



**St John Chrisootom Kudho Sec School v Jen Jack General Supplies (Civil Appeal E062 of 2024) [2024] KEHC 14320 (KLR) (11 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14320 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E062 OF 2024  
RE ABURILI, J  
NOVEMBER 11, 2024**

**BETWEEN**

**ST JOHN CHRISOOTOM KUDHO SEC SCHOOL ..... APPELLANT**

**AND**

**JEN JACK GENERAL SUPPLIES ..... RESPONDENT**

*(An appeal arising out of the Judgment of the Honourable G.C. Serem in the Small Claim's Court at Kisumu delivered on the 22nd March 2024 in Kisumu SCC No. E072 of 2024)*

**JUDGMENT**

**Introduction**

1. The appellant was sued by the respondent vide a statement of claim dated 15<sup>th</sup> January 2024 who sought judgement in the sum of Kshs. 285,000 being monies allegedly owed by the appellant to the respondent.
2. It was the respondent's case at the trial that on or about the 8<sup>th</sup> January 2019 and 5<sup>th</sup> September 2020, the appellant made orders for cereal but on receipt of the said cereal the appellant failed to meet its obligation to pay for the same.
3. The parties before the trial court chose to proceed by way of Section 30 of the *Small Claims Court Act*. In her judgement, the trial magistrate found that the respondent had proved her case that the appellant owed her the sums claimed whereas the appellant had failed to show that he had indeed paid the sum amount. The trial magistrate proceeded to grant the respondent herein his claimed sum of Kshs. 285,000 plus costs of the suit.
4. Aggrieved by the said decision, the appellant filed a memorandum of appeal dated 28<sup>th</sup> March 2024 raising the following grounds of appeal;



- a. The learned trial magistrate erred in both fact and in law by failing to appreciate that the burden of proof was at all times upon the plaintiff.
  - b. The learned trial magistrate erred in law by shifting the burden of proof to the defendant.
  - c. The learned trial magistrate erred in fact and in law by arriving at a finding that the claimant produced invoice to show that they supplied the sum of Kshs. 285,000 yet the sum was not supported by an invoice, no delivery note, and local purchase order the only invoice attached was that for Kshs. 85,000 thus arriving at a finding based on no evidence.
  - d. The learned trial magistrate erred in law by ignoring the cardinal principle that special damages claims must be specifically pleaded and proved and the special damage herein was not proved to the required standard.
  - e. The learned trial magistrate erred in fact and in law by completely ignoring the defendant's written submissions and all authorities cited whose copies were availed.
5. The parties agreed to dispose the dispose of the appeal by way of written submissions but only the respondent filed his appeal.

### **Respondent's Submissions**

6. The respondent submitted that the appellant owed it the claimed sum as evidenced by the invoices dated 5<sup>th</sup> September, 2020 for supply of ten (10) bags of dry beans at Kshs. 85,000, another for supplies of 20 bags of Maize at Kshs. 80,000 and 15 bags of beans at Kshs. 120,000 totaling to Kshs. 285,000, all invoices bearing the stamp of the appellant.
7. It was submitted that there were no water tight rules regarding procurement on the Appellant's side hence the Appellant is bound to pay the Respondent the decretal award as decided by the trial court as was held in the case of *Techarid Steam & Power Limited v Mather & Platt (K) Limited* [2014] KEHC 2322 (KLR).

### **Analysis and Determination**

8. This being a first appeal the court relies on a number of principles as set out in *Selle and Another v Associated Motor Boat Company Ltd & others* [1968] 1EA 123:
 

“...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. In particular, this court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”
9. In this case, the appellant faulted the trial magistrate's finding that the appellant owed the respondent the sums of money claimed.
10. The appellant however, did not file any submissions to prosecute its appeal as at the time that I am writing this judgment, I have checked in the Case Tracking system and found no submissions.
11. The issue of whether the claim was statute barred and therefore whether appellant is “the Government or a local authority” is a matter that I will not determine fully on merit without the appellant's submissions on record. It is not enough to claim that the claim is statute barred after goods are delivered



and payment is not made. The appellant must prosecute its appeal and argue out on merit since it is not automatic that this court will find that the claim is statute barred in the absence of any material placed before it on appeal.

12. Accordingly, as it is not the duty of this court to prosecute the appeal for the appellant and neither can the respondent do so, I find the appeal not prosecuted and proceed to dismiss it.
13. Each party to bear their own costs of the appeal.
14. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2024**

**R.E. ABURILI**  
**JUDGE**

