Agot v Munge (Civil Appeal E1028 of 2023)
[2024] KEHC 11925 (KLR) (Civ) (23 September 2024) (Judgment)

Neutral citation: [2024] KEHC 11925 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E1028 OF 2023

TW OUYA, J

SEPTEMBER 23, 2024

BETWEEN

BRYSON MANGLA AGOT ..... APPELLANT

AND

JOHN GIKONYO MUNGE ..... RESPONDENT

(Being an appeal against the judgement and decree of the Hon. J.P Omollo (Adjudicator) delivered on 25th November, 2022 in Nairobi Milimani SCCC No. E1794 OF 2022)

JUDGMENT

Background

1. Bryson Mangla Agot, (hereinafter the Appellant), the Claimant before the lower Court, initiated suit by way of a statement of claim dated 5th July, 2022 and amended on 14th July 2022 as against John Gikonyo Munge, the Respondent before the lower Court, (hereinafter the Respondent) claiming special damages for material and labour of Kshs. 24,650/-; special damages for loss of rain water harvest valued at Kshs. 24,000/-; general damages as against the Respondent's tortious actions for Kshs. 60,000/- and costs of filing the claim at Kshs. 6,000/-.

2. The claim arose when on or about the 6th of February, 2022 the Appellant engaged the Respondent by requesting him to repair and re-plaster his stone water tank at a cost of Kshs. 24,650/- on accord of having identified three (3) spots on the rear wall of the tank which allowed slow seepage of approximately 5,000 litres of water in seven (7) months. It was averred that despite the said repairs being carried out on the said water tank by the Respondent's assistant – one Paul Githinji – when was water was eventually offloaded into the water tank, there was heavy leakage from all round the tank. In spite of the Respondent's admission of liability towards the tanks failure and undertaking to re-do the works therein, he failed to do so notwithstanding several reminders. It was further averred that the

Respondent intentionally and with malice for reasons best known to himself damaged the said water tank with the consequence of sabotaging the Appellant's ability to harvest rain water with a commercial value of Kshs. 24,000/-. The Appellant's claim was therefore premised on breach of contract and a claim on liability in tort with the doctrine of Res Ipsa Loquitor being pleaded thereto.

3. The Respondent despite being served with summons failed and or neglected to enter appearance or file a response to the amended statement of claim. On 12th October 2022, when the Appellant appeared before the trial Court, he orally lodged a request for entry of judgment in default of appearance and or a response by the Respondent, which was subsequently entered by the Court with the claim thereafter being scheduled for formal proof hearing.

4. At the hearing, only the Appellant adduced evidence in support of the averments in his amended statement of claim. In its judgment, the trial Court found in favour of the Appellant by finding the Respondent 100% liable and proceeded to entered judgment as against the latter in the sum of Kshs. 8,410/- and costs of the claim.

5. Aggrieved with the outcome therein, the Appellant preferred the instant appeal challenging the finding by the trial Court on the following grounds in his memorandum of appeal dated 25th November, 2022 and later amended on 20th March, 2023, as itemized hereinunder: -

    a. After the adjudicator Hon. J.P. Omollo found the defendant to be 100% liable in breach of contract, she erred in law and fact by mining ill will and malice to deny the Appellant his constitutional and common law rights to general damages on tort and anticipated costs of repair thereby whimsically violating Article 10; 20(1), (2), (3) & (4); 24(1); 27 (1) & (2); 50(1) and 159 (2) *the Constitution* of Kenya 2010.

    b. The Adjudicator erred in law and fact by introducing absurdity and conflict of statutory law in Rule 5(2)(b)& (c) vis a vis Section 3 & 32 of the *Small Claims Court Act* and Rule (2)(f)(g) and 31 impliedly demanding production of a receipt or invoice for rain water from God.

    c. The adjudicator further erred in law by failing to utilize the powers directly coffered to her vide Section 17 and 19 of the *Small Claims Court Act*, 2016.

