



**Ilara Health Limited v Francis (Civil Appeal E163 of 2023)  
[2024] KEHC 11001 (KLR) (Commercial and Tax) (20 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL E163 OF 2023  
FG MUGAMBI, J  
SEPTEMBER 20, 2024**

**BETWEEN**

**ILARA HEALTH LIMITED ..... APPELLANT**

**AND**

**DR. CAREY FRANCIS ..... RESPONDENT**

*(Being an appeal from the Judgment delivered on 27/4/2023 (Hon.  
DS Aswani, RM/Adjudicator) in SCCCOMM NO. E6199/2022)*

**JUDGMENT**

**Background**

1. The Small Claims Court delivered a judgment on 27/4/2023 in favour of the respondent and ordered the appellant to pay the respondent a sum of Kshs.727,540/=.
2. The appellant being aggrieved by the judgment appeals against the entire order to this court on six (6) grounds of appeal as more specifically laid out in the Memorandum of Appeal dated 24/7/2023. In opposition to the appeal, the respondent filed submissions dated 19/12/2023 while the appellant filed submissions dated 9/12/2023 in support of its appeal.
3. From the statement of claim filed at the trial court, the dispute between the parties arises from a credit agreement dated 22/8/2020. Under this contract the appellant sold some medical devices and accessories to the respondent at a cost of Kshs. 698,500/=. The respondent, who was the claimant at the lower court, contends that upon completing all the payments and having overpaid, he opted to transfer legal title to the items to his name.



4. The appellant declined to transfer the same and instead demanded for additional monies. The respondent declined to make any further payments and the appellant switched off the equipment giving rise to the suit.

### **Analysis and Determination**

5. The court has considered the record of appeal dated 8/11/2023, the submissions filed by the parties and authorities cited by both.
6. The appellant raises a preliminary issue challenging the jurisdiction of this court which must be determined before analysing the substantive grounds of appeal. The challenge is premised on the fact that all of the grounds of appeal contained in the Memorandum of Appeal dated 24/7/2023 are based on an appreciation of facts and not law even though the words “erred in law” have been used. The respondent contends that the basic definition of a matter of law is an issue requiring the court's interpretation of the law or relevant principles of the law.
7. On this account and considering that appeals from the Small Claims Court can be sustained by the High Court only on matters of law, the appellant argues that this court lacks the jurisdiction to entertain the appeal. Conversely, the respondent contends that the issues raised in the appeal do indeed qualify as matters of law, thereby granting the court the requisite jurisdiction to hear and determine the case.
8. The authority to hear appeals from the Small Claims Court is conferred by Section 38(1) of the [\*Small Claims Court Act\*](#). It states as follows:

“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.”

9. Although both parties agree on this point, the dispute lies in whether the Memorandum of Appeal, as drafted, meets these requirements. In other words, the key issue is determining what constitutes matters of law and whether the grounds raised by the appellant qualify as such.
10. In [\*Patrick Sosio Lekakeny v Tomito Alex Tampushi & 3 Others\*](#), [2018] eKLR, the court referred to the English case of *Bracegirdle v Oxley*, (1947) 1 All ER 126, where Lord Denning provided guidance on distinguishing matters of fact from matters of law. He stated as follows:

“The question whether 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 deduced by a process of reasoning from them. The determination of primary facts is always a question of facts. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depends on them. The conclusions from those facts are sometimes conclusions of facts and sometimes conclusions of law. .... The court will only interfere if the conclusions cannot reasonably be drawn from the primary facts. ....”

11. Relying on these observations, the court in the [\*Patrick Sosio case\*](#) went on to find that:

“It is clear from the foregoing matters that the jurisdiction of this court is limited to issues of law only. As was rightly pointed out by Lord Denning in *Bracegirdle v. Oxley*, *supra*,



the conclusions which are drawn from the facts are sometimes conclusions of fact and sometimes of law. This dichotomy will always be there. It therefore follows that as to whether a conclusion drawn is one of fact or law depends on the particular circumstances of each case. In other words, the distinction between fact and law will have to be decided on a case by case basis.”

