



REPUBLIC OF KENYA



KENYA LAW
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Real Time Company Limited v Vigor Medical (K) Limited (Small Claims Appeal E035 of 2025) [2025] KEHC 15956 (KLR) (7 November 2025) (Judgment)

Neutral citation: [2025] KEHC 15956 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
SMALL CLAIMS APPEAL E035 OF 2025
AN ONGERI, J
NOVEMBER 7, 2025**

BETWEEN

REAL TIME COMPANY LIMITED APPELLANT

AND

VIGOR MEDICAL (K) LIMITED RESPONDENT

(Being an appeal from the Judgment of Hon. V. M. Mochache (RM/Adjudicator) in Nairobi Small Claims Court Case No. E3331 of 2023 delivered on 7th September 2023)

JUDGMENT

1. The Respondent in this appeal was the Claimant in Nairobi Small Claims Court Case No. E3331 of 2023 where it was demanding Kshs. 574,000/= for goods supplied to the Appellant on diverse dated in the year 2021.
2. The Appellant opposed the claim and contended that the goods were supplied to the City Mortuary and not to the Appellant.
3. The case proceeded by way of documents and submissions.
4. The trial court found that there was a contract between the Appellant and the Respondent for the supply of goods.
5. The trial court entered judgment in favour of the Respondent against the Appellant in the sum of Kshs. 574,000/= plus costs and interest from the date of filing suit until payment in full.
6. The Appellant has appealed to this Court on the following grounds:-
 - i. That the Learned Magistrate erred and misdirected herself on the facts and law and based her findings on wrong and irrelevant considerations.



- ii. That the Learned Magistrate erred in law and in fact in holding that there was a valid contract between the Appellant and the Respondent.
 - iii. That the Learned Magistrate erred in law and in fact in holding that the Respondent was liable for the breach of contract yet there was no contract between the parties.
 - iv. That the Learned Magistrate erred in law and in fact in disregarding the evidence tendered by the Appellant.
 - v. That the Learned Magistrate erred in law and in fact in disregarding the Appellant's submissions that the Respondent herein had failed to prove that there was a valid contract between them.
 - vi. That in all the circumstances of the case, the Learned Magistrate failed to do justice before the Appellant.
7. The parties filed written submissions as follows:- the appellant submitted that for the supply of goods, evidence of delivery is typically established by delivery notes signed and stamped upon receipt plus LPO's as proof of order.
 8. That the respondent failed to discharge his burden of proof as not a single note duly signed and stamped by the appellant was produced to confirm receipt of any goods.
 9. The respondent heavily relied on invoices as proof of supply which is merely a request for payment and does not by itself establish that goods were ordered, delivered or received. In support the appellant stated that the Supreme Court of Kenya in *Total (Kenya) Limited (Formerly Caltex Oil (Kenya) Limited) v Janevams Limited* [2015] eKLR affirmed that:

“A proforma invoice is considered a commitment to purchase goods at a specified price. It is not a receipt, and as such cannot attest to the existence or acquisition of goods.”
 10. The appellant argued further that the invoices produced in the present matter bore no seal, rubber stamp, or signature of the Appellant acknowledging receipt. Without delivery notes or endorsed invoices, the alleged supply remains unproved. The Respondent did not also produce any Local Purchase Orders (LPOs) issued by the Appellant. An LPO serves as confirmation and authorization by the purchaser.
 11. That the absence of an LPO reinforces the conclusion that no valid order was ever placed by the Appellant. The appellant submitted that consequently the respondent failed to prove supply of the goods in question on a balance of probabilities.
 12. The respondent alternatively submitted that the evidence before the trial court clearly demonstrated that the appellant requested the respondent to supply the said goods directly to a third party.
 13. That the arrangement was not only verbal but was also corroborated by invoices received by the appellant without any reservation. The trial court's finding was therefore grounded on the evidence adduced before the court and was consistent with the doctrine of privity of contract.
 14. The respondent submitted that the appellant has not demonstrated any error of law committed by the trial court to justify interference by this court. Section 38(1) of the *small claims court Act* required that an appeal from the decision of the small claims court can only be matter of law.
 15. A perusal of the record of appeal shows that the grounds advanced by the appellant are predominantly factual in nature which is within the exclusive jurisdiction of the trial court and cannot be reopened



on appeal. It was the respondent argument therefore that this appeal consequently lacks merit both in law and in substance and should be dismissed with costs.