    d. The Hon. J.P. Omollo erred and failed in law to comprehend and apply the overriding factor and intension of parliament domiciled in Section 3(3) of the *Small Claims Court Act*, 2016.

    e. The learned Adjudicator erred in law and in fact by failing to factor in her judgment, the natural consequence that follow specific facts already proven.

    f. The Adjudicator erred in law by introducing strict adherence to the *Civil Procedure Act* Cap 21, Section 31 and the Small Claims Court Rules and the *Evidence Act* Cap 80 demanding the attachment of receipts or meter reading from the Supreme being for rain water the Appellant collected and lost during the April 2022 long rains.

    g. Adjudicator Omollo erred in law and fact to appreciate social justice that Gok has repeatedly implored its citizens who have the ability to harvest rain water to do so.

    h. The Adjudicator erred in law and in fact by not factoring that an Appellant has a right to claim both special and general damages The Hon. J.P. Omollo erred and failed in law by not considering the effect of uncontroverted evidence where the expert Respondent chose silence.

    i. The Hon. J.P. Omollo erred and failed in law and in fact by not considering that in good faith, the Appellant invited an expert/ Respondent within 15 minutes of the discovery of the damage to assess the damage.

j. The learned Adjudicator erred in law and fact by not considering the unique circumstance of the case that harnessed God given rain water in specific volume of commercial value.

k. The Adjudicator erred in law that the Claimant had a right to own 58,000 litres of rain water he harnessed vide Article 40(1)(a) of the CoK.

l. The Adjudicator J.P. Omollo fatally erred in law by making a decision per incuriam of oral contract envisaged in the *Law of Contract Act* 1961 [Revised 2012] Section 32 of the *Small Claims Court Act* 2016 and Article 159(2)(d) of the CoK 2010.

m. I have filed the decree issued on 03/01.2023 and proceedings issued but not dated 14/3/23.

6. In light of afore captioned itemized grounds of appeal, the Appellant prays that:

1. Declaration that the Court below violated both the Constitutional, Statutory and Common Law rights of the Appellant.

2. A declaration that the misapplication of law occasioned the ousting of oral contract domiciled in the *Law of Contract Act* and Common Law.

3. Declaration that the Defendant was in contempt of Court by ignoring its direct summons initiated by the Court's own motion.

4. Overturn the partial judgment appealed against.

5. Award all the prayers that were declined by the lower Court.

6. Award disbursement cost of self-litigation for this appeal." (sic)

7. Directions were taken on disposal of the appeal by way of written submissions, of which this Court has duly considered. Similar, to the lower Court proceedings, only the Appellant participated in the instant appellate proceedings.

Submissions

8. On the part of the Appellant, while calling to aid the provisions of Section 17, 19 & 32 of the *Small Claims Court Act*, he contended that the learned Adjudicator was not seized of the fore-captioned provisions which embodied the intention of Parliament to simplify Court procedures in order to give equal opportunity to the non-legal population to access judicial services under the Act. He went on to submit that the trial Court was expected to resolve issues within the parameters of the Act from which it derives its authority and was not to refer to other laws it was meant to ameliorate of which it would be unconstitutional and against the rules of natural justice to do so. While calling to aid the decision in *Center for Rights and Awareness & Another v John Harun Mwau & 6 Others (Civil Appeal 74 & 82 of 2012*) [2012] KECA 101 (KLR) (Civ), he argued that the learned Adjudicator's failure to internalize the *Small Claims Court Act* occasioned a conflict of laws in an otherwise simple case and thus ended up with the undesired able judgment that this Court ought to set aside. That the *Small Claims Court Act* was legislated to cure the injustices which arose as technicalities to procedure that ended up taking away the natural justice that has already accrued. Therefore, this Court ought to apply its mind to the intention of the said statute in setting aside the decision of the trial Court.

