

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E116 OF 2024

JACKSON KOINE STEPHEN.....APPELLANT

-VERSUS-

LEAH

NJERI

KARANJA.....

.....RESPONDENT

(Being an appeal from judgment and decree of the Small Claims Court at Ruiru case number E200 of 2024 dated 13th May 2024)

JUDGMENT

This is an appeal from the Small Claims Court at Ruiru following judgment in favour of the respondent for a sum of Kshs 294,000.00 plus interest and costs assessed at Kshs 20,000.00 in its case number E200 of 2024. The claim arose from an admitted contract between the parties dated 2nd February 2023. The respondent claimed that pursuant to the agreement, she on 7th February 2023 gave the respondent a loan of Kshs 249,000.00 as investment capital for planting of potatoes in Ol-Jorok in Nyandarua County which was to be refunded within 100 days. On 8th March 2023, the respondent advanced a further Kshs 45,000.00. The initial loan of Kshs 249,000.00 was to be refunded with profit of 40 per cent.

In response to the claim, the appellant admitted the agreement but stated that the same was an investment and not a loan. According to him, the parties were to share profits with the respondent going home with 40 per cent. He stated that he was not able to pay the respondent as there were no returns on the respondent's investment.

After hearing the parties, the court in its judgement appreciated that the agreement was an investment arrangement and not a loan agreement and went on to find that the appellant had admitted that he had sold 5.8 tonnes of potatoes and therefore the investment was successful. On this basis, the court entered judgment for the respondent as stated above. Aggrieved by the said judgment, the appellant preferred this appeal citing the following grounds;

- 1. The learned trial Magistrate erred in fact and in law by failing to appreciate the evidence tendered regarding the investment agreement between the appellant and the respondent herein.*
- 2. The learned trial Magistrate erred by failing to appreciate the fact that the respondent admitted to having willingly executed an investment agreement and not a loan agreement.*
- 3. The learned trial Magistrate misdirected herself by finding that the appellant had made profits from his farming venture to be shared with the respondent.*
- 4. The learned trial Magistrate erred by failing to evaluate the evidence adduced by the appellant on his response to statement of claim and the oral evidence adduced at the hearing of the claim.*

The appeal was disposed of by way of written submissions vide the appellant's submissions dated 20th August 2025 and those of the respondent dated 14th August 2025. I have read the said submissions and the memorandum of appeal. I find the memorandum of appeal misleading in grounds 2 and 3 by alluding that the court trial court found the agreement as a loan and not an investment one and that the court found that the appellant made profits from the farming. I have read the

judgment of the trial court and in my view, the court appreciated the agreement as investment and not a loan when it stated that;

‘It is therefore this court’s finding that the business venture was successful and the respondent chose not to repay the claimant her money and profit therefrom.’

Although the court mentioned that the appellant chose not to pay profits, it did not make a determination of how much the profit was or enter any judgment in respect of the profits. What the court found as a matter of fact was that the venture was successful. The judgement entered against the appellant did not have the component of profits. If the component of profits were part of the judgment, it would have been more than Kshs 294,000.00. In any event, I find this to be a matter of fact which is not appealable under Section 38 of the Small Claims Act which states that;

1. *A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.*
- 2, *An appeal from any decision or order referred to in subsection (1) shall be final.*

Honourable Justice T.W. Ouya reiterated the above position in ***Okal v Awiti (2024) KEHC 14405 (KLR)*** when she held that;

‘This is a first appeal. Section 38(1) of the Small Claims Court Act specifically prescribes that appeals from the Small Claims Court to the High Court be premised solely on matters of law.’

Similarly, in ***Wamae v Wainaina (2024) KEHC 2468 (KLR)*** while commenting on the limits of the appellate court where an appeal is limited to matters of law Honourable Justice Kizito Magare held as follows;

‘In the case of Mwita v Woodventure (K) Limited & another (Civil Appeal 58 of 2017) [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal while referring to a second Appeal, which is essentially on points of law and thus similar to the duty of the court under section 38 of the Small Claims Court, stated as doth:-

“This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of Stanley N. Muriithi & Another v Bernard Munene Ithiga [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse.’

Grounds 1 and 4 of the memorandum of appeal raise issues of facts too. Nevertheless, going through the judgement of the court, I take the position that she properly and exhaustively analysed the evidence before making her determination. I see no reason to fault the trial court on the way she evaluated the evidence as it appreciated what the parties stated in their testimony and the exhibits produced.

The upshot of the above is that this appeal has no merit and it is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this 7th day of **November** 2025.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Kambia for the appellant and Mr. Oyori for the respondent.

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