



**Mutuma v Meru Highlands Dairy Limited (Civil Appeal E109 of 2023)
[2025] KEHC 15206 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E109 OF 2023
SM GITHINJI, J
OCTOBER 28, 2025**

BETWEEN

ANTONY MUTUMA APPELLANT

AND

MERU HIGHLANDS DAIRY LIMITED RESPONDENT

*(An appeal from the Judgment/Decree of Hon. L.W Maina Mouti (R.M) in
Meru Small Claims Court Case No. E167 of 2023 delivered on 22/6/2023)*

JUDGMENT

1. This Appeal arises from the Judgment of the learned Resident Magistrate Hon. L.W. Maina Mouti (C.M) delivered on 22.6.2023 in Meru Small Claims Court Case No. E167 of 2023, wherein the trial court entered judgment in favour of the Respondent herein at the sum of Ksh. 719,712.21 together with costs and interest.
2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 11th July, 2023;
 1. The Learned Magistrate erred in law and fact in finding that it was the willful duty of the Respondent to collect the proceeds of sale.
 2. The Learned Magistrate erred in law and fact in finding that the discrepancies in the statements was the Responsibility of the Appellant and no one else.
 3. The Learned Magistrate erred in law and fact in awarding the claim in its entirety ignoring the evidence by the Appellant.
 4. The Learned Magistrate erred in law and fact in her application and interpretation of the law regarding the suit.



5. The Learned Magistrate erred in law and fact in failing to consider and/or disregarding the Appellant's evidence, submissions and case law cited.
6. The Learned Magistrate Ruling was biased in favour of the Respondent against the Appellant, is full of errors, against the weight of evidence and a travesty of justice.

Oral evidence

3. CW1 David Gitonga, the Respondent's Operation Manager, adopted his statement dated 9/5/2023 as his evidence in chief and produced the documents filed therewith as exhibits 1 to 5. He told the court that they delivered milk to the Appellant on several occasions, demand for Ksh. 643,200 was made on 13/11/2020, but the payment was not made. The claim was for Ksh. 1,000,000 for various dates when milk was dispatched to the Respondent.
4. RW1 Antony Mutuma, the Appellant herein adopted his response filed on 8/6/2023 as his evidence in chief and produced the documents filed therewith as exhibits 1 to 4. He was employed by the Respondent as a salesman plying the Tharaka, Maua and Nanyuki routes. After the sale, the customers would pay either via cash or Mpesa, and if there was improper reconciliation, he would bear the responsibility. He would take the milk and sign the invoice but the customers were responsible to pay, even though they were not party to the reconciliation. While he gave the company details of new customers including the ID, Phone and business numbers, he would only supply to known people, and he would never sell on credit to new customers. It was the company's duty to follow up with any debtors, because it had their details.

Submissions

5. The Appellant, through the firm of Kiautha Arithi & Co. Advocates, filed submissions dated 1/7/2025. Counsel submitted that it was erroneous and prejudicial to hold the Appellant responsible for the alleged discrepancies or uncollected debts where no such duty existed. Counsel contended that the Appellant's termination was unfair and unlawful, and cited Banking Insurance and Finance Union (Kenya) v Murata Sacco Society Ltd, Cause NO. 616 OF 2010, Ibrahim Kamasi Amoni v Kenital Solar Limited (2018) eKLR and Kenya County Government Workers Union v Wajir County Government & another (2020) eKLR.
6. The Respondent, through the firm of M.D Maranya & Co. Advocates filed submissions dated 30/7/2025. Counsel submitted that there existed an agent-principal relationship between the Appellant and the Respondent, and cited Lucy Nungari Ngigi & 4 Others v National Bank of Kenya Limited & another (2015) eKLR. Counsel contended that the Appellant owed the Respondent a duty to remit proceeds from his dealings with 3rd parties as an agent. Counsel argued that the Appellant's contention that it was the Respondent's obligation to demand payment from customers was not supported by any evidence, and cited SYT v TA (2019) eKLR, where the Court of Appeal in the case held that, "It is established that where a party fails to call evidence in support of his case, that party's pleadings remain mere unsubstantiated statements of fact." Counsel asserted that the Appellant's failure to collect proceeds from the sale he made was a breach of contractual duties for which the Respondent was entitled to recover, and cited Dormakaba Limited v Arcitectural Supplies Kenya Limited [2021] KEHC 210 (KLR) and Kenya Commercial Bank v Suntra Investment Bank Ltd (2015) eKLR. Counsel submitted that the Appellant's counterclaim was a nullity ab initio as the small claims court lacks jurisdiction to deal with employment disputes, and cited Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd (989) eKLR.



Analysis and Determination

7. This being a first appeal, the court is obligated to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.
8. In *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA, the court held as follows: “This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that 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.”
9. I have considered the appeal herein, the trial court’s judgment which is the subject of this appeal as well as the submissions by counsel.
10. From the grounds of appeal, the issue for determination is whether the trial court’s decision was erroneous.
11. The undisputed facts are that the Respondent engaged the Appellant, its salesman to supply milk to its vast clientele on diverse dates. While some customers would pay upfront, the Appellant contended that delivery would occasionally be done to others on credit, because they were known to the company, as the company retained their details. He stated that, “I would meet my customers in person and I would go and look for them in their shops and wholesales. The customers would give me their details and they would pay cash, Mpesa, cheques and credit. I would collect their money and send to the company or they would send the money themselves. I would not sell on credit to new customers. After sale I would go for reconciliation. If there was improper reconciliation, I would bear responsibility. I would take the milk and sign the invoice.”
12. I am minded that the order books (invoices) dated 27/4/2020 and 4/5/2020 are expressly addressed to the Appellant as the client.
13. The Respondent’s Operation Manager was categorical in his testimony that once an order was made, the milk was delivered, the invoice was generated and payment was made.
14. I find that the Appellant was duty bound to ensure the milk supplied to him duly reconciled with the corresponding remittances made to the Respondent, as any shortfall would, in the circumstances, be recoverable from him personally.
15. Needless to state, it would be manifestly unreasonable to expect the Respondent to demand payment from 3rd parties who were not privy to its dealings.
16. The trial court is faulted for failing to consider the Appellant’s submissions and authorities. That fault is misconceived because submissions cannot take the place of pleadings, and their non-consideration cannot in itself be a basis to overturn a trial court’s decision. Moreover, the mere fact that the trial court was ultimately dissuaded by the submissions of the Appellant together with the authorities he cited does not imply that they were disregarded altogether.
17. For the foregoing reasons, I find that the appeal is in want of merit and it is hereby dismissed with cost to the Respondent

DATED AND DELIVERED AT MERU THIS 28TH OCTOBER, 2025

S.M. GITHINJI



JUDGE

Apperances:-

Mr. Kaimba holding brief for Mr. Maranya for the Respondent.

Mr. Kerubo holding brief for Mr. Kiautha for the Appellant.

