Kiarie v Njihia (Civil Appeal E151 of 2022)
[2024] KEHC 14214 (KLR) (15 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14214 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL E151 OF 2022

JRA WANANDA, J

NOVEMBER 15, 2024

BETWEEN

GRACE MUTHONI KIARIE ..... APPELLANT

AND

ANN WANJIKU NJIHIA ..... RESPONDENT

JUDGMENT

1. This Appeal arises from the Judgement delivered on 23/09/2022 in Eldoret Small Claims Court Claim No. E324 of 2022 in which the Respondent (as the Claimant) sought Judgment against the Appellant for the sum of Kshs 700,000/-, injunction orders restraining the Appellant from evicting and/or interfering with the Respondent's property/shop known as Eldoret Municipality Lock Up Shop No. 50, interest and costs.

2. The background of the case is that by the Statement of Claim filed through Messrs. J.M Kimani & Co Advocates on 22/07/2022, the Respondent pleaded that she entered into an agreement with the Respondent for sale of the said shop at a total consideration of Kshs 700,000/- which sum she paid in full on the same day, that on 11/05/2022, the Respondent received a verbal notice to vacate the premises by 1/08/2022, that the Appellant then issued a letter demanding refund of her said payment of Kshs 700,000/- from the Appellant, but that the Appellant replied informing the Respondent that the sum paid was "goodwill" and could not therefore be refunded.

3. The Appellant, through the firm of Kamau Lagat & Co. Advocates filed its Response to the Statement of Claim on 3/08/2022. It was stated therein that the parties never entered into an agreement for sale of the shop, and that the subject matter was the "goodwill" for the business, which the Respondent agreed to, since the Appellant was not the owner of the shop. It was further stated that the consideration for the "goodwill" was Kshs 700,000/-, that subject to disbursement of the agreed consideration thereof, the Appellant had since vacated the premises for almost a year, and owing to completion on her part of the agreement, she owed the Respondent no amount of money.

4. The matter then proceeded for trial in which the Respondent called 3 witnesses (including herself) while the Appellant testified on her own behalf.

Respondent's evidence before the trial Court

5. The Respondent testified as CW1. She stated that she bought the shop from the Appellant after she got information about the intention to sell from one Elizabeth, that she entered into the agreement dated for 13/07/2021 with the Appellant for sale of the shop which is situated at Naivas (look up shops) and that she paid Kshs. 700,000/- to the Appellant, for the same in 3 instalments, all paid on the same day. She stated further that the Appellant told her that the shop belonged to her and that she bought it from one Wairimu and even showed her a copy of her agreement with the said Beatrice Wairimu. She testified further that she took possession after 3 months but that she then received information that a certain man by the name Maina was claiming ownership of the shop, that when she inquired from the Appellant, she told the Respondent to ignore the information. The Respondent contended that she then received a letter from the said Maina addressed to the said Wairimu demanding that the shop be vacated, that she then instructed her Advocates to demand a refund of the paid sum of Kshs 700,000/-. She testified that the Appellant responded stating that she did not sell the shop but only the "goodwill" thereof. The Respondent denied that what she purchased was "goodwill" since she was not selling similar goods to those sold by the previous occupant. She also stated that the agreement was drafted by her son but that the Appellant inserted her details such as her National Identity Card number, bank account details and her name.

6. In cross-examination, the Respondent testified that the ownership of a look-up shop is with the County Government but that she never established such ownership from the County, that the Landlord is the County Government but that she never regularized her ownership with the County. She stated further that she used to pay rent of Kshs 1,800/- to the County as she had instructed by the Appellant. She stated that the notice to vacate that she received was addressed to the said Wairimu and was verbal.

7. CW2 was Elizabeth Muthoni Wanyoike, who stated that she is the one who introduced the parties to each other for purposes of the sale transaction.

8. CW3 was Daniel Gichuru Njihia, who stated that he is a son to the Respondent. He testified that he is the one who prepared the agreement dated 13/07/2022 between the parties although he did not include the details of the Respondent, that both parties had asked him to draft the agreement, that the Appellant filled her own details and that she witnessed the Appellant sign the agreement. He stated that to his and the Respondent's understanding, the Appellant was the owner of the shop as she had shown them a previous agreement indicating that she had purchased the same but that when he went to pay rent, he learnt that the shop belonged to one Maina, that he used to pay rent to one Paul Maina Karubi who was introduced to them by the Appellant and that it is the said Paul Maina Karubi who issued the notice, first verbally and later written. In re-examination, he maintained that what they purchased was the shop, not "goodwill".

