



**Kartar Singh Dhupar & Company Ltd v ARM Cement PLC (In Liquidation) (Civil Appeal 129 of 2022) [2023] KEHC 2417 (KLR) (Commercial and Tax) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2417 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL 129 OF 2022  
PN GICHOHI, J  
MARCH 23, 2023**

**BETWEEN**

**KARTAR SINGH DHUPAR & COMPANY LTD ..... APPELLANT**

**AND**

**ARM CEMENT PLC (IN LIQUIDATION) ..... RESPONDENT**

*(Being an appeal from the judgment and order of Honourable C. A. Okumu(Ms), Adjudicator, delivered on the 23rd day of August, 2022 in SCCOMM No. 3459 of 2022- ARM Cement PLC (In Liquidation) V Kartar Singh Dhupar & Company Limited)*

**Jurisdiction of the Small Claims Court to determine a matter after lapse of the statutory sixty (60) days for the determination of a matter before it**

Reported by Kakai Toili

**Jurisdiction** - jurisdiction of the Small Claims Court - determination of matters by the Small Claims Court within the sixty (60) day period provided by statute - jurisdiction to determine a matter before it after lapse of the statutory sixty (60) days - whether the Small Claims Court had jurisdiction to render a determination after the expiry of the statutory sixty-day period prescribed for concluding matters before it - what were the underlying objectives and policy reasons for the establishment of the Small Claims Court - Small Claims Court Act (cap 10A) sections 3 and 34.

**Electoral Law** - election petitions - timelines for determining election petitions - what was the rationale behind the imposition of strict timelines under electoral laws?

**Brief facts**

The respondent instituted a claim before the Small Claims Court (the trial court) seeking payment of Kshs 629,599.21 from the appellant for goods allegedly supplied and delivered. The appellant denied liability, asserting that no Local Purchase Order (LPO) had been issued by it to the respondent for the procurement of the goods. It further argued that, in accordance with procedure, any goods delivered should have been



received and duly stamped by the appellant’s representative—something which did not occur. The appellant also contended that the invoices produced by the respondent merely indicated dispatch, not receipt, and that the goods in question were never received by the appellant. Upon considering the evidence, the trial court rendered judgment on August 23, 2022 in favour of the respondent, awarding Kshs 629,599.21 plus costs and interest.

Aggrieved by the decision, the appellant lodged the instant appeal. One of the central grounds was that the trial court had delivered its judgment outside the sixty-day time limit prescribed under the Small Claims Court Act and thus lacked jurisdiction as of August 23, 2022. The appellant argued that the trial court’s jurisdiction ceased by operation of law on August 6, 2022, sixty days after the conclusion of the hearing. It was contended that the court erred in failing to recognize the statutory time constraint on its jurisdiction and that the judgment was rendered without jurisdiction. Accordingly, the appellant sought to have the judgment set aside, the orders of August 23, 2022, quashed, and the appeal allowed with costs both in the appeal and the trial proceedings.

### **Issues**

- i. Whether the Small Claims Court had jurisdiction to render a determination after the expiry of the statutory sixty-day period prescribed for concluding matters before it.
- ii. What were the underlying objectives and policy reasons for the establishment of the Small Claims Court?
- iii. What is the rationale behind the imposition of strict timelines under electoral laws?

### **Relevant provisions of the Law**

#### **Small Claims Court Act (cap 10A)**

#### **Section 34 - Expeditious disposal of cases**

1. *All proceedings before the Court on any particular day so far as is 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 claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.*
3. *The Court may only adjourn the hearing of any matter under exceptional and unforeseen circumstances which shall be recorded and be limited to a maximum of three adjournments.*
4. *When considering whether to allow an adjournment on the grounds of exceptional and unforeseen circumstances referred to in subsection (3), the court may in particular take into consideration where appropriate any of the following exceptional and unforeseen circumstances—*
  1. *the absence of the parties concerned or their advocate or other participants to the proceedings required to appear in court for justified personal reasons which may include sickness, death, accident or other calamities;*
  2. *an application by a party for the Adjudicator to withdraw from hearing the matter;*
  3. *a request by parties to settle the matter out of court;*
  4. *an appeal filed in the matter where orders of stay of proceedings have been granted;*
  5. *an application by a party to summon new witnesses to court, collect new evidence, new inspection or evaluation or supplementary investigation on the subject matter of the case; and*
  6. *any other exceptional and unforeseen circumstances which in the opinion of the court justifies or warrants an adjournment.*

### **Held**

1. Being a first appeal, it was incumbent upon the appellate court to re-evaluate the evidence afresh and arrive at its independent conclusions, while bearing in mind that it neither saw nor heard the witnesses as the trial court did.



