



Collection Agency Kenya Limited v Trishcon Construction Company Limited (Commercial Appeal E011 of 2023) [2024] KEHC 15715 (KLR) (Commercial and Tax) (13 December 2024) (Judgment)

Neutral citation: [2024] KEHC 15715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E011 OF 2023
BM MUSYOKI, J
DECEMBER 13, 2024**

BETWEEN

COLLECTION AGENCY KENYA LIMITED APPELLANT

AND

TRISHCON CONSTRUCTION COMPANY LIMITED RESPONDENT

(Being an appeal against the Judgment of Hon. J.W. Munene, Adjudicator delivered dated 23-12-2022 in SCC COMM NO. E3703 of 2022)

JUDGMENT

1. This is an interesting appeal. Interesting because the file from the trial court record contains three different versions of judgment two of which appear to be drafts. The first two versions are dated 24-08-2022 and the other one is date 23-12-2022. The proceedings do not show that there was any application for review, variation or correction of the first two versions neither is it recorded that the honourable adjudicator moved herself to correct an error under Section 99 of the Civil Procedure Act or any other relevant laws.
2. This appeal is stated to be against the version dated 23-12-2022. It is hard to tell whether the other two versions are subject of this appeal. The memorandum of appeal talks generally of judgement delivered on 23-12-2022 while the appellant's submission makes reference to one the versions which talks of Kshs 121,175.00.
3. It is important to point out the differences between the three versions to enable the court appreciate the issue raised in the appeal. The background of the case was a claim for refund of Kshs 75,000.00 which was paid to the appellant for recovery of some debt owed to the respondent. The respondent claimed that it had paid the appellant the said amount as its fees for recovery of a debt from a third party which task the appellant failed to undertake.



4. The appellant denied the claim and stated that the respondent's agent was the one who was in breach. After hearing the case under Section 30 of the Small Claims Court Act, the adjudicator held that the claim for breach of contract was devoid of merit and in a strange twist of the same, she in the sentence that immediately followed stated that judgment was entered against the appellant for Kshs 75,000.00 plus costs and interest. This meant that the respondent's claim had been dismissed with costs and judgment entered for the respondents in the same judgment.
5. The appellant in its memorandum of appeal has faulted the adjudicator for sitting on appeal of her own decision. According to the appellant, the adjudicator issued two versions of judgments which were contradictory in which case she sat on appeal against her decision. I do not think that the court delivered two judgments. In my view, the lower court's judgment and the resultant decree seem to have been a product of confusion which the respondent took advantage of. I say so because I do not see much difference in the version shown to have been signed on 24-08-2022 and that shown to have been signed on 23-12-2022. The three version of the judgement are contradictory in the following aspects;
 - a. The last paragraph of the version dated 24-08-2022 with the bolded portion being handwritten in ink pen and not countersigned while the rest of the judgement is typed reads;

‘The claimant’s claim based on breach of contract is therefore devoid of merit. The same is dismissed with costs to the respondent. Judgement is entered against the resp. Respondent in the sum of Kshs 121,175 plus costs and interest at court rates.’
 - b. The last paragraph of the version dated 23-12-2022 reads as follows;

The claimant’s claim based on breach of contract is therefore devoid of merit and the same is dismissed with costs to the respondent. Judgment is entered against the respondent for Kshs 121,175 plus costs and interest at court rates.’
 - c. The third version dated 24-08-2022 in its last paragraph reads;

The claimant’s claim based on breach of contract is therefore devoid of merit. The same is dismissed with costs to the respondent. Respondent in the sum of Kshs 121,175 plus costs and interest at court rates.’
6. The opening sentence of this version states, ‘the claimant states that on or about 9-07-2019’ followed by a comma then followed by contents which is similar to the other versions.
7. The versions dated 24-08-2022 have cancellations and corrections done by pen. They would easily pass for drafts but they all bear a certification stamp and signature of the adjudicator. According to the recorded proceedings, judgement in this matter was delivered on 24-08-2022. There is no indication any further proceedings were taken after 24-08-2022. The respondent argues that the version of 23-12-2022 was just a correction under discretion granted to the court by Section 99 of the [Civil Procedure Act](#). I do not buy this argument because if that was the position, the proceedings would have shown endorsements of the correction of the error and reasons for that and whether or not parties were notified of the same. In my view, in exercise of discretion under the said Section, the judicial officer or the judge must indicate in the court record that he had undertaken the exercise and give explanation for the corrections.
8. Having read and considered the proceedings and record, it is clear to me that the only judgement delivered in this matter was on 24-08-2022. The copy of the judgment shown to be dated 23-12-2022 appears to me to have been just a fair copy of the draft that was read on 24-08-2023. And one of the copies dated 24-08-2022 is clearly a raw draft while the 2nd one was a fair or improved draft. There was



no review or correction as alleged by the respondent. It would appear that this state of affairs was a product of recklessness and failure by the adjudicator to pay attention to the details of what she was signing three times. She signed off two drafts and went on to certify each of them. She then went ahead to date the corrected copy as having been delivered on 23-12-2024. The other possible cause would be that someone manipulated the court judgment which no one should not even imagine of doing. It could also have been caused by the adjudicator actually correcting or reviewing her earlier judgement and failing to endorse the same in the proceedings but even then, the reviewed version still remained confusing and lacking in sense. Curiously, the decree which was extracted reflected the part entering judgement against the appellant with no explanation why the part dismissing the claim was left out.

9. In the above scenarios, if one were to hold that the judgement delivered on 24-08-2022 was not reviewed and signing off the latest version as having been delivered 23-12-2022 was a mistake, then there would not be a competent appeal before this court. An appeal to this court from the Small Claims Court must be filed within thirty days from the date of the decision being appealed. This appeal was filed on 21-01-2023 which would mean that the appeal was filed out of time.
10. The above notwithstanding, I do not think that the court should, let a judgment which is glaringly questionable and incapable of interpretation with some degree of certainty stand. Article 165(6) and (7) of the *Constitution* empowers this court to call for record and proceedings of the subordinate court and make any order or give any direction it considers appropriate to ensure fair administration of justice.
11. The appellant has brought this matter to the attention of this court in form of an appeal. It is not clear to me whether there was proper procedure for the review of the judgment delivered on 24-08-2022. Even if there was, the analysis and finding of the trial court is clearly in variance with the final orders of the court. Fair administration of justice demands that court decisions be unambiguous, clear and capable of being executed. A judgment which results to a decree against a defendant or respondent and at the same time dismissal of the claim or suit cannot be said to serve or advance fair administration of justice.
12. In my considered view, it is only the adjudicator who could read her own mind and tell the parties what she meant with the two contradictory findings. In view of this, I make the following orders;
 - a. This matter (*Milimani Small Claims Court Commercial Suit number E3703 of 2022*) is remitted to the trial court for consideration and clarification of its judgement delivered on 24-08-2022 and apparently signed on 23-12-2022.
 - b. Before the trial court makes its decision on the judgment as ordered above, it shall offer the parties opportunity to make submissions on the issue.
 - c. There shall be a stay of execution of the lower court's decree until the judgment is clarified and/or corrected by the trial court.
 - d. I make no orders as to costs of this appeal.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF DECEMBER 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Tumu for the appellant and Miss Nadongo holding brief for Miss Luther for the respondent.