Appellant's evidence

9. On her part, the Respondent testified as RW1. She testified that she agreed to sell the shop but denied that she penned down any agreement. She stated that the signature appearing on the copy of the agreement produced is not hers but the National Identity Card number is hers. She confirmed that the shop belonged to one Paul Maina Korubia who had exchanged it with one Beatrice Wairimu, that she used to pay a rent of Kshs. 15,000/- to the said Paul Maina Korubia and that she was to continue doing so. She insisted that the sum of Kshs. 700,000/- paid to her by the Respondent was "goodwill"

since she had simply rented the shop and was selling the same goods as the Respondent and to whom she had also left her clients. She insisted that the payment was not refundable.

10. In cross-examination, she admitted that apart from the National Identity Card number on the agreement being hers, the bank account stated therein was also hers. She also conceded that she has not raised any complaint that her signature had been forged. She also confirmed that she received the said amount of Kshs 700,000/- from the Respondent and conceded that there is no mention of "goodwill" in the agreement produced. She also admitted that she had nothing in Court, such as photographs, to demonstrate that she was in the business of selling duvets.

Judgment of the trial Court

11. By its Judgment delivered on 23/09/2022, the Adjudicator found that there was a valid sale agreement between the parties, that the allegation that what sold was only the "goodwill", and not the shop, was not proved and that the Respondent was therefore entitled to the refund of the sum Kshs 700,000/- from the Respondent. Judgment was then entered against the Appellant for the said amount, costs of the suit and interest from the date of filing the suit.

Appeal__**

12. Aggrieved with the Judgement, the Appellant instituted this Appeal vide the Memorandum of Appeal filed on 19/10/2022. The same was later amended on 19/01/2024 by leave of the Court. The same is however unnecessarily too lengthy and verbose and lists the Grounds of Appeal as follows:

    i. The Learned Magistrate erred in law in pronouncing judgment in favour of the Respondent by awarding a sum of Kenya Shillings Seven Hundred Thousand (700,000/=) in favour of the Respondent when there was no legal basis of doing so.

    ii. That the Learned Trial Magistrate erred in law by pronouncing judgment in favour of the Respondent despite the fact that the court lacked jurisdiction to grant the prayers sought.

    iii. That the Learned Magistrate erred in law by failing to take into account relevant factors and instead took into account irrelevant and extraneous factors, hence she reached an erroneous verdict.

    iv. That the Learned Magistrate misapprehended the evidence on record, the consequence of which she reached an erroneous verdict.

    v. That the Learned Magistrate erred in law by failing to properly and exhaustively evaluate the evidence on record tendered by the appellant hence she arrived at wrong decisions.

    vi. That the Learned Magistrate erred in law by unjustifiably rejecting the appellants evidence.

    vii. That the Learned Trial Magistrate erred in law by misdirecting herself by Applying wrong principles thus awarding the Respondent an award that was irregular.

    viii. That the Learned Magistrate erred in law in considering the agreement valid contract.

    ix. That the Learned Magistrate erred in law by shifting the burden of proof to the appellant.

    x. That the Learned Trial Magistrate erred in law by not appreciating the rival submissions of the Appellant and the legal authorities in support of her case.

    xi. The judgment of the Learned Magistrate is in the circumstances unfair and unjust.

    xii. The judgment of the Learned Magistrate is in the circumstance unfair and unjust.

13. As aforesaid, the Grounds of Appeal listed above are simply too lengthy and verbose for no good reason since considered together, save for the obvious duplication, they amount to only one question; "whether the Respondent proved her case to the required standards".

Hearing of the Appeal

14. The Appeal was canvassed by way of written Submissions. The Appellant filed her Submissions on 23/02/2024 while the Respondent filed on 6/04/2024.

