

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E065 OF 2024

ENA CAPITAL LIMITED.....APPELLANT
VERSUS
GEORGE KARIUKI KABUTU.....1ST RESPONDENT
DIRECT 'O' AUCTIONEERS.....2ND RESPONDENT

**(Appeal from the ruling and orders, of the Small Claims Court at
Nairobi, by Hon. JW Munene, Resident Magistrate, RM, delivered on
22nd December 2023, in Nairobi SCCC No. E4737 of 2023)**

JUDGEMENT

1. The appeal herein arises from Nairobi SCCC No. E4737 of 2023. The impugned order, of 22nd December 2023, struck out the claim, on the grounds that there was a similar claim, between the parties, in Nakuru SCCC No. E172 of 2022.
2. The exact date when the claim herein, Nairobi SCCC No. E4737 of 2023, was lodged in court, is not obvious from the record, but the statement of claim was dated 30th September 2023. Upon being served, the respondent appeared, by a memorandum, dated 3rd October 2023. The matter was first placed before the Adjudicator on 9th October 2023. The application, the subject of the ruling of 22nd December 2023, was the one dated 3rd October 2023.
3. It is certain that, by 3rd October 2023, the claim in Nairobi SCCC No. E4737 of 2023 had been filed. The suit was filed before 3rd October 2023. The ruling, the subject of the appeal herein, was delivered on 22nd December 2023. It would be a matter of speculation as to whether, by 22nd December 2023, the Adjudicator had jurisdiction to determine the matter.
4. The jurisdiction of the Small Claims Court is 60 days, according to section 34(1) of the Small Claims Court Act, Cap 10A, Laws of Kenya. Even if 3rd October 2023 were to be taken as the cut-off date, the 60 days lapsed on or before 3rd December 2023. As the claim was filed before 3rd October 2023, the 60 days expired before 3rd December 2023. That being the case, it would mean that there was no jurisdiction for the trial court to make the orders it made on 22nd

December 2023, of striking out the suit in Nairobi SCCC No. E4737 of 2023. It should have had downed its tools by then.

5. As there was no jurisdiction to make the order of 22nd December 2023, there cannot be a valid appeal before me, on the merits of that decision. The said appeal is hereby struck out.
6. As there was no jurisdiction on 22nd December 2023, to strike out the suit before the Small Claims Court, the said suit is still viable. After the 60 days expired, the decision to strike out the suit could only be made by a court with jurisdiction, either the High Court or Magistrate's Court.
7. To progress the matter, in Nairobi SCCC No. E4737 of 2023, I, in exercise of the supervisory jurisdiction of the High Court, granted by Article 165(5) of the Constitution, do hereby order transfer of Nairobi SCCC No. E4737 of 2023 to the Chief Magistrate's Court, at Milimani Commercial Courts, for disposal. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
BUSIA, ON THIS 23RD DAY OF OCTOBER 2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyn Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Ayora, instructed by Ayora Magati & Company, Advocates for the appellant.

Messrs Muchiri Gathecha & Company, Advocates for the respondent.