



Zappkaas Consulting Training Limited v Kenya Tea Packers Limited (Civil Appeal E146 of 2022) [2024] KEHC 5747 (KLR) (Civ) (8 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5747 (KLR)

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

CIVIL

CIVIL APPEAL E146 OF 2022

DKN MAGARE, J

MAY 8, 2024

BETWEEN

ZAPPKAAS CONSULTING TRAINING LIMITED APPELLANT

AND

KENYA TEA PACKERS LIMITED RESPONDENT

JUDGMENT

1. This is an appeal from the decision of the small claims adjudicator J W Munene given on 14/9/2022. The Appellant is the Decree holder in the lower court.
2. The Appellant was aggrieved by the decision of the adjudicator and set forth 5 grounds of appeal. I need not set out the same herein.
3. The duty of the court is to defer to the findings of fact of the adjudicator and analyse the matter for issues of law. The issues of law are either due to the subject matter or the finding of law by the court. In the case of *Mbogo and Another v Shah* [1968] EA 93, the court of Appeal stated as doth:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
4. However, an Appeal of this nature is on points of law. It can be pure points of law or mixed points of law but points of law it is. Given that the second issues herein is a question of mixed facts and law, the court shall not delve into it. It is only useful when it is the only decisive point.



5. An appeal on points of law is akin to a second appeal to the court of Appeal. The duty of a second Appeal was set out in the case of [Orieno, Ragot & Company Advocates v National Bank of Kenya Limited](#) [2020] eKLR: -

“This is a second appeal. I am alive to my duty as a second appellate court to determine 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: *Stanley N. Muriithi & Another v Bernard Munene Ithiga* (2016) eKLR).”

6. Then what constitutes a point of law? In [Twaber Abdulkarim Mohamed v Independent Electoral and Boundaries Commission \(IEBC\) & 2 others](#), (2014) eKLR, the court stated as doth: -

“4. Although the phrase ‘a matter of law’ has not been defined by the [Elections Act](#), it has been held 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 January 13, 2014 that a decision is erroneous in law if it is one to which no court could reasonably come to, citing *Bracegirdle v Oxney* (1947) 1 All ER 126. See also *Khatib Abdalla Mwashetani v Gedion Mwangangi Wambua & 3 Others*, Malindi Civil Appeal No. 39 Of 2013 (Court Of Appeal), (Okwengu, M’inoti & Sichale, JJA) of 23.01.2014 following *AG v David Marakaru* (1960) EA 484.”

7. In [Peter Gichuki King'ara v Iebc & 2 Others](#), Nyeri Civil Appeal No. 31 Of 2013 (Court Of Appeal) (Visram, Koome & Odek, JJA) Of February 13, 2014, the court of Appeal held as follows: -

“it was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanour – is an issue of law.”

8. A point of law is similar to a preliminary point of law but has a broader meaning. Justice prof J.B. Ojwang J (as he then was) succinctly addressed the issue of preliminary objection in the case of [Oraro v Mbaja](#) [2005] eKLR:

“I think the principle is abundantly clear. A preliminary objection as correctly understood is now well settled. It is identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. I am in agreement that where a court needs to investigate facts, a matter cannot be raised as a preliminary point.



9. The question raised in the Appeal relate to interpretation of a contract between the parties. I am endeavoring to find the questions of law raised in this Appeal.
10. The jurisdiction of this court is limited to questions of law only. Therefore, grounds 2 and 3 are untenable as they are questions of evidence.
11. The claim arose from prequalification of Training and Consultation Services. The documents were produced without calling the makers. The court considered the correspondence and found that an award. The court was invited to use parole evidence to change what is in the contract.
12. However, a contract should be read within its 4 corners. In *Fidelity & Commercial Bank Ltd V Kenya Grange Vehicle Industries Ltd* (2017) eKLR, the Court of Appeal, Ouko, Kiage and Murgor JJA held as doth; -

“Courts adopt the objective theory of contract interpretation and profess to have overriding view sometimes called Four Corners of an Instrument, which insists that a documents meaning should be derived from the document itself, without reference to anything outside of the document, extrinsic reversed...”
13. There is no question of law raised in the Appeal. The reading of the contract is plainly clear. Consequently, I find no fault in exercise of discretion by the Adjudicator. The net effect is that I dismiss the Appeal with costs of Kshs. 35,000/= to the Respondent.

Determination

14. The upshot of the foregoing is that I make the following orders: -
 - a. The appeal lacks merit and is consequently dismissed with costs of Kshs. 35,000/= within 30 days in default execution to issue.
 - b. The file is closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 8TH DAY OF MAY, 2024.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Miss Aremo for the Respondent

No appearance for the Appellant

Court Assistant- Brian