9. He further posited that the trial Court failed to be judicious in factoring in the intent of the *Small Claims Court Act* when interpreting conflicting laws, if in the Court's opinion there were any, because as a rule of thumb it is clear that Parliament intended the latter Act take precedence over older laws in certain situations. As such, the *Small Claims Court Act* ought to prevail over the *Evidence Act* under the

circumstances. He submitted that the trial Court erred by withholding general damages on tort which was specifically pleaded, on accord of his failure to adduce documentary evidence evincing loss of rain water. That the foregoing finding violated Article 10; 20(1), (2), (3) & (4); 24(1); 27 (1) & (2); 50(1) &159 (2) *the Constitution* of Kenya and the intent of Section 3, 12 17, 19 & 32 of the *Small Claims Court Act*. He equally argued that the standard of assessing damages to a motor vehicle should not have been applied to the damaged water tank which has already been assessed by the Respondent who was himself a professional mason and promised to fix the problem but later changed his mind and would only increase the costs of litigation contrary to Section 3(3) of the *Small Claims Court Act*. That the trial Court failed to apply the principle of "Natural consequence, following facts already proven" by not allowing the Appellant's itemized labor costs which the Respondent never controverted, challenged or replied to. Summarily, he contended that the trial Court's decision was in contravention of the spirit and intent of the *Small Claims Court Act* therefore this Court ought to lay down principles to cure the conflict of law & constitutionality of Section 5(2) & 50 of the *Small Claims Court Act* and the Small Claims Court Rules. In conclusion the Court was urged to allow the appeal and substitute the trial Court decision by allowing the claim as lodged.

Disposition And Determination

10. The Court has considered the memorandum of appeal, the record of appeal and original lower Court record. It would be apt to observe at this juncture that this is a first appeal and specifically one from the Small Claims Court. Section 38 of the *Small Claims Court Act* prescribes the nature of appeals that lie from the said Court to the High Court by providing that; -

> "(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."

11. In ordinary appeals, the first appellate Court will only interfere with a finding of fact made by a trial Court when such finding was based on no evidence, or if it is demonstrated that the Court below acted on wrong principles in arriving at the finding it did. See Ephantus Mwangi & Another vs Duncan Mwangi Wambugu (1982 – 1988) 1 KAR 278. Nevertheless, by dint of Section 38 of the *Small Claims Court Act* this is no ordinary first appeal and it would be remiss if this Court were not at the outset, satisfy itself that the appeal before it falls within the purview of Section 38 of the *Small Claims Court Act*. In considering its mandate on a second appeal, that is on points of law only, the Court of Appeal in Kenya Breweries Ltd v Godfrey Odoyo [2010] eKLR, distinguished between matters of law vis-à-vis matters of fact by stating that: -

> "I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of a retrial and facts must be revisited and analysed a fresh, - see Selle and Another vs. Associated Motor Boat Company Ltd and Others (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two 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."

12. Black's Law Dictionary, 9th Ed. Pg. 1067 defines; -

> " Matter of fact as: A matter involving a judicial inquiry into the truth of alleged facts and Matter of law as: A matter involving a judicial inquiry into the applicable law."

13. The Court of Appeal in its subsequent decision in Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others [2014] eKLR while addressing the question whether a memorandum of appeal on a second appeal raised factual issues and the distinction between a matter of fact and matter of law, observed that; -

> " One of the best expositions on the distinction between the two is to be found in the judgment of Denning J in the English case of BRACEGIRDLE Vs. OXLEY (2) [1947] 1 ALL E.R. 126 at p 130;
>
> "The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by testimony; conclusions from those facts are inferences deducted by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depend on them. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law. In a case under the Road *Traffic Act*, 1930, s. 11, the question whether a speed is dangerous is a question of degree and a conclusion on a question of degree is a conclusion of fact. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The conclusion drawn by these justices from the primary facts, was not one that could reasonably be drawn from them."