2. The memorandum of appeal challenged the trial court’s decision on a point of law—namely, jurisdiction relating to the statutory timelines for the determination of claims under the Small Claims Court Act. The record showed that the matter had been canvassed through written submissions without oral testimony. The appeal, therefore, fell within the ambit of section 38 of the Act and could not be dismissed as scandalous or vexatious.
3. Upon delivery of the impugned judgment, the appellant requested and was granted a 30-day stay of execution but did not file a formal application for a stay pending appeal. Consequently, the issue of deposit of security for costs did not arise, as the matter before the court was a substantive appeal, not an application for leave to appeal.
4. The trial court record demonstrated the existence of a contractual relationship between the parties for the supply of cement. The respondent delivered the goods, and the appellant made partial payment, leaving an outstanding balance of Kshs 629,599.21. The trial court correctly analyzed the evidence and made no error of law or fact in entering judgment for the respondent.
5. There was no dispute regarding the trial court’s initial jurisdiction to entertain the matter. The respondent filed the claim on June 6, 2022, and served the appellant on June 16, 2022. The matter was first mentioned on June 20, 2022, in the presence of both parties. Although the appellant had not yet filed a response, he explained the delay. Under section 34(3) and (4) of the Act, the trial court had the discretion to grant adjournments in appropriate circumstances.
6. The appellant was granted seven (7) days to file his response, and the matter was listed for mention on June 30, 2022. On that date, the response had not been filed; the appellant attributed the delay to his absence. The court granted an additional adjournment, directing the filing by July 7, 2022, and set the next mention for July 19, 2022. By then, the response had been filed, and the matter was certified ready for hearing. The parties agreed to proceed by way of written submissions, which were filed by August 2, 2022. Pursuant to section 34(2) of the Act, the trial court was required to deliver its judgment on the same day or within three days of the hearing.
7. On August 2, 2022, only three (3) days remained before the statutory 60-day period lapsed. Judgment was required to be delivered by August 5, 2022. However, the trial court scheduled judgment for August 19, 2022, and ultimately delivered it on August 23, 2022. No justification was recorded for the delay, and the claimant was noted as absent. The judgment was thus rendered 17 days beyond the statutory deadline.
8. The rationale for strict timelines in electoral laws was grounded in the need to prevent prolonged litigation and ensure finality in the electoral process. In the past, election petitions often remained unresolved for the entire electoral cycle, undermining public confidence in the judicial system. Strict timelines were therefore introduced to restore credibility and prevent abuse of process.
9. The objectives behind the establishment of the Small Claims Court included promoting access to justice, easing the cost and complexity of litigation, and expediting the resolution of commercial and civil disputes. Those objectives were grounded in section 3 of the Small Claims Court Act and formed the foundation of its procedural framework.
10. The respondent approached the court in pursuit of justice as contemplated under the Act. However, despite being aware of the statutory timelines, the appellant caused significant delays by failing to file a response timeously and by seeking multiple adjournments. Although the respondent did not directly cause the delay, it failed to object or raise concerns regarding the lapse of time, thus appearing indifferent to the timelines—an unfortunate posture in time-bound litigation.
11. Considering the purpose and framework of the Small Claims Court, it would be inequitable for the appellant, having contributed to the delay, to now rely on section 34 to challenge the judgment. Nevertheless, jurisdiction was a matter of law, not equity. Once the statutory time limit expired, the trial court ceased to have jurisdiction, and sympathy or practical considerations could not cure that jurisdictional defect.



12. The judgment delivered on August 23, 2022, by the Small Claims Court was rendered outside the statutory 60-day period prescribed under section 34 of the Small Claims Court Act. As such, it was issued without jurisdiction and was therefore a nullity, lacking any legal force or effect.

