

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
[MILIMANI LAW COURTS]
THE CIVIL APPELLATE DIVISION
(Coram: A.C Mrima, J.)
SMALL CLAIMS CIVIL APPEAL NO. E114 OF 2025

-between-

AUTOGALLERY (MOMBASA) LTD.....
APPELLANT

-versus-

UNAITAS SACCO SOCIETY LTD.....1st
RESPONDENT

JOSRICK MERCHANTS AUCTIONEERS.....2nd
RESPONDENT

*(Being an appeal from the judgment and decree of Hon. S. G Gitonga (Senior Resident Magistrate/Adjudicator)
delivered on 24th February,2023 in Nairobi SCCCOMM No.E5237 of 2022)*

JUDGMENT

1. Through the Amended Statement of Claim dated 11th October 2022, the Appellant sought recovery of Kshs. 991,104/= plus costs from the Respondents on account of rendering storage facility for Motor Vehicle Registration Number *KBD 348N* in its yard.

2. In its Response to the claim dated 19th October 2022, the 1st Respondent denied entering into any contract with the Appellant for the alleged storage of the motor vehicle and stated that its interest in the said motor vehicle was limited to that of a financier who had used the motor vehicle as collateral. It reiterated that its relationship with the 2nd Respondent was limited to the recovery of Kshs. 404,724/= owing to the 1st Respondent and that therefore, it did not instruct the 2nd Respondent to repossess, store and/or enter into any contract to store the motor vehicle in the Appellant's yard, and as such, they were not privy to the allege contract between the Appellant and the 2nd Respondent. In

the end, the 1st Respondent urged the Court to dismiss the claim with costs.

3. The 2nd Respondent did not participate in the proceedings.
4. The claim proceeded by way of oral evidence and at the close of parties' cases, the trial Court rendered its judgment on 24th February 2024 dismissing the Appellant's claim.
5. Dissatisfied with that decision, the Appellant filed the instant appeal *vide* the Memorandum of Appeal dated 21st March 2023 on the following grounds: -
 1. *The Learned Magistrate erred in law and in fact in finding that the instructions by the 1st Respondent were specific as to what was to be collected.*
 2. *The Learned Magistrate erred in law and in fact in failing to recognize that the 2nd Respondent acted as an agent of a known principal.*
 3. *The Learned Magistrate erred in law and seriously misdirected herself on the relationship between the 1st and 2nd Respondent.*
 4. *The Learned Magistrate erred in law and in fact in failing to recognize that there was an agreement in form of an Inventory signed by the 2nd Respondent on behalf of the 1st Respondent to store the attached motor vehicle and that the 1st Respondent was not privy to this agreement.*
 5. *The Learned Magistrate erred in law and in fact and seriously misdirected herself to require proof of storage charges agreed. Storage fees to be charged are provide for under the Auctioneer Act Schedule.*
 6. *The Learned Magistrate erred in law and in fact in finding that the plaintiff failed to prove its case of a balance of probabilities.*
6. It was upon these grounds that the Appellant urged this Court to set aside the impugned judgment and substitute it with a decision allowing the sum for Kshs. 991,104/= against the 1st

Respondent. It also prayed for costs of the instant appeal and the suit.

7. Pursuant to the directions of this Court, the appeal was canvassed by way of written submissions. The Appellant's submissions were dated 15th April 2025 while the 1st Respondents written submissions were dated 10th July, 2025. The 2nd Respondent did not take part in this appeal. The crux of these submissions and the decisions referred thereto will be ingrained in the latter part of this rendition.
8. The jurisdiction of this Court is as delineated by *Section 38* of the *Small Claims Court Act* and is limited to reconsideration of matters of law. Whereas there has been no universally accepted definition of the term '*matters of law*', there has been some working definitions thereto. The term '**point of law**' may also be referred to as '**matter of law**'. The ***Black's Law Dictionary*** defines '*a matter of fact*' and '*a matter of law*' as follows: -

Matter of fact: A matter involving a judicial inquiry into the truth of alleged facts and ***Matter of law:*** A matter involving a judicial inquiry into the applicable law.

9. Lord Denning, J in ***Bracegirdle vs. Oxley*** (2) [1947] 1 ALL E.R. 126 at p 130 in espousing the two terms had the following to say:

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.... The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by testimony; conclusions from those facts are inferences deducted by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depend on them. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law. In a case under the Road

Traffic Act, 1930, s. 11, the question whether a speed is dangerous is a question of degree and a conclusion on a question of degree is a conclusion of fact. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The conclusion drawn by these justices from the primary facts, was not one that could reasonably be drawn from them.

10. Drawing from the above, the Court of Appeal in **Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others** [2014] eKLR sated as under: -

*.... That reasoning has been adopted in this jurisdiction. In **A.G. Vs. DAVID MURAKARU** [1960] EA 484, for instance, Chief Justice Ronald Sinclair sitting with Rudd J. adverted to the factual foundations of legal questions by stating that an appellate court restricted to determining questions of law may yet quite properly interfere with the conclusion of a lower court if the same is erroneous in point of law. **This is the case where that lower court arrives at a conclusion on the primary facts that it could not reasonably come to. Such a conclusion or decision becomes an error in point of law.** See also **PATEL vs. UGANDA** [1966] EA 311 and **SHAH Vs. AGUTO** [1970] EA 263.*