14. The Court of Appel continued to state that: -

> " That reasoning has been adopted in this jurisdiction. In A.G. Vs. David Murakaru [1960] EA 484, for instance, Chief Justice Ronald Sinclair sitting with Rudd J. adverted to the factual foundations of legal questions by stating that an appellate court restricted to determining questions of law may yet quite properly interfere with the conclusion of a lower court if the same is erroneous in point of law. This is the case where that lower court arrives at a conclusion on the primary facts that it could not reasonably come to. Such a conclusion or decision becomes an error in point of law. See also Patel Vs. Uganda [1966] Ea 311 And Shah Vs. Aguto [1970] EA 263.
>
> There is no denying from the cases we have referred to, that in not a few cases the determination of whether a particular complaint on appeal a question of law is or of fact is not always a very straight-forward one, not least because the determination of whether a lower court drew the correct legal conclusions inevitably entails an examination of the factual basis of the decision. That reality has with it the inherent danger that legal ingenuity may attempt to dress-up and camouflage purely factual issues with the borrowed garb of "legalness." This is what the majority of this Court had in mind in M'riungu And Others Vs. R [1982-88] 1 KAR 360 when it stated, (per Chesoni AJA) at p366;

> "We would agree with the views expressed in the English case of Martin v Glyneed Distributors Ltd (t/a MBS Fastenings) [1983] 1 CR 511 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 as holdings of law or mixed findings of fact and law, and, it should not interfere with the decision of the trial of 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 law."

15. Applying the dicta in Bashir Haji Abdullahi (supra) – which this Court takes due cognizance of the fact that it was an appeal arising from an election dispute – to the grounds of appeal in the instant matter, the same would appear to exemplify "an attempt at legal ingenuity to dress-up and camouflage purely factual issues with the borrowed garb of "legalness" in a bid to escape the strictures of Section 38 of the *Small Claims Court Act*. And further introduces issues that were not canvassed before the trial Court, of which this Court will address later in this judgment.

16. Notably, this Court is judicious of the fact that the Appellant prosecuted both the lower Court and appellate proceedings in person and as a consequence may have been at a reasonable disadvantage as to presentation of his pleadings, rules of procedure and edicts of statute. It is manifestly evident from the amended memorandum of appeal that in a number of the grounds of appeal, the Appellant elected to use the trouble-inviting pair of words, so to speak, "law and in fact" in the face of a plain and straight-forward statutory exclusion of matters of fact pursuant to Section 38 of the *Small Claims Court Act*. Even for arguments sake, if the inclusion of the pair of words "in fact" in the said grounds presented in the amended memorandum of appeal was erroneous, a resolute examination of the grounds of appeal and arguments raised in support through the Appellants' submissions, undoubtedly reveals his intent. The issues raised therein, challenge the lower Court's inferences and decision on "facts" and not exclusively on the "law".

17. That said, a perfunctory review of the record of appeal and submissions before this Court, the key thrust of the Appellants' case is that there was an oral contract between himself and the Respondent in respect of the works appertaining to the repair and re-plaster of his stone water tank. On accord of the inferior work that was undertaken by the Respondent and or his assistant, the same occasioned the Appellant loss whereas the trial Court erred in failing to award the sums claimed in loss by the Appellant. It was further argued that the trial Court erred by strictly applying itself to rules of evidence contrary to the intent of the *Small Claims Court Act* meanwhile the trial Court ought to have applied itself to the provisions of the *Small Claims Court Act* and its rules thereto in light of the evidence adduced by the Appellant, to arrive at the conclusion that the Appellant was entitled to the sums pleaded. Curiously, notwithstanding the rather mutated appeal and or pleadings before this Court as juxtaposed against the lower Court claim, the Appellant's arguments appear primarily to rest on factual and evidentiary questions pertaining to the oral contract between the parties herein that more or less required of the trial Court to examine factual and evidentiary material place before it. It is equally not lost on this Court that the claim proceeded as undefended.

18. Indeed, the lower Court after considering the Appellant's pleadings and material relied on in support of his amended claim, stated in its decision that; -

> "I have considered the pleadings and evidence filed herein. Rule 5(2) of the Small Claims Court Rules provides as follows... "(2) A person claiming....."
>
> Section 107(1) of the *Evidence Act* (Chapter 80 of the Laws of Kenya) provides.... "107(1) Whoever desires....."