*Appeal allowed; judgment delivered on August 23, 2022 was quashed.*

### **Orders**

*Each party to bear its own costs.*

### **Citations**

#### **Cases**

#### **Kenya**

1. *Aprim Consultants v Parliamentary Service Commission & another* Civil Appeal E039 of 2021; [2021] KECA 1090 (KLR)
2. *Karua, Martha Wangari v Independent Electoral and Boundaries Commission, Seki Lempaka, Anne Waiguru & Peter Ndambiri* Petition 3 of 2019; [2019] KESC 26 (KLR) - Explained
3. *Kivanga Estates Limited v National Bank of Kenya Limited* Civil Appeal 217 of 2015; [2017] KECA 591 (KLR) - Mentioned

#### **Regional Court**

*Selle & another v Associated Motor Boat Co Ltd & others* [1968] EA 123) - Explained

#### **Statutes**

#### **Kenya**

1. Civil Procedure Rules, 2020 (cap 21 Sub Leg) order 42 - (Interpreted)
2. Public Procurement and Assets Disposal Act (cap 412C) section 175 - (Interpreted)
3. Small Claims Court (Amendment) Rules, 2020 (cap 10A Sub Leg) rule 30 - (Interpreted)
4. Small Claims Court Act (cap 10A) sections 34, 34(1); 34(3)(4) - (Interpreted)

#### **Advocates**

*Mr Kiprotich* for the respondent

## **JUDGMENT**

1. The background of this matter is that through the firm of Atim Apum & Co Advocates, the respondent (ARM Cement PLC (In Liquidation), who was claimant, filed a claim dated June 6, 2022 in the Small Claims Court against the appellant (Kartar Singh Dhupar & Company Limited who was the respondent, for payment of the sum of Ksh 629, 599. 21 for goods supplied and delivered to the appellant on or about February 18, 2015.
2. The appellant filed his statement of response dated July 6, 2022 through the firm of Waruhiu & Co Advocates denying the claim on the grounds that there was no local service order (LPO) from the respondent requesting for the said goods from the respondent and that any delivery made to the appellant ought to have been received and stamped but this was not done.
3. Further, the appellant stated that the invoices attached by the respondent only showed to have been dispatched to the appellant but the appellant never received the goods. That the alleged debt was null, void and unenforceable against the appellant for lack of a consent, and/or approval, as there was no acknowledgment bearing the appellant's sign and or mark to receive the goods.
4. The claim was canvassed by way of written submissions and the court finally delivered its judgment on August 23, 2022 where it found that the respondent had established on a balance of probability that there was supply and delivery of the goods to the appellant and that the amount remained unpaid.



Therefore, the court entered judgment in favour of the respondent as against the appellant in the sum of Ksh 629, 599.21 plus costs and interest.

5. The appellant was aggrieved by this decision and filed a memorandum of appeal dated September 20, 2022 listing four grounds of appeal as follows;
  1. That the learned trial magistrate/adjudicator misdirected herself on several matters of law.
  2. That the learned trial magistrate/adjudicator erred in law by failing to appreciate that the jurisdiction of the trial court was time bound that ran out and ceased by effluxion of time on the 6<sup>th</sup> day of August, 2022 being the date and day the court's time-bound jurisdiction ceased to exist by dint of section 34(1) of the *Small Claims Court Act* No 2 of 2016.
  3. That the learned trial magistrate/adjudicator erred in law by failing to take into account legal and fact that the moment the sixty (60) days ended, the jurisdiction of the court also ended.
  4. That the learned trial magistrate/adjudicator erred in law by failing to take cognisance of the legal fact that the judgment rendered and returned outside time was without jurisdiction ergo a nullity bereft of any force of law.
6. The appellant therefore seeks that this court sets aside the judgment by the adjudicator, Hon CA Okumu (Ms), quash the orders of August 23, 2022 and allow the Appeal with costs of both the appeal and the trial court proceedings.
7. The respondent filed amended notice of preliminary objection dated January 13, 2023 against the memorandum of appeal and an affidavit in support sworn on January 13, 2023 by Joan A Atim Advocate in the firm of Atim Apuun & Co Advocates for the respondent.
8. Counsel states that the appellant misdirected itself on the purport, intent and application of section 34(1) of the *Small Claims Court Act* No 2 of 2016 and terms the memorandum of appeal vexatious as it does not raise any point of law on the case and/or judgement of the honourable magistrate. Further, counsel states that the memorandum of appeal does not operate as a stay and that the appeal has not been secured. The respondent contends that the memorandum of appeal is defective, a waste of the court's time and a delaying tactic meant to deny the respondent the fruits of the judgment.
9. Giving the background and chronology of the flow said case before the Small Claims Court, counsel depones that the court had jurisdiction by dint of sec 12 of the *Small Claims Act, 2016* to hear and determine the claim instituted by the respondent on June 9, 2022 against the appellant for the recovery of the debt. Further, she depones that the court endeavoured and determined the matter within the Sixty (60) days period set in section 34 of the Act and that there was no inordinate delay and the appellant did not take into account non- working days in adding time.
10. That despite the court's endeavours, one adjournment was caused by the appellant on June 30, 2022 who requested for more time to file a response to the claim and the other by the court at the time of delivery of judgment on August 19, 2022 when the court stated that judgment was not ready and deferred it to August 23, 2022. She therefore depones that the extension of time was not occasioned by the respondent/claimant.