Appellants' Submissions

15. Counsel for the Appellant submitted that the Small Claims Court did not have any legal basis in rendering the said Judgment as the said "lock up" shop was owned by the County Government of Uasin Gishu, and not the Appellant, and that it is trite law that one cannot sell what does not belong to him or her. He submitted that the Respondent admitted that the shop is owned by the County Government and that she used to pay monthly rent to the landlord, that these sentiments clearly indicate that the Small Claims Adjudicator, without any legal basis, rendered a wrong verdict. He cited the case of Abraham Tenoi Kimala versus Job Kipsang Suter [2002] eKLR regarding instances when the appellate Court has power to disturb the exercise of discretion by the trial Court.

16. Counsel urged that the Respondent could have ascertained transfer of ownership of the shop from the County Government if her claim was anything to go by, that the Small Claims Court Adjudicator lacked jurisdiction to grant the prayers sought, that that the Court failed to re-evaluate the nature of the claim, testimony of witnesses and the evidence tendered which clearly pointed that the matter was a Lease dispute and which the Small Claims Court does not have jurisdiction to handle and thus it ought to have downed its tools as jurisdiction is everything. Counsel submitted that CW3, the Respondent's son and who was the one operating the said business admitted that Paul Maina Karobia was introduced to them as the Landlord of the premises and that he had been paying rent to him, that therefore if the Respondent had a complaint concerning unjustified termination of the tenancy, then she ought to have directed her complaint to the Landlord, and not the Appellant.

17. Counsel contended that the Respondent was a "protected tenant" under the Business Premises and Rent Act, and was at liberty to invoke the provisions thereof to protect her interests, that CW3 admitted that that rent was payable to the Landlord, who had himself leased the shop from the County Government, that the moment the said Landlord accepted rent from the Respondent, a Landlord-Tenant relationship was created and the leasehold thereof was passed to the Respondent who thus became a protected tenant under the Landlord and Tenant Act, Cap 301. He submitted that the Adjudicator misdirected herself by applying the wrong principles, thus arriving in an irregular award.

18. Counsel submitted further that the Respondent had been a tenant on the said premises for more than a year as demonstrated in the purported sale agreement produced, that the Appellant's interest had lapsed upon sale of the "goodwill" and upon the Landlord accepting rent from the Respondent, that the Small Claims Court allowed the claim even after it had been demonstrated that the monthly rental consideration obligation was not in dispute and that the same continued for a period of more than a year until when the suit was instituted. He cited the case of Mbogo and Another vs. Shah [1968].

19. Counsel posited that the Respondent misled the Court when she testified that after taking possession of the shop, she continued to pay rent of Kshs 1,800/- to the County Government which was contrary to the evidence of CW3, her son, and who stated that he used to pay such rent to the said Paul Maina Korobia. He contended that the Respondent also stated that the Appellant informed her that she would be obligated to pay rent which she dutifully complied with, that the Respondent later received

a notice from the said Paul Maina Karobia asking her to vacate despite paying rent to the County Government as she had alleged but that she never complained to the right authority, namely, the County Government, of the alleged notice to vacate. He therefore contended that both parties were aware of the conditions of the business premises before exchanging the consideration, that both elected to continue with the performance of their obligation by their conduct and representation, which culminated into the Appellant vacating the premises and the Respondent continued to pay rent to the Landlord.

20. Counsel further submitted that the Leaned Adjudicator erred in law by shifting the burden of proof to the Appellant and also considering the sale agreement yet it did not meet the contractual threshold for it to be binding, that it is not in dispute that the discharge from the premises entitled the Appellant, as the innocent party in the circumstances, to continue with her personal business for more than 1 year until the institution of the suit. He added that the agreement was not conditional on refund of the consideration when an issue arose and that the Appellant should not have been subjected to such. He added that the consideration of Kshs 700,000/- had no conditions attached to it and that it is evident that the Appellant was not the owner of the shop and therefore could not transfer the same to another party.

21. Counsel submitted further that there is no proof that the parties agreed that the said sum of Kshs 700,000/ - would be refundable, that the purported sale agreement did not have the exit clause and that it was not the work of the Court determine the same on behalf of the Respondent. He cited the case of National Bank of Kenya Vs. Pipeplastic Samkolit (K) Ltd (2002) EA 503. He insisted that the consideration was purposefully made for transfer of the "goodwill" and cited the House of Lords case of Inland Revenue Commissioners V Muller & CO's Margarine Ltd 1901) AC 217. He urged that "goodwill" is defined as an intangible, saleable asset in this case, a fee arising from the reputation that a business has built over the years and its relationship with its customers, distinct from the value of its stock and other tangible assets, which is usually charged separately from the monthly rental fee. He contended that the "goodwill" concept meant that the incoming tenants make compensation to the business that is exiting a building or premises and that a key factor that determines "goodwill" is location which may be correspondingly high if the business is centrally located. He urged further that the Appellant had been operating her business from the said premises since her occupation from 27/01/2018 to 13/07/2021 and it was only right for the Respondent to compensate her for the business, customers and her time in operating the business, as demonstrated by the Agreement 27/01/2018.