The Claimant provided receipts amounting to Kshs. 8,410/= which are the only documents proving the value of the moneys spent on repairing the tank which is sought to be recovered, labour and other costs have not been proved as there is no document showing the Claimant expended the amount claimed.

The other claim for loss of rain water and general damages have not been proved on a balance of probabilities and hence not awarded.

Consequently, I enter judgment for the Claimant against the Respondent as follows: -

1. liability 100%
2. Kshs. 8,410/=
3. Disbursements
4. Interest at Court rates from date of filing the suit until payment in full" (sic)

19. Palpably, the foregoing determination was arrived at upon analysis of the factual material presented before the trial Court. By his appeal, the Appellant is inviting this Court to re-evaluate the trial evidence, contrary to the provisions of Section 38 of the *Small Claims Court Act* and to make contrary findings thereon. As held in Bashir Haji Abdullahi (supra) an appellate Court faced with a situation of this kind is at liberty to strike out any grounds of appeal that are non-compliant while retaining those that are compliant. In this case, having reviewed the Appellant's grounds in the amended memorandum of appeal, the Court is inclined to strike out grounds 1, 2, 5, 7, 8, 10 & 11 for the tacit invitation contained therein to this Court to address factual issues. Therefore, it is only grounds 3, 4, 6, 9, 12 & 13 in the amended memorandum of appeal which appear to raise issues of law that can be entertained on this appeal.

20. Earlier, this Court had noted that the appeal herein attempts to introduce issues that were not canvassed before the trial Court. It is well trodden that cases are tried and determined on the basis of pleadings, see Court of Appeal decisions in Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank [2004] 2 KLR 91 and North Kisii Central Farmers Limited v Jeremiah Mayaka Ombui & 4 others [2014] eKLR. This Court while applying its mind to the above dicta in the fore-captioned decisions, invariably and as a matter of good practice, the only issues that can fall for determination before an appellate Court are issues arising from the original pleadings and or canvassed before the trial Court. Herein, the Appellant has proceeded to raise and submit on constitutional questions as appertains various sections of the *Small Claims Court Act*, issues of which were evidently not canvassed before the trial Court. Notwithstanding, the jurisdiction conferred upon this Court by dint of Article 165(2)(d) of *the Constitution*, to address constitutional queries, what was before the trial Court was contractual a dispute and not a constitutional question. To the foregoing end, this Court will decline the implied invitation by the Appellant to consider constitutional questions and or conflict of laws issues as may be addressed in the Appellant's grounds 3, 4, 6, 9, 12 & 13 in the amended memorandum of appeal and submissions.

21. Now to address the substratum of the appeal, pertinent to determining the issues before this Court are the pleadings, which formed the basis of the Appellant's cases before the trial Court. See Court of Appeal decision in Wareham t/a A.F. Wareham (supra). This Court had earlier outlined the gist of the Appellants' pleadings, as such it serves no purpose restating the same at this juncture. Further, having equally identified what the dispute before the trial Court gyrated on, the key question for determination is whether the trial Court's findings on the issues falling for determination therein were well founded. At this point, to contextualize the latter, the Court would ordinarily quote in extenso

the relevant facets of the impugned judgment however the same had earlier been done herein therefore equally negating the need to do the same at this point.