16. This being an appeal from the Small Claims Court, the same can only be entertained on points of law.
17. The sole issue for determination is whether the trial court erred in holding that there was a contract between the Appellant and the Respondent for the supply of goods.
18. This appeal, arising from the Small Claims Court, is confined to matters of law by dint of Section 38(1) of the *Small Claims Court Act*.
19. The Appellant's challenge, though framed in several grounds, essentially contests the trial court's factual finding that goods were supplied pursuant to a contract.
20. However, an appellate court will not normally interfere with the findings of fact by a trial court unless it is demonstrated that the court misdirected itself in law in its evaluation of the evidence, thus arriving at a finding that is not supported by the evidence at all.
21. The Appellant's core argument is that the Respondent failed to prove the supply of goods because it did not produce delivery notes signed by the Appellant or Local Purchase Orders (LPOs).
22. It is contended that the invoices alone are insufficient proof of a contract or delivery. In this regard, the Appellant heavily relies on the decision of the Supreme Court in Total (Kenya) Limited (Formerly Caltex Oil (Kenya) Limited) v Janevams Limited [2015] eKLR, where it was stated that a proforma invoice is a commitment to purchase but is not a receipt and cannot attest to the acquisition of goods.
23. While this principle is sound, its application is context-specific. The evidence before the trial court was not limited to invoices in a vacuum.
24. The Respondent's case was predicated on a specific arrangement: that the Appellant requested the Respondent to supply goods directly to a third party, the City Mortuary.
25. This factual scenario distinguishes the present matter from the Total Kenya case, which dealt with the evidentiary value of a proforma invoice in isolation.
26. The trial court, as the trier of fact, was entitled to look at the entire body of evidence, including the pattern of invoicing and the Appellant's conduct, to determine whether a contract was established.
27. The legal principles governing the formation of a contract in Kenya are well-settled. A contract is formed where there is an offer, acceptance, consideration, and an intention to create legal relations.
28. The form these elements take can vary. A contract can be written, oral, or inferred from the conduct of the parties.
29. A court can infer a contract from the correspondence and conduct of the parties. A contract can also be implied from the acts and conduct of the parties.
30. In the present case, the trial court was presented with evidence of invoices raised by the Respondent, which were not disputed by the Appellant at the time.
31. The Appellant's failure to raise any reservation or objection upon receiving these invoices is a significant piece of conduct from which the trial court could, as a matter of fact, infer acceptance of the terms and an acknowledgment of the debt.
32. The Appellant's complaint that the trial court disregarded its evidence and submissions is, in essence, an invitation for this Court to re-evaluate the evidence and come to a different factual conclusion.



- 33. This is not the function of a first appellate court in an appeal restricted to a point of law from the Small Claims Court.
- 34. The role of this Court is to ascertain whether the Adjudicator applied the correct legal principles to the facts as she found them.
- 35. The finding that a contract existed, whether verbal or inferred from conduct, is a finding of fact. The Adjudicator, having considered the documents and submissions, made a factual determination that the Respondent had proved its case on a balance of probabilities.
- 36. This Court finds no error of law in the Adjudicator's process of reaching that conclusion. She applied the correct legal test for proof in civil cases and did not base her judgment on any manifestly wrong legal principle.
- 37. Consequently, for the reasons set forth above, this Court finds that the appeal lacks merit.
- 38. The learned Adjudicator did not err in law in holding that a contract for the supply of goods was established between the parties.
- 39. The appeal is therefore dismissed with costs to the Respondent. The judgment of the Small Claims Court in Nairobi SCC Case No. E3331 of 2023 delivered on 7th September 2023 is hereby affirmed.
- 40. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 7TH DAY OF NOVEMBER 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Millicent/Mabishi

.....for the Appellant

.....for the Respondent