11. Earlier, the Court of Appeal in **M’riungu and Others -vs- R** [1982-88] 1 KAR 360 observed thus: -

*.... We would agree with the views expressed in the English case of **Martin v Glyneed Distributors Ltd (t/a MBS Fastenings)** [1983] 1 CR 511 that where a right of appeal is confined to questions of law only, **an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the temptation to treat findings of fact as holdings of law or mixed findings of fact and law, and, it should not interfere with the decision of the trial of first appellate court unless it is apparent that;_on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad law.***

12. Later, the Court of Appeal in **Charles Kipkoech Leting -vs- Express (K) Ltd & another** [2018] eKLR discussed what entails matters of laws as the Court considered its role as a second appellate Court. It observed thus;

*.... Our mandate is as has been enunciated in a long line of cases decided by the Court. See Maina -vs- Mugiria [1983] KLR 78, Kenya Breweries Ltd v Godfrey Odongo, Civil Appeal No. 127 of 2007, and Stanley N. Muriithi & another v Bernard Munene Ithiga [2016] eKLR, for the holdings inter alia that, on a second appeal, **the Court confines itself to 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.....***

13. And, in **Peter Gichuki King'ara vs. IEBC & 2 others**, Nyeri Civil Appeal No. 31 of 2013, Court of Appeal held that a decision challenged on the basis of wrongful exercise of discretion raises a point of law. [See also **Twaher Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others**, (2014) eKLR].
14. From the foregoing, an appeal on matters of law calls upon the appellate Court to steer clear of findings of fact derived from primary evidence and to also restrain itself from treating findings of fact as holdings of law or mixed findings of fact and law unless the findings are so perverse as to defeat the object of justice.
15. In discharging its appellate role in matters from the Small Claims Court, the High Court should remain alive to the rationale behind the establishment of the Small Claims Court as a special and unique Court which is different from the mainstream civil Courts. It must always be remembered that the focal point of the Small Claims Courts is expeditious disposal of cases and that is why the Court is not bound by the strict rules of evidence [**Section 32** of the Small Claims Court Act] and further the Court has power to control of its own procedure in determining any claim before it subject to regard to the principles of natural justice [**Section 17**

of the Act]. The High Court, therefore, is duty-bound to assist the Small Claims Court realize its said objective and it ought to consider appeals from the said Court through those special lenses.

16. Having said so, according to the record, parties' submissions and rival arguments, the only issue of law that falls for this Court's determination is whether there was an agency relationship between the 1st and 2nd Respondents. On this score, the Appellant submitted that the 2nd Respondent introduced himself as an agent of the 1st Respondent and that it was on that basis that the Appellant entered into an agreement with the 2nd Respondent for storage of the motor vehicle. Additionally, the Appellant submitted that the letter dated 11th August 2014 and the storage agreement dated 19th September 2014 were enough proof that the 2nd Respondent acted on the authority of, and as an agent of, the 1st Respondent. For these reasons, the Appellant posited that the 1st Respondent was therefore liable to pay for the storage costs.
17. The 1st Respondent on the other hand emphatically submitted that the letter dated 11th August 2014 was an authority by itself to the 2nd Respondent to collect debts on its behalf, and as such, did not authorize the 2nd Respondent to repossess any motor vehicle. It reiterated that it can only be legally held for actions of an agent who was operating with express or implied instructions which in the instance case, was not as such.
18. This Court has had the liberty to carefully peruse the letter dated 11th August 2014 and the storage agreement dated 19th September 2014. The letter dated 11th August 2014 essentially authorized the 2nd Respondent to collect debts owing to the 1st Respondent, and it read in part thus: -

.... this letter authorizes you through your company to collect on our behalf the outstanding debts from our debtor named above who the debts are long overdue.

19. On the other hand, the storage agreement dated 19th September 2014 is essentially an inventory form by the Appellant. As said, the 1st Respondent remained emphatic that it did not authorise the 2nd Respondent to act as its agent, but engaged it for a specific business relationship without more, as such, it could not be held liable for the actions of the 2nd Respondent. The Supreme Court of Kenya in **Jovet (Kenya) Limited v Bavaria NV** (Petition E039 of 2024) [2025] KESC 27 (KLR) (Constitutional and Judicial Review) (16 May 2025) (Judgment) had the following to say on agency relationships: -

16. Demonstrating a direct working relationship did not necessarily imply an agency relationship by analogy. An agency relationship often required a principal to authorize an agent to act on its behalf, creating legal authority, a direct working relationship, while conversely, demonstrating a working arrangement did not inherently involve that delegation of authority or legal power.

20. In this case, it comes to the fore that the 1st Respondent did not issue any instructions to the 2nd Respondent to act as its agent. The much that was exhibited from the documents on record is proof of a working business arrangement and not a legal delegation of authority or legal power. Therefore, the Appellant's contention that the 2nd Respondent was an agent of the 1st Respondent fails and is hereby dismissed.

21. On the basis of the foregoing, the appeal is unsuccessful and the following final orders do hereby issue: -

[a] The appeal is hereby dismissed.

[b] The Appellant shall bear the costs of the appeal assessed at Kshs. 60,000/= payable within 30 days and in default execution to issue.

22. Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 19th day of November, 2025.

**A.C. MRIMA
JUDGE**

Judgment virtually delivered in the presence of:

Mr. Ombiro, Learned Counsel for the Appellant.

Mr. Kamwaro, Learned Counsel for the 1st Respondent.

No appearance for the 2nd Respondent.

Michael/Amina - Court Assistants.