



Crown Beverages Limited v MFI Document Solutions Limited (Civil Appeal E833 of 2021) [2023] KEHC 58 (KLR) (Civ) (17 January 2023) (Judgment)

Neutral citation: [2023] KEHC 58 (KLR)

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

CIVIL

CIVIL APPEAL E833 OF 2021

DAS MAJANJA, J

JANUARY 17, 2023

BETWEEN

CROWN BEVERAGES LIMITED APPELLANT

AND

MFI DOCUMENT SOLUTIONS LIMITED RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. M. Mutua, Adjudicator/RM dated 3rd December 2021 at the Small Claims Court at Nairobi in SCCC Claim No. 728 of 2021)

JUDGMENT

1. This appeal arises from a judgment of the Small Claims Court where the adjudicator allowed the respondent's claim and entered judgment for the respondent against the appellant for Kshs 156,600.00 costs and interest thereon.
2. In order to address the issues in this appeal, a summary of the facts as set out in the pleadings is necessary. In its statement of claim dated August 11, 2021, the respondent stated that it supplied photocopying equipment to the appellant. It claimed that the appellant failed to pay for services rendered between March 30, 2019 and July 31, 2019 amounting to Kshs 156,600.00. In its response to the statement of claim dated August 26, 2021, the appellant denied that it owed the respondent the amount claimed as the respondent supplied it with a non-functional printer in breach of the service level agreement dated January 12, 2017 ("the agreement"). It further stated that the respondent failed to rectify the breach despite demand causing the appellant to terminate the agreement by issuing a 14-day termination notice dated May 7, 2020 ("the termination notice"). It averred that since it did not receive the services of the printer, it was not liable to pay for services not rendered.
3. At the hearing, the respondent called its finance director, Sachin Mittal (PW 1) as its witness while the appellant called Barry Otieno (DW 1). In the judgment, the adjudicator framed three issues for



determination. First, whether there was an existing contract between the parties for the period in question. Second, whether it was probable that the printer was in use during the period subject of the claim and last, whether the respondent proved its case on the balance of probabilities.

4. On the first issue, the adjudicator ruled that agreement was not in dispute in view of the termination notice issued by the appellant. On the second issue, the adjudicator held that the respondent's claim concerned the period between March 2019 and July 2019 which was prior to the period when the appellant issued the termination notice and that the emails produced in evidence were exchanged in 2018. The Adjudicator concluded it was more probable than not that the printer was in use in 2019 as the appellant had not issued a termination notice when the issues with the printer arose. The adjudicator also held that the appellant did not settle or dispute the invoices sent to it.
5. Before I consider the grounds of appeal and the parties' written submissions, it is important to recall the appellate jurisdiction of this court in relation to appeals from the Small Claims Court is circumscribed by section 38(1) of the *Small Claims Court Act*, 2016 ("the SCCA") which 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.' A court limited to resolving matters of law 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 (see *John Munuve Mati v Returning Officer Mwingi North Constituency and 2 others* NRB CA EPA No 5 of 2018 [2018] eKLR).
6. The central issue for determination by the trial court was whether the respondent proved its case against the appellant. The appellant's case is set out in the memorandum of appeal dated December 17, 2021. It claims, *inter alia*, that the adjudicator failed to take into account the consideration that he ought to have taken into account, that the adjudicator failed to apply the law of evidence including the law on admissions and also failed to evaluate and assign appropriate weight to the legal arguments and evidence. That the adjudicator failed to appreciate the public policy against unjust enrichment. The appellant further impugns the judgment on the ground that it was delivered outside the time limited for delivery under section 34(2) of the SCCA.
7. Before I deal with the substance of the appeal, let me deal with implications of section 34(2) of the SCCA which provides as follows:
 34. Expeditious disposal of cases
 - (1) All proceedings before the court on any particular day so far as it practicable shall be heard and determined on the same day or on a day to day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.
 - (2) Judgment given in determination of any claims shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.
 - (3) -----
 - (4) -----
8. It is not in dispute that the suit before the subordinate court was heard on September 29, 2021 and October 28, 2021 and upon conclusion of the trial, the judgment was delivered on December 3, 2021. Based on the timelines, the appellant argued that the trial court violated the mandatory provisions of the SCCA and as a result of the delay, the jurisdiction of the trial court lapsed hence the judgment ought to be set aside. The respondent takes the view that the judgment is valid as the court conducted



a full trial and in any case, the appellant was to blame for delay. It adds that the court has the power to enlarge time especially if the reason for extension is beyond the control of the court.