Respondent's Submissions

22. On his part, Counsel for the Respondent submitted that the gravamen of the Appellant is the decision that was delivered on 20/09/2022 but that on a casual look at the record, no such Judgment exists as the only Judgment on record is the one delivered on 23/09/2022, that it therefore follows that in so far as the amended Memorandum of Appeal is against a non-existent judgment, the appeal is moot and it must fail because Section 38 (1) of the Small Claims Act does not envisage an imaginary appeal.

23. In respect to the substantive matters, Counsel submitted that it is not in dispute that the Appellant sold a shop to the Respondent at a consideration of Kshs 700,000/- vide the agreement dated 13/07/2021 which money was paid in full on the same day, that subsequently, the Respondent received a verbal notice to vacate the premises from a third party and that as a result, she issued a demand to the Appellant for refund but who responded alleging that the amount was "goodwill", that a casual look at the agreement clearly shows that it was a sale of shop and the Respondent was within her right to demand a refund upon receipt of notice to vacate from a third party. He submitted that from

the Respondent's evidence, she bought the shop knowing it belonged to the Appellant based on the agreement, and that the Respondent's claim was not based on tenancy relationship but sale of shop as can be gleaned from the face of the agreement neither was it purchase of "goodwill". He submitted further that in the circumstances of the case, it is apparent that the Appellant had no authority to dispose the shop to the Respondent and she thus did so illegally, and that therefore, she cannot be allowed to keep proceeds from the sale. He cited the case of Root Capital Incorporated v Tekangu Farmers' Cooperative Society Ltd & another [2016] eKLR and also the case of Jordan Properties Limited v Margaret Njoki Migwi (2020) eKLR.

24. Counsel maintained that the transaction giving rise to the claim relates to restitutionary claim for money had and received by the Appellant from the Respondent on account of sale of a shop that was later frustrated by a third party and that it was not "goodwill" as alleged. Counsel submitted that the Appellant seeks to introduce the issue of tenancy at an appeal stage yet it was not pleaded in the Response to the claim before the trial Court and that as such, it cannot be raised at this late stage, that parties are bound by their pleadings and any evidence that is not in tandem with the pleadings goes to no issue. He cited the Court of Appeal in the case of Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR.

Determination

25. Before I delve further into determining this Appeal, I note that Counsel for the Respondent submitted that the Appellant, in her Memorandum of Appeal, has cited the Judgment being challenged to be the one delivered on 20/09/2022. Counsel has argued that no such Judgment exists as the Judgment on record is the one delivered on 23/09/2022. According to him therefore, the Appeal is against a non-existent judgment and must, on this ground, fail.

26. Although it is indeed true that the Appellant has cited the wrong date for the Judgment, I do not deem it to amount to such an integral irregularity that it should lead to this Appeal's collapse. I say so because both the parties are aware that there was only one Judgment delivered by the Small Claims Court in the matter and that it is only that Judgment that is being challenged herein. The Respondent has not demonstrated what prejudice it has suffered as a result of the inaccurate date attributed to the Judgment. I therefore overrule the said challenge.

27. Regarding the substantive matters, as this is an appeal from a Small Claims Court, the appeal can only be entertained on points of law. This is the import of Section 38 of the *Small Claims Court Act* which provides as follows:

> 38. Appeals
>
> (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.

28. As aforesaid, although the Appellant filed an unnecessarily lengthy and verbose Memorandum of Appeal, the sole broad issue raised can be summarized into one, namely, "whether the Respondent proved her case before the Small Claims Court to the required standard".