11. Counsel depones that immediately after delivery of judgment, the appellant was granted Thirty (30) days stay of execution which has since lapsed. Lastly, counsel urges the court to strike out the memorandum of appeal with costs and uphold the lower court judgment .

### Submissions

12. Filed together with the preliminary objection were submissions by the respondent dated January 13, 2023. Citing the case of *Kivanga Estates Ltd v National Bank of Kenya Limited* [2017] eKLR, counsel submits that this court has discretion to strike out pleadings at any stage if the same is scandalous, frivolous or vexatious.
13. While citing rule 30 of the *Small Claims Court (Amendment) Rules 2020*, counsel submits that that a party aggrieved by the judgment or order of the court may appeal pursuant to section 38 of the act, appeal to High Court in accordance with order 42 of the *Civil Procedure Rules 2020*. However, the appellant was given the thirty days stay after delivery of the judgment, it never took time to file a formal application upon lapse of the time but instead opted to file this memorandum of appeal and no security for costs has been filed to secure the appeal.
14. The appellant did not file submissions and did not attend court for directions on this matter.

### Determination

15. This being a first appeal, this court is duty bound to re-evaluate the facts afresh and come to its own independent findings and conclusions while bearing in mind that unlike the trial court, this court has neither seen nor heard the witnesses when they testified as stated in *Selle & another v Associated Motor Boat Co Ltd & others* [1968] EA 123 where it was stated;

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

16. However, it is clear from the memorandum of appeal that the appellant is attacking the judgment on point of law only and which is on jurisdiction regarding timelines for hearing and concluding a matter before the Small Claims Court. Further, a perusal of the lower court original record shows that the parties therein had canvassed the claim by way of written submissions and therefore, no witness testified. I have already highlighted the pleadings by parties in the lower court. The broad issues for determination before this court therefore , are :-

1. Whether this appeal is incompetent.
2. Whether the error in law and fact in arriving at the judgment by the trial court.
3. Whether jurisdiction of the court had ceased at the time of delivery of the judgment thus rendering the judgment a nullity.

17. As to the competence of the appeal, section 38 of the *Act* that;
  - a. 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.



