

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL APPEAL NO. E067 OF 2024

EDWARD ONGARO OUMA

t/a KATHIENO DISABLED ENTERPRISE.....
APPELLANT

VERSUS

THE CHAIRMAN,

THE SECRETARY, AND

THE TREASURER

BOARD OF MANAGEMENT

JERA MIXED SECONDARY SCHOOL.....RESPONDENT

(Appeal from the ruling of Hon. Kassim Akida, Resident
Magistrate, of 12th January 2025, in Milimani SCCC No. E2418
of 2023)

JUDGEMENT

1. The claim, at the Small Claims Court, was filed by the appellant, against the respondent. It sought recovery of a sum of Kshs. 252,000.00, being in respect of goods supplied, but not paid for. The claim was filed on 6th February 2024. Judgement was entered on 27th February 2024.
2. A firm of Advocates, K'Owino & Company, filed a notice of appointment, on 22nd February 2024. It did not file an appearance, nor a defence, on behalf of the respondent. The matter came up several times, as the parties, ostensibly, attempted an out of court settlement.
3. A Motion was filed, on an undocumented date, dated 19th July 2024. It was at the instance of the appellant, it sought review of the default judgement, of 27th February 2024, by way of the same being set aside, for omitting to award costs and interests.

4. A preliminary objection was filed, on 13th September 2024, of even date, asserting that the court was *functus officio*, the Advocate who had filed it was not properly on record, and the court had no jurisdiction to sit on its own judgement. Grounds of opposition were filed, on the same issues, dated 17th September 2024.
5. Directions were taken, on 23rd September 2024, for disposal of the Motion, and the preliminary objection to it. A ruling was delivered on 11th November 2024, dismissing the application, dated 19th July 2024.
6. It is that dismissal order of 11th November 2024, which has provoked the filing of this appeal. The grounds are that the trial court did not deal with the preliminary objection of 13th September 2024; the appellant filed written submissions which were not considered; and the trial court erred in pronouncing itself on the principal sum, but not on costs and interests, despite the same being pleaded.
7. Directions were given, on 9th June 2025, for disposal of the appeal, by way of written submissions. I have only seen submissions by the appellant, but not by the respondent.
8. In the written submissions, the appellant argues that the trial court prioritized the Motion, over the preliminary objection, hence it got mixed-up. It is, secondly, submitted that the appellant had filed written submissions, but the trial court indicated that it did not see them, hence his arguments were not considered. He also cites section 26(1) of the Civil Procedure Act, Cap 21, Laws of Kenya, on the court having direction to order interests at such rate as it deems reasonable.
9. I note that the claim was filed on 6th February 2024, and the interlocutory judgement was entered on 27th February 2024.

That judgment was not set aside, it became final. The judgement was entered within the 60 days allowed by section 34(1) of the Small Claims Court Act, Cap 10A, Laws of Kenya, for determination of claims filed at the Small Claims Court.

10. The issues raised, in the Motion of 13th September 2024, went to the core of the determination of 27th February 2024. They were not in the nature of an error on the face of the record, for they were substantive, about the trial court exercising discretion to award and assess the costs payable, and about whether or not to award interests. The Motion invited the trial court to re-visit the determination of 27th February 2024, with the possibility of making a determination, of the kind envisaged by section 34(1) of the Small Claims Court Act, but way outside the 60-day rule. There would have been no jurisdiction to do that which the trial court was being invited to do.
11. As the determination, of 27th February 2024, was properly made, within the 60-day rule, the appropriate thing, that the appellant should have done, was to appeal the said determination, instead of seeking review.
12. Consequently, I do not find merit in the appeal herein. I hereby dismiss the same, with no orders on costs. Orders accordingly.
13. I note that Hon. Akida was recorded, as having conducted the proceedings that were before him, in his capacity as Resident Magistrate, instead of as Adjudicator. The Small Claims Court is a court distinct from the Magistrate's Court. A Resident Magistrate sits in the Magistrate's Court, and exercises jurisdiction under the Magistrate's Court Act, Cap 10, Laws of Kenya, over matters that fall within the jurisdiction of a Magistrate's Court.

14. The judicial officers, who exercise jurisdiction over matters filed under the Small Claims Court Act, are Adjudicators, and a Resident Magistrate would have no jurisdiction whatsoever, under that Act. Even where a Resident Magistrate is appointed to sit as an Adjudicator, over matters filed under that Act, he would sit as an Adjudicator, and not as a Resident Magistrate, and there could be something to be said about proceedings, in the Small Claims Court, that are recorded as having been presided over by such a Resident Magistrate, sitting in his capacity as a Resident Magistrate, rather than in his temporary role as an Adjudicator.
15. It would appear to be a small slip, but it could have serious ramifications, to the validity of the proceedings conducted, given that it goes into jurisdiction.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA, ON THIS 3RD DAY OF NOVEMBER
2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Ms. Achala, instructed by Abalo & Company, Advocates for the appellant.

Mr. Simiyu, instructed by the Attorney General, for the respondent.