29. This is a very straight-forward matter. It is clear from the evidence on record that sometime in September 2021, the parties entered into an arrangement under which the Respondent obtained from the Appellant possession of a shop that was, at all material times, under the custody of the Appellant. The transaction was a mutual and voluntary arrangement between the two and as agreed consideration for the same, the Respondent paid to the Appellant a sum of Kshs 700,000/-. It is also not in dispute

that subsequently, sometime in May 2022, the Respondent demanded refund of the said payment after she received a notice from a third-party claiming ownership of the shop and asking her to vacate. There is also no dispute that in the Appellant's Advocate's response to this demand, refund was resisted on the ground that the payment was made for purchase of "goodwill" attached to the shop, and not for purchase of the shop itself.

30. The point of departure between the parties is therefore that, while according to the Respondent, the arrangement was a full sale of the shop to her by the Appellant, according to the Appellant, the transaction was simply sale of "goodwill" attached to the shop. Secondly, according to the Respondent, the parties executed the Sale Agreement dated 13/07/2021 but according to the Appellant, the agreement was only verbal, and was never reduced into writing. These then were the rival positions taken by the parties before the Small Claims Court.

31. In support of her claim, the Respondent produced a copy of a 1-paragraph home-made Sale Agreement dated 13/07/2021. Although the Appellant denied any knowledge of the agreement and denied that the signature appearing thereon is hers, she however conceded that the National Identity Card and bank account particulars and details stated therein were hers. She also conceded that the said consideration of Kshs 700,000/- was paid to her in full, and through the same bank account cited in the agreement. She also conceded that the date appearing on the agreement, namely, 13/07/2021, indeed tallies with the period when the arrangement was entered into.

32. Further, regarding her disowning of the signature appearing on the agreement, the Appellant also conceded that she has never made any report to the police in respect to any alleged forgery thereof. I also notice that when the Respondent's Advocates issued the demand letter dated 26/05/2021 seeking a refund for the "botched" transaction, they expressly cited the agreement entered into on 13/07/2021. In the response letter of the same date from the Appellant's Advocates, they never mentioned anything in respect to any forgery. Further, although a copy of the sale agreement was attached to the Respondent's List of documents, in her Response thereto, the Appellant never at all mentioned anything about any forgery of her signature on the agreement. The issue of forgery seems to have been raised for the first time at the trial. For the above reasons, I find it to be an afterthought.

33. Considering the above scenario, I am persuaded, on a balance of probabilities, that the Respondent's version of events is the correct and truthful one. Like the Adjudicator, I, too, believe the Respondent's claim that the parties entered into the home-made written agreement dated 13/07/2021 which is premised as follows:

> " Agreement for Sale of Shop
>
> I GRACE MUTHONI KIARIE of ID number hereby certify that I have sold my shop of Eldoret municipality located opposite Naivas Supermarket to Anna Wanjiku Njihia of ID number at a last mutually agreed upon price of Kshs 700,000/- transferred from Equity Bank Account to Account ....."

34. Having found the agreement above to be genuine and executed by the parties, it is clear that considering the title thereof, namely, "Agreement for sale of shop", the Appellant's allegation that the transaction was for purchase of "goodwill", and not purchase of the shop, cannot hold. I am fortified in this finding by the fact that, apart from making a mere verbal claim, the Appellant has not presented any evidence whatsoever, not even call a witness, to support her allegations. Since it is the Appellant who introduced the allegations that the sale was for "goodwill", it is her who bore the burden of proving that allegation. This aspect of the principle of burden of proof was restated by the Court of Appeal in the case of Mbuthia Macharia v Annah Mutua & Another [2017] eKLR in the following terms:

(16) "The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence? ....."

35. In view of the foregoing, the Appellant cannot be heard to accuse the Adjudicator of having allegedly shifted the burden of proof to her.

36. The Appellant has also contended that the matter at hand is a Lease dispute which the Small Claims Court did not have the jurisdiction over, and that the Respondent was a "protected tenant" within the meaning of the Landlord and Tenant (Shops, Hotels and Catering Establishments), Cap. 301. She alleged that the shop belonged to one Paul Maina Korubia who had exchanged it with one Beatrice Wairimu, and that she used to pay a rent of Kshs. 15,000/- to the said Paul Maina Korubia. She argued that the moment the alleged Landlord accepted rent from the Respondent, a Landlord-Tenant relationship was created and that the leasehold was passed to the Respondent who thus became a "protected tenant". From the findings that I have made above, this defence, too. cannot succeed. What was before the Small Claims Court was clearly a claim for refund of monies paid under a "botched" sale agreement. The Respondent never sought relief from eviction as a tenant. The Small Claims Court was therefore perfectly within its jurisdiction to hear and determine the matter and this limb of the appeal therefore also fails.