- b. An appeal from any decision or order referred to in subsection (1) shall be final.
18. The grounds of appeal herein clearly fall within the provisions of section 38 of the Act. In the circumstances stated herein, this court is not persuaded that the appeal herein is scandalous or vexatious for not raising a fundamental point of law as submitted by the respondent's counsel. The Court of Appeal decision in Kivanga Estates Limited v National Bank of Kenya Limited [2017] eKLR cited by counsel does not support the respondent.
19. Further, it is factual that the appellant sought and was granted Thirty (30) days of execution when the judgment was delivered but did not file any formal application for stay pending appeal. The issue as to deposit of security for costs would not arise in the circumstances as what is before court is an appeal not application for leave to appeal.
20. On whether there is an error in law and fact in arriving at the judgment by the trial court, it is clear from the lower court record that there was a contractual relationship between the appellant and the Respondent for the purchase and supply of cement.
21. Various correspondences between the parties in regard to the payment of the said sum by the appellant reveal a confirmation of that contract between the two parties. In light of the delivery notes, the statements of account and emails between the parties as attached to the statement of claim, the appellant's argument that if the goods were delivered then it was without order by the appellant, does not therefore stand.
22. Indeed, that is well captured in paragraph 4 and 5 of the judgment as follows:
- “The respondent submitted that there existed a valid contract between themselves and the claimant for the supply of bags of cement to the respondent's warehouse.
- It is undisputed that there existed a valid contract between the two parties as evidenced by email correspondences between the parties and their admission.”
23. The respondent did supply the cement and the appellant made only part payment leaving the balance of the amount claimed in the respondent's claim as Ksh 629,599.21 as found by the trial court. I see no error in law or fact in the analysis by the said court in arriving at that judgment.
24. There is no dispute on jurisdiction of the honourable magistrate/ adjudicator in starting to hear this case. From the lower court record, it is clear that the respondent's claim was filed on June 6, 2022 and served on the appellant on June 16, 2022. The matter was first listed before the honourable magistrate/ adjudicator on June 20, 2022 and both parties were present. However, the appellant had not filed a response despite the provisions of section 34 of the Act on expiations disposal of the matter and in particular sec 34(1) that;
- “All proceedings before the court on any particular day so far as is 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.”
25. The reason for not filing the response was explained to court. Adjournment of the matter is within the discretion of the court as provided for under section 34(3) and (4) of the Act that;
3. “The court may only adjourn the hearing of any matter under exceptional and unforeseen circumstances which shall be recorded and be limited to a maximum of three adjournments.



4. When considering whether to allow an adjournment on the grounds of exceptional and unforeseen circumstances referred to in subsection (3), the court may in particular take into consideration where appropriate any of the following exceptional and unforeseen circumstances—
  - a. the absence of the parties concerned or their advocate or other participants to the proceedings required to appear in court for justified personal reasons which may include sickness, death, accident or other calamities;
  - b. ..;
  - c. ...;
  - d. ....;
  - e. ...and;
  - f. any other exceptional and unforeseen circumstances which in the opinion of the court justifies or warrants an adjournment.”
26. The court granted the appellant Seven (7) days to file the response and the matter to be mentioned on June 30, 2022. Surprisingly, the appellant had not yet filed the response by the time the matter came for mention on that date as scheduled. The grounds were that the appellant was away for two weeks. The appellant sought more time and was ordered to file the same by close of business on July 7, 2022. That was the second adjournment on the matter. The court granted the adjournment and the matter was scheduled for further mention on July 19, 2022.
27. The appellant had filed his response by then and the matter was certified ready for hearing. Parties agreed to dispose of the matter by way of written submissions. Both had complied by the date set that is, August 2, 2022. Section 34(2) of the Act provides that; “Judgment given in determination of any claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.”
28. On August 2, 2022 when the court set a date for judgment, only three days remained to the expiry of the timelines. The court should have delivered its judgment on or before the August 5, 2022 which was the day the sixty (60) days lapsed. The court however set set judgement date as August 19, 2022.
29. There is nothing indicated on record as to why the court deferred the judgment to August 23, 2022 but it is indicated that the claimant was absent. The judgment was delivered on August 23, 2022 as scheduled. That was well over the Sixty (60) days allowed by the law, and to be precise, Seventeen (17) days after the lapse. The question therefore is, should the judgment and proceedings be declared a nullity due to the fact that they went beyond the timelines set by the law?
30. While dealing with timelines in an election petition, it was argued in Supreme Court Petition 3 of 2019 Martha Wangari Karua v Independent Electoral and Boundaries Commission & 3 others [2019]eKLR, that the High Court proceedings that occurred after the lapse of Six (6) months were a nullity as well as the judgment delivered by that court. The Supreme Court held:

“As already stated, all election petitions must be resolved within the provided timeframes without qualifications. In this case, we have noted that High Court determined the petition before it after lapse of the 6 months from the date of filing. That was an affront to the Constitution and enabling electoral laws. As such, we agree with the Court of Appeal that



the said High Court proceedings were a nullity...we restate that upon lapse of time, the High Court had no jurisdiction to determine the petition... As such, no remedy was available to any party.”

