



ARM Cement Plc (In Liquidation) v Kimani & another (Both t/a Jeffy's Enterprises) (Civil Appeal E599 of 2025) [2025] KEHC 17599 (KLR) (Civ) (27 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17599 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E599 OF 2025**

**LP KASSAN, J
NOVEMBER 27, 2025**

BETWEEN

ARM CEMENT PLC (IN LIQUIDATION) APPELLANT

AND

SIMON GITAU KIMANI 1ST RESPONDENT

SUSAN WAITHERA GITAU 2ND RESPONDENT

BOTH T/A JEFFY'S ENTERPRISES

JUDGMENT

1. This Appeal emanates from a valid contractual relationship between the parties herein. The brief history of this matter is that The Appellant entered into a contract with the Respondent to supply cement and related materials to the Respondent who would then pay with cheques. Further to the contract, the Appellant opened an account to facilitate payments of the supplies. The Appellant produced his statement showing the arrears which is the subject of this appeal. I have read the proceedings and the submissions and I have flagged one issue which will break the camel's back- the evidence produced by the Claimant.
2. The Claimant produced the statement of account showing arrears. This statement was admitted as an exhibit in Court. The statement showed payments made in cheques and details of cheques that bounced. In cross examination, the Claimant admitted that there were invoices raised but he chose not to produce them as exhibits. The details on exact number of cement supplied or related Items at any time are not in the statement which only has figures. There are no delivery notes, no documents of acknowledgement by the Respondent was attached. The statement has number plates of the motor vehicles that supplied the Items but it is difficult for anyone to confirm if all Items were supplied without supporting documents. What if the drivers did not supply these documents? Needless to say,



the Appellant was in control of the statement and that is why he prepared it. A mere production of a statement of accounts can be seriously challenged by a response of " I paid fully" or that the goods never reached the Respondent under these circumstances. Admission that invoices were within the custody of the Appellant raises doubts as to why they were not produced. There was not even a single attempt to seek Courts leave to file these documents.

3. The rules of evidence in small Claim Courts are flexible but not in a contested matter like this one. The simplicity or flexibility of Small Claims Courts is available for both parties in the dispute and not only for the claimant. The issue here is not about procedural technicalities but purely evidence. The "flexibility nature " of a small Claims Court cannot defeat the quest for justice, the primary rule of evidence which will always remain paramount.
4. The demand letter issued by the Plaintiff came four years after the arrears were noted by the Plaintiff. In other words, the Appellant sat knowing that the Respondent was in arrears for four years after termination of the Contract. This, considered with the above, works against the Appellant however " feeble" it might look like.
5. The issue of whether an appeal lies to this Court on factual matters is already settled. The dispute here is on a contract which is surrounded by factual and legal issues. The matter is rightly before me.

Conclusion

6. The Appeal is dismissed with costs.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 27TH DAY OF NOVEMBER 2025.

HON L P KASSAN

JUDGE

In the presence of;

Kaburi for Appellant

Kinuthia for Respondent

Carol – Court Assistant

