



**Flamingo Africa Limited v Heykal Investment Limited (Small Claims Appeal E034 of 2025) [2025] KEHC 18199 (KLR) (Civ) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18199 (KLR)

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

**SMALL CLAIMS APPEAL E034 OF 2025**

**WM MUSYOKA, J**

**DECEMBER 4, 2025**

**BETWEEN**

**FLAMINGO AFRICA LIMITED ..... APPELLANT**

**AND**

**HEYKAL INVESTMENT LIMITED ..... RESPONDENT**

*(Appeal from the judgement and decree, of Hon. VK Momanyi, Resident Magistrate/ Adjudicator, of 6th December 2024, in Milimani Small Claims Court No. E10772 of 2024)*

**JUDGMENT**

1. The claim, at the trial court, was filed by the respondent herein, against the appellant, for Kshs. 879,032.00; arising from an alleged breach of contract. The claim was resisted by the appellant, who conceded the contract, but denied owing the respondent any money. Instead, it accused the respondent of defrauding it, and counterclaimed for Kshs. 915,969.00.
2. The matter was disposed of by way of viva voce evidence. 1 witness testified for the respondent, and 2 for the appellant. Judgement was delivered on 6<sup>th</sup> December 2024, via email.
3. The appellant was aggrieved, hence the instant appeal. The grounds revolve around the respondent not performing its obligations under the subject contract; the evidence not being properly evaluated; the trial court failing to find elements of fraud in the evidence tendered; not finding that the contract became void after the fraud was discovered; among others.
4. The appeal was never placed before a Judge, for directions on its disposal. The parties did, however, appear before the Deputy Registrar, on 2 occasions, with respect to filing of written submissions. Both sides did file written submissions, which I have read, and noted the arguments made.



5. There is a fundamental issue that the parties have not raised, in their filings, that is with respect to whether the Small Claims Court had jurisdiction, as at 6<sup>th</sup> December 2024, when the impugned judgement was delivered or the determination made.
6. The suit, at the trial court, was filed at the Small Claims Court, which is established under the [Small Claims Court Act](#), Cap 10A, Laws of Kenya. The jurisdiction of that court, to handle the matters before it, is limited by section 34(1) of the Act, to 60 days. The court is seized of the matter for 60 days, from the date of its filing, to hear and determine it. That would mean that once the 60 days lapse, the jurisdiction of the Small Claims Court, over the dispute, would be lost, and any determination, outside that period, would be a nullity.
7. The claim, at the Small Claims Court, was filed on 2<sup>nd</sup> September 2024. 60 days from 2<sup>nd</sup> September 2024 lapsed on 2<sup>nd</sup> November 2024. That claim should have been determined on or by 2<sup>nd</sup> November 2024, after which jurisdiction was lost, and, therefore, the determination of 6<sup>th</sup> December 2024 was outside the 60 days, and was by a court that had lost jurisdiction. It meant that the determination of 6<sup>th</sup> December 2024 was void, on account of being a nullity. It was not a valid judgement. An invalid judgement cannot give rise to a competent appeal, unless the appeal raises the issue of jurisdiction, or seeks a declaration that the judgement was invalid on that ground.
8. The appeal, before me, attacks the judgement of 6<sup>th</sup> December 2024 on merits. It does not raise the issue of jurisdiction. Consequently, it is an incompetent appeal. There is no valid appeal before me. However, that should not mean that the appellant loses out. It was not to blame for the lapse of jurisdiction of the Small Claims Court. If anything, it should be the Small Claims Court to blame, for insisting on determining the matter, after it had lost jurisdiction, instead of downing its tools, as required of it by Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd [1989] KLR 1 [1989] eKLR [1989] KECA 48 (KLR) (Nyarangi, Masime & Kwach, JJA).
9. So, what should be the way out?
10. The suit, at the trial court, was founded on a contract. A claim, founded on breach of contract, according to the [Limitation of Actions Act](#), Cap 22, Laws of Kenya, should be filed within 6 years, of the breach, or of the cause of action arising. The cause of action herein allegedly arose within the year 2024. The suit was, therefore, filed within the limitation period.
11. The lapse of jurisdiction, of the Small Claims Court, has not rendered the suit non-viable. It was filed within limitation period, before a competent court. Unfortunately, the court did not exercise its jurisdiction within the 60 days limitation, and ended up acting outside its jurisdiction, by rendering a null judgement. That act, by the court, ought not rob the parties of their right to access the courts, to have their case determined by a competent court.
12. Upon loss of competence, by the Small Claims Court, on 2<sup>nd</sup> November 2024, before the claim was determined, the claim itself did not become incompetent, for there existed other courts with competence to hear and determine it with finality. The Magistrate Court and the High Court had and have jurisdiction, concurrent to that of the Small Claims Court, except for the pecuniary ceiling of Kshs. 1,000,000.00, for the Small Claims Court. The suit, lying at the Small Claims Court, which is now incompetent, the Small Claims Court that is, can be moved out of the Small Claims Court, to the Magistrate Court, or the High Court, which still have competence, for disposal. The Magistrate Court has a pecuniary ceiling of up to Kshs. 20,000,000.00; and the claim can quite comfortably be handled from there.



13. To do justice to the parties, I will, as I hereby do, exercise jurisdiction, under Article 165(6)(7) of *the Constitution*, to order transfer of the matter, in Milimani SCCCOMM No. E10772 of 2024, out of the Small Claims Court, under section 18 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, to the Magistrate Court, at the Milimani Commercial Courts, for hearing and final disposal.
14. To facilitate that disposal. I hereby declare the proceedings, that led up to the null judgement of 6<sup>th</sup> December 2024, null and void.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 4<sup>TH</sup> DAY OF DECEMBER 2025.**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Ms. Nanjala, instructed by Mitau Kimanzi & Company, Advocates for the appellant.

Mr. Burugu, instructed by Anthony Burugu & Company, Advocates for the respondent.

