



4. The case, at the Small Claims Court, was filed on 26<sup>th</sup> September 2023, and determined on 14<sup>th</sup> October 2024, when the judgement, dated 11<sup>th</sup> October 2024, was delivered.
5. Under section 34 of the Small Claims Court Act, the adjudicator has 60 days, from the date of the filing of the claim, to hear and determine it. That would mean that a judgement, delivered outside the 60 days, would be without jurisdiction, and an appeal, challenging the determination on merits, would be incompetent.
6. 60 days, from 26<sup>th</sup> September 2023, expired on or before 26<sup>th</sup> November 2023. A judgement, delivered on 14<sup>th</sup> October 2024, was clearly by a court which had no jurisdiction, and it was a nullity. As such, there is nothing for me to determine, for a null Judgment can only lead to an incompetent appeal, if the same attacks the null judgement on its merits.
7. The alleged cause of action arose out of an alleged contractual arrangement between the appellant and the respondent, and accrued sometime in September 2021 or thereabout. Under the Limitation of Actions Act, Cap 22, Laws of Kenya, an action, founded on a contract, should be filed within 6 years of the breach of the contract. That would mean that the claim herein was filed within the requisite 6 years.
8. What has been lost is the jurisdiction of the Small Claims Court, to handle the dispute. That should not affect the viability of the claim, for it was filed within the requisite limitation period, and the claim is still outstanding, given that its purported determination was by a court lacking jurisdiction, and the determination was a nullity, which amounted to a no determination.
9. The claim was a pure civil claim. I will not venture to evaluate whether it revolved around employment and labour relations, for the appellant has not raised that issue. For now, I shall presume that it is a pure civil matter, in respect of which other courts would still have jurisdiction to hear and determine, such as the Magistrate Court and the High Court, or even the Employment and Labour Relations Court, should it be an employment and labour relations dispute.

10. To do justice to the parties, the way forward should be to exercise the supervisory jurisdiction, conferred on the High Court, by Article 165(6)(7) of the Constitution, and order transfer of the claim, from the Small Claims Court, to the Magistrate Court, under section 18 of the Civil Procedure Act, Cap 21, Laws of Kenya. It shall be transferred to the Magistrate Court at the Milimani Commercial Courts, for hearing and final disposal. To facilitate that, I shall declare the proceedings, conducted by the Small Claims Court, null and void.
11. The appeal herein is disposed of in those terms. Orders accordingly.

**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.**

**Miss Milcah Mutheni Ndiku, the appellant, in person.**

**Advocates**

**Mr. Mwachofi, instructed by Apudo Kamuyu & Mariga,  
Advocates for the respondent.**