



**Miriti v Mukobwa (Civil Appeal E002 of 2025)
[2025] KEHC 14834 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14834 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL APPEAL E002 OF 2025
RL KORIR, J
OCTOBER 8, 2025**

BETWEEN

WINNIE GATAKAA MIRITI APPELLANT

AND

DENNIS KITHINJI MUKOBWA RESPONDENT

RULING

1. This ruling is in respect of the Preliminary objection dated 12th September 2024 filed by the Respondent. The Preliminary objection was a response to the Notice of Motion dated 29th January, 2025 filed by the Appellant and sought the following orders:-
 - i. Spent
 - ii. That pending the interpartes hearing and determination of this application and appeal an order do issue to stay the execution of the judgment and decree issued in Chuka SCCCOMM No. E053 of 2024.
 - a. That pending the hearing and determination of this application and appeal an order do issue to stay the execution of the judgment and decree issued in Chuka SCCCOMM No. E053 of 2024.
 - b. That costs of the application abide by the outcome of the appeal.
2. In response to the Application, the Respondent raised the present Preliminary Objection on the following grounds;
 - i. The appeal offends the provisions of Section 38 of the Small Claims Act.
 - ii. Eight (8) of the set grounds in the Appeal are matters of fact.



Brief background

3. The Respondent (the Claimant) vide the claim dated 12th September, 2024 had sued the Appellant for breach of contract in respect of a motor vehicle valued at Kshs. 900,000, damages for loss of user and costs of the suit together with interest.
4. Upon hearing and determination of the suit, judgment was entered in favour of the Claimant for the sum of Kshs. 900,000, interest from date of filing and costs of the suit.
5. Aggrieved by the judgment of the trial court, the Appellant lodged an appeal on the following grounds:-
 - i. That the learned adjudicator erred in law and in fact in completely misconstruing the trade practices involving contracts for sale and purchase of motor vehicles in Kenya.
 - ii. That the learned adjudicator erred in law and fact in failing to find that the Respondent did not at trial satisfactorily prove that there was actual sale of motor vehicle registration number KBW 218L in satisfaction of the decree in Runyenjes CMCC No. E007 of 2021.
 - iii. That the learned adjudicator erred in law and fact in shifting the burden of proof towards the Appellant.
 - iv. That the learned adjudicator erred in law and in fact in failing to make a finding that a motor vehicle that is involved in a road traffic accident is not necessarily the subject matter of a civil suit for compensation under the Law Reform Act and Fatal Accidents Act.
 - v. That the learned adjudicator erred in law and fact by misunderstanding the nature of objection proceedings initiated by the Appellant's father in Runyenjes CMCC No. E007 of 2021.
 - vi. That the learned adjudicator erred in law and fact in failing to sufficiently appreciate that if motor vehicle registration no KBW 218L had been sold in execution of the decree in Runyenjes CMCC no. E007 of 201 then the holder therein would still not be executing the same decree against the Appellant.
 - vii. That the learned adjudicator erred in law and fact in restricting the dispute before her to the adjudication of the alleged breach of contract thus effectively excluding other pertinent factual material adduced in evidence.
 - viii. That the learned adjudicator erred in law and fact in equating the attachment of a movable property to its actual sale.
 - ix. That the learned adjudicator erred in law in failing to apply the necessary caution while invoking Section 32 (1) and (2) of the Small Claims Court Act to admit evidentiary material introduced through written submissions by the Respondent in light of the Appellant's pleading that there existed collusion between the Respondent and the auctioneers involved in the execution decree in Runyenjes CMCC No. E007 of 2021.
 - x. That the learned adjudicator's judgment is not supported by the evidence on record and is against the principles of law.
6. As earlier stated the Appeal above elicited the present P.O filed by the Respondent.
7. Parties were directed to canvass the P.O through written submissions.



Respondent's submissions on the P. O

8. Respondent filed their written submissions dated 20th May 2025.
9. Counsel for the Respondent raised the following issues for determination;
 - i. Whether all the grounds of Appeal raised by the Appellant comply with Section 38 (1) of the Small Claims Act, 2016. On this, it was submitted that Section 38 (1) provides that an appeal from the small claims court to the High court is only on matters of law. Further, that all the grounds raised in the Memorandum of Appeal do not comply with Section 38 of the Small Claims Act thus the court should strike out all the grounds. Reliance was placed on the case of *Fidelity Insurance Company Ltd V Korir* [2024] KEHC 3365 (KLR) and *Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others* [2014] eKLR.
 - ii. Whether the Appeal is maintainable or not. Counsel submitted that the grounds of Appeal are not purely matters of law. That the Appellant was covertly inviting the court to re-evaluate the trial evidence contrary to Section 38 of the *Small Claims Court Act* and to make an alternate finding on the facts presented before the trial court.

