

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL DIVISION
CIVIL APPEAL NO E749 OF 2024

SUNDOWN LOGISTICS LIMITED.....
APPELLANT

VERSUS

PLAN AUTO SPARES LIMITED.....RESPONDENT

(Being an Appeal from the judgment of the Hon. Barbara A. Akinyi delivered on the 10th Day of June 2024 in Nairobi Small Claims Court Case No: SCCCOMM/E5369/2023)

JUDGMENT

1. The appeal that is before this court for determination is the Appeal against the Judgment of Hon. Barbara A. Akinyi delivered on the 10th day of June 2024 in Nairobi Small Claims Court Case No: SCCCOMM/E5369/2023.

Brief background;

2. In the trial court the Respondent in its Statement of Claim dated 18th July 2023 prayed for:

- i) Judgment in the sum of Kshs. 135,000/=
- ii) Interest and compensation to be determined by the Court
- iii) Costs of the claim to be assessed by the Court

- iv) Any other relief that this Honourable Court may deem fit and just to grant in the circumstances.
3. The Appellant filed its Response to the Statement of Claim dated 4th August 2023 and witness statement seeking to have the Statement of Claim dismissed with costs.
 4. The appellants Memorandum of Appeal dated 20th June 2024 and prays that:
 - a) The Appeal be allowed.
 - b) The judgment delivered on the 10th Day of June 2024 by Hon. Barbara A. Akinyi at Milimani Small Claims Case no. E5369 of 2023 be set aside.
 - c) The Respondents do pay the costs of the appeal.
 5. The Respondent supplied the Appellant with various motor vehicle parts which the Respondent raised invoices and the Appellant settled.
 6. The Respondent supplied the Appellant with spares amounting to Kshs 235,000/=.
 7. According to the appellant, the parties had various modes of payment which were in form of cash, Mpesa and/or bank transfer.
 8. It is its case that on the 24th of May 2023 the Appellant made a bank transfer of Kshs. 100,000/= to the Respondent and later through the Respondent's agent settled the balance.
 9. The Respondent denied receiving Ksh135,300/= thereby giving rise to the suit.

10. The trial Court in its judgment held that the Respondent had proved its claim on a balance of probabilities and that the Appellant should pay Kshs. 135,300/= plus interest at Court rates from the date of filing the claim until payment in full together with costs of the claim.

The Respondents Case;

Whether this Appeal is merited.

11. It submits that the Appellant failed to file a complete Record of Appeal as the Record of Appeal dated 11th November 2024 left out crucial documents.
12. This necessitated the Respondent to file the Respondent's Supplementary Record of Appeal dated 25th March 2025.
13. The goods were supplied by the Respondent to the Appellant. Both parties acknowledged the supply of good by the Respondent and the corresponding receipt of the goods by the Appellant evidenced by invoices which were duly acknowledged by the Appellant as evidenced by the signatures and stamps of the Appellant. It is therefore clear that indeed there was a supply and receipt of goods.
14. The Respondent produced a statement dated 30th June 2023 which provides a summary of the invoices issued and amount received in return.
15. The statement also shows that payments made by the Appellant were made via bank and none was ever received in cash.
16. A payment was made through an Equity EFT Bank transfer on the 24th of May 2023 of Kshs. 100,000/=.

17. In making the said payment, the Appellant acknowledged that there was indeed a balance to be paid.
18. After the said date, the Appellant has not made any payment towards the outstanding balance of Kshs. 135,300/=.
19. It was the Appellant's case that the outstanding amount was paid to a former employee, one Caroline Wangechi Macharia.
20. The parties herein had not agreed on a different method of payment and from the evidence on record, the Appellant made his payment via the bank.
21. It is also important to note that no evidence has been tendered before Court by the Appellant to show that indeed the said monies were paid to the former employee.
22. The Appellant never tried to avail the said employee as she would have been a crucial witness to demonstrate that she had received the said monies on behalf of the Respondent.
23. It is evident that the Respondent did prove its case on a balance of probabilities while the Appellant failed to prove its defence.

Analysis and determination

24. In **Selle & Another vs. Associated Motor Boat Co Ltd & Others [1968] EA** The court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.

- 25.** The Supreme Court of India on the 27th day of April, 2015 in the case of **K. Anbazhagan v. State of Karnataka and Others**, as follows;

“The appellate court has a duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in entirety has to be scrutinized with care and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. The said responsibility cannot be abdicated or abandoned or ostracized, even remotely.....The appellate court is required to weigh the materials, ascribe concrete reasons and the filament of reasoning must logically flow from the requisite analysis of the material on record. The approach cannot be cryptic. It cannot be perverse. The duty of the Judge is to consider the evidence objectively and dispassionately. The reasoning in appeal are to be well deliberated. They are to be resolutely expressed. An objective judgment of the evidence reflects the greatness of mind - sans passion and sans prejudice. The reflective attitude of the Judge must be demonstrable from the judgment itself. A judge must avoid all kind of weakness and vacillation. That is the sole test. That is the litmus test.”

- 26.** The court is satisfied that goods were delivered by the Respondent to the appellant. This is not in dispute.

27. Further the court is satisfied that they Appellant made part payment to the Respondent of the amount due leaving a balance of 135,000 shillings.
28. The court is satisfied that the mode of payment was through the bank as demonstrated in the bank statements.
29. The court is for satisfied that the Applicant refused to call a key witness who it alleged had received the final payments for and on behalf of the respondent.
30. The appellant had an opportunity to call this witness. The presumption is that the witness would have produced adverse evidence.
31. On a balance of probabilities, the court is satisfied that the Respondent proved its case within section 107 and 108 of the evidence act.

Disposition;

The appeal lacks merit.

Order:

The appeal is dismissed with costs.

Dated, signed and delivered at Nairobi this 3rd day of November, 2025.

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J. CHIGITI (SC)

JUDGE