22. That said, the applicable law as to the burden of proof is found in Section 107, 108 & 109 of the *Evidence Act*. Whereas, it is well trodden that the same is on a balance of probabilities meaning that the Court will assess the oral, documentary and real evidence advanced by a party and decide which case is more probable. See Court of Appeal decision in Mumbi M'Nabea v David M.Wachira [2016] eKLR. Hence, the duty of proving the averments contained in the claim lay squarely on the Appellant. In Karugi & Another v Kabiya & 3 Others (1987) KLR 347 the Court of Appeal stated that: -

> " [T]he burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof. We would therefore venture to suggest that before the trial court can conclude that the plaintiff's case is not controverted or is proved on a balance of probabilities by reason of the defendants' failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant...--. The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim." (Emphasis added)

23. It is not in dispute that the Appellant contracted the Respondent to repair and re-plaster his stone water tank and that as a result of the substandard works undertaken by the latter, the Appellant lost water that ought to have been retained in the said water tank. At the heart of the dispute was an oral contract between the parties and the resultant damages on accord of the breach. The role a Court plays while adjudicating a dispute between contracting parties is well settled in the of-cited decision of National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR and this Court does not purpose to re-invent the wheel. That said, in Karugi (supra) it was equally settled that the party with legal burden must adduce evidence which in the absence of rebuttal evidence convinces the Court that on a balance of probabilities a claim has been proved.

24. With the foregoing legal proposition in mind, as a general rule, general damages do not issue for breach of contract. See:- Kenya Tourist Development Corporation v Sundowner Lodge Limited [2018] eKLR. However, an injured party would be entitled to itemized damages in respect of actual loss suffered as a result of the breach. In Anson's Law of Contract, 28th Edition at Pg. 589 - 590, it is stated: -

> " Every breach of a contract entitles the injured party to damages for the loss he or she has suffered. Damages for breach of contract are designed to compensate for the damage, loss or injury the claimant has suffered through that breach. A claimant who has not, in fact, suffered any loss by reason of that breach, is nevertheless entitled to a verdict but the damages recoverable will be purely nominal".

25. Meanwhile in Hahn -v- Singh [1985] KLR 716 it was held that;-

> " ...special damages must not only be specifically claimed but also strictly proved. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the acts themselves..."

26. As earlier, noted the Appellant was the only witness who testified in the matter and from the documents he relied on in support of his claim for damages and or special damages as can be gleaned from the record of appeal, he adduced receipts totaling Kshs. 8,410/- therefore the trial Court was not

in error to award the said amount that was only proved in the circumstance. As to the application of Section 3(3), 17 and 19 of the *Small Claims Court Act* to the matter and whether the trial Court erred, there is no indication from proceedings before the trial Court that there was any procedural impropriety by the trial Court. It is well known that our judicial system is adversarial and applying the dicta in Karugi (supra) onus is on the Claimant and or Plaintiff to prove his case on a balance of probabilities with the Court being an independent arbiter notwithstanding the Respondent's failure to appear. Therefore, reading of Section 19(1) of the *Small Claims Court Act*, it would have been arduous and unprecedent of the Appellant to expect the Court to compel the Respondent to defend and issue evidence in the claim, if he willfully declined to do so, in light of the fact that he was duly served with summons to enter appearance and file a defence, however failed to do so. Further, Section 32 of the *Small Claims Court Act* is not a waiver on evidentiary burden of proof in civil matters or on rules of evidence. Therefore, it still stands true that for the Appellant to succeed in his claim he ought to have called or adduced evidence in support notwithstanding its form and manner.

27. Consequently, the Appellant failed to establish on a balance of probabilities his case as against the Respondent and this Court cannot fault the trial Court for arriving at the decision it. Under Section 107 of the *Evidence Act*, the burden of proof lay with the Appellant and if his evidence did not support the facts pleaded, he failed as the party with the burden of proof. See the case of Wareham t/a A.F. Wareham (supra). Therefore, the appeal herein lacks merit and ought to be dismissed with no orders as to costs.

Determination

i. This Appeal is hereby dismissed.

ii. The Judgement and or Decree in Milimani SCCC No. E1794 of 2022 delivered on 25th November, 2022 is hereby sustained and or upheld.

iii. No orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23rd DAY OF SEPTEMBER, 2024

ROA 14 days.

HON. T. W. Ouya

JUDGE

For Appellant Bryson Mangala Agot

For Respondent No appearance

Court Assistant Martin Korir