9. Although section 34(2) of the SCCA is couched in mandatory terms, the court must look at the context of the provision in light of the guiding principles which include, inter alia, the timely disposal of all proceedings before the court using the least expensive method. The provision as to delivery of judgment is meant to be directory and not mandatory as it is not the intention of the SCCA to invalidate any proceedings that violate the statutory timelines. To adopt such a position would undermine the statutory objects and cause injustice to the parties as the case would have to be reheard.
10. The issue of breach of timelines for delivery of judgment is not a novel issue and has been dealt with by our courts in reference to order 21 rule 1 of the [Civil Procedure Rules](#) which provides that judgments must be delivered within 60 days upon conclusion of the hearing. In [Nyagwoka Ogora alias Kennedy Kemoni Bwogora v Francis Osoro Maiko](#) Civil Appeal No 271 of 2000 (UR) the Court of Appeal observed as follows:

The real question is what is the consequence of non-compliance therewith? no doubt that rule is an important one in the expeditious dispensation of justice. And it is made to be obeyed. However, if non-compliance with the rule were to have the effect contended for by the appellant, we think the overall result would be more injustice than justice to the parties. A lot of time and resources spent in litigation would come to naught if judgments delivered after the expiry of 42 days were to be voided or declared void ipso facto. The rule cannot and in our view could not have been intended to deprive a trial judge of his jurisdiction to write and pronounce judgment in a case he has heard. In our considered view, while non-compliance with the rule and particularly persistent non-compliance or inordinate delay in compliance should call for censure of the judicial officer concerned from those in-charge of judicial administration, it should not be a ground for vitiating a duly delivered judgment. Being of that persuasion we would reject ground 1 of appeal.

11. There may be instances where the delay is inordinate and such delay prejudicial to the parties. In such cases, the court may set aside the judgment as was held by the Court of Appeal in [Manchester Outfitters Services Limited and Another v Standard Chartered Financial Services Limited and Another](#) [2002] eKLR. The appellant does not contend that the failure to deliver the judgment within the stipulated timelines was prejudicial or that the delay was inordinate. I therefore reject the appellant's contention that the judgment is null and void.
12. Turning to the substance of the suit and appeal, there is no dispute that the parties entered into a service level agreement dated January 12, 2017. Under the agreement, the appellant was to pay a fixed monthly rental charge of Kshs 18,000.00 plus VAT and rates per page depending on usage. The appellant would be invoiced monthly. It is true that a dispute arose between the parties regarding a defective machine as evidenced by the emails exchanged between the appellant and respondent between March 20, 2018 and June 5, 2018. The invoices forming the basis of the claim were issued between March 30, 2019 and July 31, 2019.
13. The trial magistrate was right to note that the complaint regarding the printer arose much earlier before the invoices in issue were issued. In any case, the appellant had the right to terminate the agreement by giving due notice in 2018 but it failed to do so at the time and only did so in May 2020. There is also no evidence that it contested the invoices that were issued for the period in dispute bearing in mind that under clause 3.2 of the agreement the invoices were required to be settled within 30 days of the date of the invoice. This is further buttressed by clause 3.4 which provides that where the invoices are not in dispute and are unpaid beyond the 30 days, they shall accrue a 2.5% interest rate on the



invoice value per month. As the time the invoices were issued, there was no dispute and they became due and owing. Upon termination of the agreement, the liability to pay the sum remained as clause 11.4 provides that, “Any termination of the agreement in whole or in part howsoever occasioned shall not affect any accrued rights or liabilities of either party

14. Having considered the material on record and bearing in mind the jurisdiction of this court, I cannot say that the decision of the adjudicator was perverse to warrant interference. It is consistent with the pleadings, evidence and submissions on record and as such the appeal is dismissed.
15. The appellant shall bear the costs of this appeal assessed at Kshs 30,000.00 only.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JANUARY, 2023.

D. S. MAJANJA

JUDGE

Mr Wathuta instructed by Kiragu Wathuta and Company Advocates for the Appellant.

Ms Amadi instructed by S. A. Amadi and Company Advocates for the Respondent.