12. Guided by these authorities, I am of the view that the crux of the appeal before this court lies in the Learned Adjudicator’s finding that the parties had entered into an agreement for the supply of medical devices and accessories on credit, which the appellant subsequently breached. This finding formed the basis for the judgment delivered in favor of the respondent.
13. Furthermore, as the grounds of appeal involve the adjudicator’s interpretation of the agreement’s clauses and the application of legal principles to those clauses, I have no doubt that these are indeed points of law. In my view, the issues raised extend beyond the evidence or facts presented at the lower court.
14. Having established that this court has jurisdiction, I now turn to the substantive appeal. The grounds of appeal can be distilled into one central issue: whether the respondent proved his case on a balance of probabilities before the trial court so as to entitle him to the judgment by the trial court.
15. I have reviewed the record of appeal, which indicates that the parties entered into three (3) separate contracts, all dated 22/8/2020. By the agreements the appellant agreed to supply medical devices and accessories to the respondent. According to the contracts, the respondent was required to pay a deposit for the equipment, followed by monthly installments over a specified period. Upon completion of these payments, the respondent had the option to either purchase the devices or upgrade them.
16. It is apt to reproduce Clause 3 of the agreement which provides as follows:

“Upon successful completion of the payment obligations, the customer has the right either to upgrade the device to the same or newer version, the pricing of which shall be communicated within 2 months of the end of this contractual term, or purchase the devices for an additional fee equivalent to an additional month of payment based on terms agreed in this contract. In case of the latter, Ilara Health shall then transfer ownership of the medical device to the Customer. Until this event occurs legal title of all medical devices & the tablet shall remain with Ilara Health.”
17. The trial court made a factual finding at page 9 of its judgment that the Respondent proved through the reconciled statement of account that the Claimant made an overpayment to the tune of Kshs 29,040/= . This was not countered by concrete evidence by the Claimant.
18. That being the case, the question is whether the respondent should have been allowed to exercise the option to have the legal title of the medical accessories transferred to his name.
19. I reiterate just as the trial court did, the holding by the Court of Appeal in *National Bank of Kenya Limited v Pipeplastic Samkolit (K) Limited & Another*, [2001] eKLR. The court held that:

“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”
20. The agreements before the court are very clear as to the intention of the parties. The appellant contends in its Memorandum of Appeal that the Learned Resident Magistrate/ Adjudicator erred in law in



failing to consider the Appellant's defence that the contract of 22/08/2020 was on "Lease-to-Purchase" terms and not on credit terms.

21. It is important to distinguish between the two types of agreements. A lease-to-purchase contract allows a party to rent an item with the option to purchase it at a later date. This agreement typically involves a lease period during which the tenant pays to use the item.
22. A portion of the rent may be applied toward the purchase price. A key distinction in a lease-to-purchase agreement is that, at the end of the lease term, the tenant has the option (but not the obligation) to buy the property at a predetermined price. Ownership of the property or item remains with the owner during the lease period. The lessee only acquires ownership if they exercise the purchase option and complete the purchase.
23. In contrast, a credit agreement is a contract where a lender provides a borrower with a sum of money, goods, or services upfront, and the borrower agrees to repay the lender over time, typically with interest.
24. Indeed, the agreement between the parties was a lease-to-purchase contract. Accordingly, the respondent had the option to purchase the goods upon making full payment. I concur with the trial court's finding that the appellant breached the contract by denying the claimant quiet possession of the [purchased] sic items, withholding the transfer of the equipment unreasonably and even involving debt collectors, despite the full and agreed price having been paid.
25. Having correctly found that the appellant breached the contract, the trial court had the discretion to make appropriate orders and give a just remedy including specific performance, retribution or damages. In this case, the Learned Adjudicator ordered the repayment of the contract price together with the overpayment by the appellant upon which it would be at liberty to repossess the items. This puts both parties where they would have been had there not been a breach of the contract. I find no reason to interfere with the judgment of the lower court.

### **Disposition**

26. Accordingly, the appeal before this court lacks merit and is dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**F. MUGAMBI**

**JUDGE**

