



Shivji & 2 others v Denko Properties Limited & 3 others (Civil Appeal E184 & E183 of 2023 (Consolidated)) [2025] KEHC 14322 (KLR) (1 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14322 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E184 & E183 OF 2023 (CONSOLIDATED)**

**NIO ADAGI, J
OCTOBER 1, 2025**

BETWEEN

SANJAY JADAVJI SHIVJI 1ST APPELLANT

RAMILA SANJAY SHIVJI 2ND APPELLANT

AND

DENKO PROPERTIES LIMITED 1ST RESPONDENT

GREEN GRO INTERNATIONAL LIMITED 2ND RESPONDENT

VICTOR KOBIA 3RD RESPONDENT

DENNIS MBAABU 4TH RESPONDENT

**AS CONSOLIDATED WITH
CIVIL APPEAL E183 OF 2023**

BETWEEN

PULIN BHAGWANJI SHAH APPELLANT

AND

DENKO PROPERTIES LIMITED RESPONDENT

JUDGMENT

1. The appeals herein challenge the decisions of the learned Adjudicator in Small Claims Court Commercial Cases No. E100/2022 and E164/2022 at Machakos Law Courts. The parties' counsel requested the court to write a single judgment for the two appeals emanating from the aforesaid Small Claims Court Commercial Cases.



2. In case No. E100/2022, the Claimants (Appellants herein) vide a Statement of Claim dated 30/05/2022 sued the Respondents claiming Kshs.825,500/= for breach of contract dated 14/12/2017 relating to construction of greenhouses by the 1st Respondent and management of the same by the 2nd Respondent. The 3rd and 4th Respondents were sued in their individual capacities as the Directors of the 1st and 2nd Respondents respectively.
3. The Claim proceeded by way of oral evidence where the Claimants and the 4th Respondent testified in court and produced various documents in support of their case. Upon considering the evidence the trial adjudicator delivered judgement on 24/07/2023 in which she found that the Claimants had not proved their claim on the required standards and thus dismissed the same with costs to the Respondents.
4. In case No. E164/2022, the Claimant (Appellant herein), vide a Statement of Claim dated 21/07/2023 sued the Respondent claiming Kshs.625,000/= being costs of construction of a green house paid to it following a contract dated 27/10/2018 but which the Respondent failed to construct.
5. The Claim also proceeded by way of oral evidence where the Claimant and the 4th Respondent testified in court and produced various documents in support of their case. Upon considering the evidence the trial adjudicator delivered judgement on 24/07/2023 in which she found that the Claimant had not proved his claim on the required standards and thus dismissed the same with costs to the Respondent.
6. The Claimants in the two claims being aggrieved by the decisions of the trail Adjudicator lodged the appeals herein which basically challenge the dismissal of the Claims.

Analysis and determination

7. The law on appeals from decisions and orders of the Small Claims Court is firmly set out. An appeal from the Small Claims Court is on issues of law only. This is pursuant to Section 38 of the Small Claims Court. The Section provides that:
 - 1) A person aggrieved by the decision or an order of the court may appeal against the 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.See the case of *Mwangi v Kihui* (Civil Appeal 16 of 2023) [2023] KEHC 18643 (KLR) (28 April 2023) (Judgment).
8. What constitutes, points of law, has been settled. In the case of *Peter Gichuki King'ara v Iebc & 2 Others*, Nyeri Civil Appeal No. 31 Of 2013, (Court of Appeal) (Visram, Koome & Odek, JJA) Of 13.02.2014, the court of Appeal stated as follows: -

“It was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanor – is an issue of law.”



9. The issues of failure to exercise discretion is equally a point of law. In the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR, the court stated as doth: -

“This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below considered matters, they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).
10. Even on the normal legal lingua, a point of law must clearly arise out of the pleadings. In case of appeal, it should arise out of the memorandum of appeal vis a vis the pleadings in the court below. In the case *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696: -

“A preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose off the suit. Examples are an objection to the jurisdiction of the court.”
11. In other words, though not seen as a preliminary point, points of law must as of necessity arise out of the pleadings. They must hold true, to the law or implication of the law. This includes deciding on basis of no evidence, based on a nullity, failing to exercise discretion which the court clearly has, failing to take up jurisdiction which the court has or taking jurisdiction the court does not have or otherwise reaching a decision which no reasonable person could have reached given the evidence and pleadings.
12. In their Memorandums of Appeal both dated 7th August 2023, the Appellants contend that the learned Adjudicator erred in "law and fact" in entirely dismissing the Appellants' Claims and arriving at findings that the Appellants had not proved their case beyond the required standards, on a balance of probability.
13. Following the above, I have carefully perused through the Memorandums of appeal filed by the Appellants and I must say I am unable to pick out any point of law to be considered in these appeals. All that the Appellants raise in the grounds of appeal is that the learned Trial Magistrate erred in law and fact in arriving at a decision that the Appellants had not proved their case against the Respondents on a balance of probability and that the learned Trial Magistrate erred in law and fact in entirely dismissing the Appellants claim. No single point of law has been cited by the Appellants for the court's consideration and determination on the appeals.
14. Furthermore, in paragraphs 4 and 5 of the Appellants' written submissions, they are inviting the Court to revisit and re-evaluate issues of fact in the evidence presented before the trial court so as to arrive at a different conclusion other than that of the trial Court. In short, the present Appeals invite this Court to re-evaluate the trial evidence, contrary to Section 38 of the [*Small Claims Court Act*](#) and to make contrary findings thereon.
15. In their submissions also, the Appellants further scrutinized the evidence presented by the witnesses in the trial Court and even quote Sections 107, 109 and 112 of the [*Evidence Act*](#) in paragraphs 12 and 13 which deal with proof of facts in Civil cases.
16. I note that both parties have submitted on the issue as to whether the alleged contracts were breached and by which party. It is my position that by doing so the parties are inviting this court into considering facts relating to the contracts which too is against the provisions of Section 38 of the [*Small Claims Court Act*](#).



17. It is my considered view that in the present Claims, the learned Adjudicator properly analysed the factual material and/or evidence presented before her and rightly arrived at the decision she made. I thus find no reason to disturb the decisions by the learned Adjudicator in Small Claims Court Commercial Cases No. E100/2022 and E164/2022 at Machakos Law Courts
18. Consequently, this Court finds that the appeals herein lack merit and are dismissed with no order as to costs. This being an appeal from the Small Claims Court, this court is aware that award of costs in small claims court are provided under Section 33 of the Act as follows:
1. The Court may award costs to the successful party in any proceedings.
 2. In any other case parties shall bear their respective costs of the proceedings.
 3. Without prejudice to subsections (1) and (2), the Court may award to a successful party disbursement incurred on account of the proceedings.
 4. Except as provided in subsection (2), costs other than disbursements, shall not be granted to or awarded against any party to any proceedings before a Court. (emphasis added).
19. Section 33(4) of the *Small Claims Court Act* prohibits awarding costs other than disbursements. The quantum of costs is a matter of fact and falls within the exercise of discretion.
20. Costs in the Small Claims Court differ from those in other cases. While the decision to award costs is a matter of discretion, the quantum of those costs in the lower court is a question of fact. This matter falls outside the purview of the appellate court and that is why I decline to award costs.

JUDGEMENT WRITTEN, SIGNED & DATED AT MACHAKOS THIS 1ST OCTOBER 2025.

NOEL I. ADAGI

JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 1ST OCTOBER 2025.

In the presence of :

Ms Awuor..... for Appellant

Ms. Nzilani..... for Respondent

Milly..... Court Assistant