31. On the issue as to who should bear the costs, the Supreme Court went on “...We sympathise with the petitioner who , without any fault of her own , has been locked out of the seat of justice...yet...the proceedings have been declared a nullity, no party can claim success...Each party should bear its own costs.”
32. That is in regard to election petitions and the reasoning behind introduction of those strict timelines in electoral laws was peculiar including huge financial resources spent in that cycle. Previously, a petition would remain pending in court for a long period of time, deliberately or otherwise. At times , an election petition would be determined after the respondent served his/her full time in the position the subject of the petition or, just a few months before such term ended. That made the whole process a mockery of justice. The petitioners therein , and the public at large, lost faith in the judicial system. That is why those timelines must strictly be complied with.
33. What about the Small Claims Court? Some of the reasons for introducing that court were to enhance ease of doing business in this country, reduce backlog of cases by having disputes resolved through simple, inexpensive and expeditious procedures, thus enhancing access to justice. The guiding principles in handling those cases are found in section 3 of the [Small Claims Act 2016](#) as follows;
  1. In exercise of its jurisdiction under this Act, the court shall be guided by the principles of judicial authority prescribed under article 159(2) of the [Constitution](#).
  2. The parties and their duly authorized representatives, as the case may be, shall assist the court to facilitate the observance of the guiding principles set out in this section, to that effect, to participate in the proceedings of the court and to comply with directions and orders of that court.
  3. Without prejudice to the generality of subsection (1) the court shall adopt such procedures as the court deems appropriate to ensure—
    - a. the timely disposal of all proceedings before the court using the least expensive method;
    - b. equal opportunity to access judicial services under this Act;
    - c. fairness of process; and
    - d. simplicity of procedure. [Emphasis added]
34. The respondent therefore approached the court in quest for justice intended by the Act. The appellant and his advocate were well aware of timelines set for such a case. They caused the delay by failing to file the response and abide by the directions given by the court towards expeditious disposal of the matter. Those delays were eating onto the timelines set for hearing and determination of the case.
35. Though the respondent herein does not appear to have directly contributed to the lapse of time, it acted as though oblivious of the timelines and therefore raised no objection to the delays and adjournments, which is very unfortunate.
36. Considering the purpose and purport of the Small Claims Court, it sounds unfair and unjust that the appellant who violated the timelines now wishes to benefit from the violation by citing section 34



of the Act in this appeal. Unfortunately, jurisdiction is everything and therefore, there is no room for sympathy and emotions in looking at a matter that is thrown out of the jurisdiction of the court by effluxion of time.

37. That was the reasoning by the three-judge bench in the Court of Appeal Civil Appeal Case No E039 of 2021 Aprim Consultant v Parliamentary Service Commission & 2 others (unreported). In that case the Judicial Review application was filed on June 2, 2020 and should have been determined on or before July 17, 2020. However, judgment by Nyamweya J was delivered on January 18, 2021 which was 185 days outside and beyond the 45 days set by section 175 of the Public Procurement and Assets Disposal Act for the determination of the Judicial Review application.
38. The court held;
- “Our reading of the Act is that the High Court was under an express duty to make its determination within the time prescribed. During such time did its jurisdiction exist, but it was a time-bound jurisdiction that ran out and ceased by effluxion of time. The moment the 45 days ended, the jurisdiction also ended. Thus, any judgment returned outside time would be without jurisdiction and therefore a nullity, bereft of any force or effect in law. That legal conclusion remains irrespective of the avowed reasons, no matter how logical, sound, reasonable or persuasive they may be. No amount of policy, wisdom or practicality can invest a decision made without jurisdiction with any legal authority.”
39. Guided by these authorities, this court is satisfied that the judgment delivered by Hon CA Okumu (Ms)/ Adjudicator on August 23, 2022 was done outside the statutory timelines set under section 34 of the Small Claims Court Act and hence made without jurisdiction. It is therefore a nullity, bereft of any force or effect in law.
40. In the upshot, the appeal is upheld. The judgment delivered on August 23, 2022 is hereby quashed. Due to the nature of the matter, each party is directed to bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISII THIS 23<sup>RD</sup> DAY OF MARCH, 2023.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

N/A for Appellant

Mr. Kiprotich for Respondent

Kevin Isindu, Court Assistant