37. The fact that the Respondent may have subsequently, after entering into the agreement, paid "rent" to an alleged Landlord, is irrelevant in the circumstances considering that it was not included as one of the terms of the written agreement produced. That being a subsequent act, cannot change the terms of the written agreement.

38. In any case, the admission by the Appellant that she was not the owner of the shop and that she could not sell what she did not own is an argument against herself. It is what, in soccer circles, would be referred to as "scoring an own goal", in fact a "classic goal". The above admission by itself, and without the need for further probing, is sufficient to lead to the finding that the Appellant illegally purported to sell the shop to the Respondent when she very well knew that it never belonged her in the first place. This act may even amount to the offence of "obtaining by false pretence". I note that according to the Respondent, the Appellant told her that the shop belonged to her and that she had bought it from one "Beatrice Wairimu" and even showed her a copy of her agreement with the said "Beatrice Wairimu". In fact, the Respondent produced a copy of that agreement dated 27/01/2018 titled "Sale of Business" and entered into between the Appellant and the said "Beatrice Wairimu".

39. Although the agreement indicates that the purchaser would continue paying rent to an undisclosed Landlord, it expressly also indicates that the Appellant purchased the business from the said "Beatrice Wairimu" at the consideration of Kshs 200,000/-. The Appellant did not deny these allegations. This being the agreement that she showed the Respondent, it is clear that she intended to, and did, mislead the Respondent that she (Appellant) was the owner thereof. It is therefore clear that the Appellant has not been candid to the Court. If therefore the Appellant was not candid on all the above issues, why should she be trusted for the rest of her allegations?

40. Even assuming that the Appellant transferred the payment of rent from herself to the Respondent and that all she sold was the "goodwill", she has not produced any evidence to demonstrate that she had the authority of the Landlord to do so or that the Landlord was even aware of the transaction The fact that the Landlord issued the notice to vacate indicates that he was not aware of this "underhand deal"

executed by the Appellant and issued the notice when he discovered the truth. This was, in my view, for all intents and purposes, an irregular transaction initiated and executed by the Appellant. Under these circumstances, how can the Respondent expect the Court to sanction it? How can she expect to keep the Kshs 700,000/- paid to her under an irregular transaction? That would a clear case of unjust enrichment.

41. The Appellant also contends that the Respondent, after entering into the agreement, remained in possession of the premises for more than a year before seeking a refund. The Appellant has alluded that she should be compensated for that period of occupation by the Respondent. The simple answer to this is that the Appellant, not having filed any Counterclaim, cannot now, at this stage, seek compensation, even assuming that the same is merited.

42. In any case, Counsel for the Respondent is right in submitting that the Appellant's contention that the Court lacked jurisdiction to hear the matter because allegedly the issues related to Lease, Landlord-Tenant relationship or "protected tenancy" and the also the issue of "goodwill" were never pleaded in the Response to the Statement of Claim. I therefore agree that the Appellant irregularly sought to introduce new matters at the trial. In view of the principle that parties are bound by their pleadings, the Appellant could not lawfully attempt to canvass such new matters at the trial, and obviously not at this appeal stage (see Court of Appeal decision in the case of Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR).

43. From the foregoing, it is clear that this Appeal is for dismissal. The Respondent clearly proved her case before the Small Claims Court to the required standards. There is no error demonstrated against the Adjudicator.

44. Further, in any event, the matters raised by the Appellant clearly involve re-evaluation of evidence afresh and re-consideration of factual matters. As already pointed out, under the provisions of Section 38 of the *Small Claims Court Act*, the jurisdiction of this appellate Court is limited to "matters of law" only. On this further ground, the Appeal would still therefore fail.

45. The upshot of my findings above is that this Appeal is dismissed in its entirety with costs to the Respondent.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 15TH DAY OF NOVEMBER 2024

.....

WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

asieba h/b for Simiyu for the Appellant

Kemei acting alongside Mr. Simiyu for the Appellant

Kinyanjui for Respondent

Court Assistant: Brian Kimathi