



Monarch Hotel Limited v Bluewave Multisupplies Limited & another (Civil Appeal E017 of 2025) [2025] KEHC 13480 (KLR) (Civ) (30 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13480 (KLR)

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

CIVIL

CIVIL APPEAL E017 OF 2025

AC MRIMA, J

SEPTEMBER 30, 2025

BETWEEN

THE MONARCH HOTEL LIMITED APPELLANT

AND

BLUEWAVE MULTISUPPLIES LIMITED 1ST RESPONDENT

THE MONARCH BOUTIQUE HOTEL LIMITED 2ND RESPONDENT

(Being an appeal from the judgment and decree of Hon. E.M. Muindi (Adjudicator) delivered on 19th September, 2024 in Nairobi SCC COMM No. E5748 of 2024)

JUDGMENT

1. Bluewave Multisupplies Limited, the 1st Respondent herein, entered into a contract with The Monarch Hotel Limited, the Appellant herein, towards supply of goods to the Appellant who carried on a hotel business on credit basis. All went on well until when the Appellant entered into a Management Contract with The Monarch Boutique Hotel Limited, the 2nd Respondent herein, over the business thereby resulting to the 1st Respondent filing Nairobi SCC COMM No. E5748 of 2024 between the Appellant and the 2nd Respondent [hereinafter referred to as 'the suit'].
2. In the suit, the 1st Respondent claimed the sum of Kshs. 561,825/=. The suit was heard under Section 30 of the *Small Claims Court Act* and judgment was jointly and severally entered against the Appellant and the 2nd Respondent on 19th September 2024. The Court allowed the sum of Kshs. 450,000/= with interest. It was that decision which resulted to the instant appeal.
3. Through a Memorandum of Appeal dated 15th October 2024, the Appellant proposed 12 grounds of appeal in faulting the impugned decision.



4. Pursuant to the directions of this Court, the appeal was canvassed by way of written submissions. The parties filed their rival submissions wherein they referred to several decisions in a bid to firm their respective positions. The gist of these submissions will be ingrained in the latter part of this judgment.
5. Section 38 of the *Small Claims Court Act* [Cap. 10A of the Laws of Kenya, hereinafter referred to as 'the Act'] provides for appeals from decisions and/or orders of the Small Claims Court. Under that provision, a party may appeal to the High Court only on matters of law and that the decision thereof is final. Whereas there has been no universally accepted definition of the term 'matters of law', there has been some working definitions thereto.
6. The term 'point of law' may also be referred to as 'matter of law'. There has been no universally accepted definition of the term 'point of law' or 'matter of law'. However, there has been some working definitions thereto. The Black's Law Dictionary defines 'a matter of fact' and 'a matter of law' as follows: -

Matter of fact: A matter involving a judicial inquiry into the truth of alleged facts and Matter of law: A matter involving a judicial inquiry into the applicable law.

7. Lord Denning, J in *Bracegirdle vs. Oxley (2)* [1947] 1 ALL E.R. 126 at p 130 in espousing the two terms had the following to say: -

.... The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by testimony; conclusions from those facts are inferences deduced by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depend on them. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law. In a case under the Road *Traffic Act*, 1930, s. 11, the question whether a speed is dangerous is a question of degree and a conclusion on a question of degree is a conclusion of fact. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The conclusion drawn by these justices from the primary facts, was not one that could reasonably be drawn from them.

8. Drawing from the above, the Court of Appeal in *Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others* [2014] eKLR sated as under: -

.... That reasoning has been adopted in this jurisdiction. In *A.G. Vs. David Murakaru* [1960] EA 484, for instance, Chief Justice Ronald Sinclair sitting with Rudd J. adverted to the factual foundations of legal questions by stating that an appellate court restricted to determining questions of law may yet quite properly interfere with the conclusion of a lower court if the same is erroneous in point of law. This is the case where that lower court arrives at a conclusion on the primary facts that it could not reasonably come to. Such a conclusion or decision becomes an error in point of law. See also *Patel Vs. Uganda* [1966] Ea 311 And *Shah Vs. Aguto* [1970] EA 263.

9. The foregoing was reiterated in *Twaber Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others*, (2014) eKLR. Further, in *Peter Gichuki King'ara vs. IEBC*



§ 2 others, Nyeri Civil Appeal No. 31 of 2013, Court of Appeal held that a decision challenged on the basis of wrongful exercise of discretion raises a point of law.

10. Applying the said dichotomy in this case, it is this Court's finding that since the matters in contention in this appeal relate to the interplay between the legality and validity of the contract between the Appellant and the 1st Respondent and the liability of the 2nd Respondent, if any, then such issues transcend the borders of matters of fact into the realm of matters of law. Therefore, this Court is properly seized of jurisdiction over this appeal.
11. Before proceeding into the heart of the appeal, there is a preliminary issue which this Court came across as it went through the record worth consideration. The issue relates to the Statement of Claim dated 3rd June 2024 as filed by the 1st Respondent, then the Claimant. In the body of the claim, the 1st Respondent made a demand for payment of Kshs. 561,825/= arising from goods supplied on credit which the Appellant and the 2nd Respondent had jointly and severally refused to pay.
12. Finally, the 1st Respondent made the following prayers: -
 - a. Kshs. 561,825/= (Kenya Shillings Five Hundred and Sixty-One Thousand, Eight Hundred and Twenty-Five) being the deposit paid by the Claimant to the Respondent.
 - b. Interest on (a) above at court rates from 4th April 2024 until payment in full.
 - c. Costs of the claim.
13. This Court has confirmed from the record that the Statement of Claim was not amended. As such, it is undisputed that the prayers in the claim do not flow from the body thereof. They are at variance. The suit was eventually heard on the basis of the Statement of Claim as it is. In the resultant judgment, the trial Court awarded the sum of Kshs. 450,000/= on account of goods supplied but not paid for and not 'being the deposit paid by the Claimant to the Respondent' as per what was sought for by the 1st Respondent. Therefore, the 1st Respondent was granted orders it did not seek. It is on that score, and even without considering the merits or otherwise of the main appeal, that the judgment cannot stand.
14. Having found as much, even though this Court has the power to determine the appeal on the basis of the record as is, the Court finds that doing so would render an injustice to the parties for two reasons. The first reason is that, with utmost respect, the trial Court did not address and determine the issue of the 'deposit paid by the Claimant to the Respondent' in the judgment and in first instance. The second reason is that since an appeal to this Court is final, it is imperative that any factual issue be canvassed and determined at trial. It is for these reasons that this Court finds it befitting to remit the matter for a fresh hearing.
15. In view of the foregoing, a consideration of the grounds of appeal in this matter would be purely academic. This Court opts to bring the discussion to an end at this point in time.
16. Consequently, this Court hereby makes the following final orders: -
 - (a) The appeal is hereby allowed.
 - (b) The judgment in Nairobi [Milimani] Small Claims Court in Nairobi SCC COMM No. E5748 of 2024 delivered on 19th September 2024 is hereby set-aside and quashed.
 - (c) The suit shall be remitted back to the Small Claims Court for a fresh hearing before any other competent Adjudicator except Hon. E. M. Muindi.
 - (d) Each party shall bear its own costs of the appeal.



Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss. Kibii, Learned Counsel for the Appellant.

Mr. Munguti, Learned Counsel for the 2nd Respondent.

Michael/Amina – Court Assistants.