Appellant's submissions on the P.O

10. The Appellant filed their written submissions dated 23rd April 2025.
11. Counsel for the Appellant submitted that the P. O revealed that the Respondent admits that the Memorandum of Appeal contains in his view one ground that raises a matter of law and on that account alone, the Respondent's invitation to the court to find the entire appeal unmerited is not well founded. He further submitted that limitation of jurisdiction to only matters of law does not of necessity preclude the appellate court from delving into the evidence if the same was overlooked, misinterpreted or misapplied so as to arrive at a wrong decision. He urged that the grounds of appeal demonstrated that a number of legal issues had been put forth for determination by the court, and that the appeal was within the purview of Section 38 of the *Small Claims Court Act*. Reliance was placed on the authorities of; *Trax Kenya Limited & Another v Dan Otieno Lwango HCCCA NO. E1468 of 2023*, *Beth Wanjiku v Julius Irungu* [2025] KEHC 3461 (KLR) and *Branton Makhatsa v Ruth Syombua Mutuku* [2023] KEHE 2692 KLR.

Analysis and determination

12. I have considered the P.O and the grounds upon which it is raised as well as the submissions by the parties. The issue arising for determination is whether the P.O raises a proper point of law capable of disposing the appeal at this stage.
13. The classical definition of a preliminary objection was stated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, where the Court held that a preliminary objection consists of a pure point of law which, if upheld, may dispose of the suit. It must be based on uncontested facts and does not call for factual examination.
14. The question whether the appeal offends Section 38(1) of the *Small Claims Court Act* can indeed be raised as a preliminary objection since it pertains to the jurisdiction of this court and the competency of the appeal.



15. Section 38(1) of the *Small Claims Court Act*, 2016 provides:
- “A person aggrieved by the decision or order of the Court may appeal against that decision or order to the High Court on matters of law.”
16. The legislative intent of the law was to limit the High court’s appellate jurisdiction to questions of law only, given the expeditious nature of the Small Claims Court’s mandate. In *Fidelity Insurance Company Ltd v Korir* [2024] KEHC 3365 (KLR), W. Korir J. (as he then was) held that:
- “An appellant who invites the court to re-evaluate evidence and substitute its own findings in place of the adjudicator’s ventures beyond the confines of Section 38(1). The High Court cannot act as a second fact-finder.”
17. In *Beth Wanjiku v Julius Irungu* [2025] KEHC 3461 (KLR), Mativo J. (as he then was) held that:-
- “An appellant may legitimately challenge the trial court’s reasoning where the facts were not disputed but the legal effect of those facts was erroneously determined.”
19. I am persuaded by the two authorities above that whereas on appeal from a small claims court pure questions of fact cannot be re-opened, mixed questions of law and fact that go to the application of law and legal principles were permissible grounds of appeal.
20. Upon perusal of the Memorandum of Appeal, it is evident that certain grounds such as grounds (a) which touches on contracts for sale and purchase of motor vehicles, (c) which challenges the burden of proof, (g) on breach of contract (i) on misapplication of Section 32 of the *Small claims Court Act* and (j) misdirection on burden of proof, all raise arguable questions of law.
21. From my further perusal of the Memorandum grounds (b) challenges prove of actual sale of the subject motor vehicle, (d) challenges factual finding of the trial court, (e) which faults the trial court for misunderstanding the nature of objection proceedings (f) faulted the trial court for its factual finding on execution of the decree and (h) faulting the trial court for equating attachment of a movable property to its actual sale prima facie raised issues of fact. However, at this stage, it was unclear whether they did not raise legal questions concerning application of law to fact.
22. From the above, I am not persuaded that the entire appeal is incompetent. The Respondent’s prayer that the appeal be struck out in limine would amount to prematurely shutting the door on the Appellant without affording the court the opportunity to interrogate whether the adjudicator indeed misapplied legal principles, a function that falls squarely within Section 38(1).
23. In light of the foregoing, the court finds that while some of the grounds of appeal may raise factual issues, not permissible under this court’s appellate jurisdiction, the appeal as a whole cannot be said to be entirely on matters of fact and therefore fit for striking out.
24. In the result, I find that:-
- i. The Preliminary Objection dated 12th September 2024 lacks merit and is dismissed.
 - ii. The appeal shall proceed to hearing on its merits, limited to questions of law as provided under Section 38(1) of the *Small Claims Court Act*.
 - iii. Costs of this P.O shall abide the outcome of the appeal.

Orders accordingly,



RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 8TH DAY OF OCTOBER, 2025.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of Appellant, Mr. Njeru for the Respondent, (Muriuki Court Assistant.)

