum of Appeal dated 2nd November, 2022 against the judgment of the trial court in SCCCOMM/E2820/2022. The respondent responded by way of a Notice of Preliminary Objection dated 12<sup>th</sup> January, 2023 on the grounds that the appeal offends section 38 of the [Small Claims Court Act](#) No.2 of 2016. The appellant thereafter filed an Amended Memorandum of Appeal dated 14<sup>th</sup> February, 2023, in an effort to salvage the appeal.
2. As far as the respondent is concerned, even the Amended Memorandum of Appeal dated 14<sup>th</sup> February, 2023 still does not adhere to the principles espoused under Section 38 of the [Small Claims Court Act](#). The appellant prays that the said preliminary objection be dismissed on grounds that the Memorandum of Appeal complies with the requirements of section 38(1) of the Act.



## Analysis

3. Section 38(1) of the SCC Act provides that:

“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.”

4. The *Blacks Dictionary of Law*, 8<sup>th</sup> edition defines a matter of law as a matter involving a judicial inquiry into the applicable law. It follows from the case *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd*, [1969] EA 696 that matters of law arise from the pleadings and in this case, the Memorandum of Appeal setting out the grounds of appeal. Points of law cannot therefore be on the basis of argumentative disagreements of facts as held by the Court of Appeal in *Robinson Kiplagat Tuwei V Felix Kipchoge Limo Langat*, [2020] eKLR.

5. I have looked at the Memorandum of Appeal dated 22<sup>nd</sup> November 2022 as initially drawn. In my view, the fact of stating that an appeal is based on errors of ‘fact and law’ made by the adjudicator alone would not make the Memorandum of Appeal defective. I have considered the Amended Memorandum of Appeal dated 14<sup>th</sup> February 2023. The element of standard of proof as well as the adjudicator’s application of the principles of contract law as enumerated on the Memorandum of Appeal are questions of law.

6. I am therefore of the view that the appeal satisfies the threshold as set out in section 38(1) and is properly before the Court. In any case, where a party raises both points both of law and fact, the Court ought to ignore the points of fact and deal only with the points of law as opposed to a drastic action of striking out an appeal altogether. As such, the Preliminary Objection fails.

7. I now go to the application dated 8<sup>th</sup> November 2023, by which the appellant seeks a stay of execution of the judgment and decree issued and dated 2<sup>nd</sup> November 2022 pending the hearing and determination of the application and the main appeal. I note that the application has not been responded to and is therefore technically unopposed. It however falls on this Court to test the veracity of the application against the requirements of order 42 rule 6 of the *Civil Procedure Rules*.

8. The said provision states as follows:

“No order for stay of execution shall be made under sub-rule (1) unless: -

- a. The Court is satisfied that substantial loss may result to the appellant unless the order is made and;
- b. That the application has been made without unreasonable delay; and
- c. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the appellant.”

9. The dispute between the parties arises from a claim for refund of Kshs. 440,000/= being capital injected by the appellant, upon her exit from the respondent company. The bone of contention appears to be the binding nature or existence of any contract between the parties. The trial court held in favour of the respondent, finding that there was no contract between the parties and thereby dismissing the claim.

10. The appellant claims that the respondent has threatened to execute over the costs awarded thus necessitating the application. The applicant states that the subject judgment matter is substantial and



that she stands to suffer irreparable loss as the ability of the respondents to refund the decretal amount is unknown.

11. I note that the Memorandum of appeal herein raises questions of law relating to the formation of a contract that the appellant ought to be allowed to interrogate in an appeal. As stated earlier, the veracity of the averments made by the appellant are not controverted by the respondent. I also note that the appellant has offered to deposit the costs awarded by the adjudicator at the trial Court.

#### **Determination**

12. I do therefore allow the application on condition that the costs of Kshs. 57,000/= awarded by the trial court be deposited in Court within 30 days of these orders, in default of which the stay of execution orders herein shall be deemed to have lapsed and the respondent shall be at liberty to execute for the said costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 1<sup>ST</sup> DAY OF MARCH 2024.**

**F. MUGAMBI**

**JUDGE**

