



Blue Valley Enterprises Limited v Board of Governors Ruthagati High School (Civil Appeal 48 of 2019) [2025] KECA 2232 (KLR) (19 December 2025) (Judgment)

Neutral citation: [2025] KECA 2232 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 48 OF 2019
W KARANJA, JW LESSIT & A ALI-ARONI, JJA
DECEMBER 19, 2025**

BETWEEN

BLUE VALLEY ENTERPRISES LIMITED APPELLANT

AND

BOARD OF GOVERNORS RUTHAGATI HIGH SCHOOL RESPONDENT

(Being an appeal against the Judgment and Decree of the High Court of Kenya at Nyeri (Matheka, J.) delivered on 18th January 2019 in HCCA No. 79 of 2014)

JUDGMENT

1. This is a second appeal, and our mandate is limited as provided under Section 72(1) of the [Civil Procedure Act](#), which outlines the circumstances under which a second appeal may lie from the appellate decree of the High Court. This Court has severally, and succinctly stated its mandate. In *Kenya Breweries Limited vs. Godfrey Odoyo* [2010] eKLR, the Court described the mandate in the following words:

“In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

2. We shall briefly consider the facts of the case to put the case in context, and bearing in mind that the first appellate court is accused of having failed to re-evaluate the evidence as required by law, which alleged failure itself becomes a matter of law for us as the second appellate court to consider.
3. The appellant Blue Valley Enterprises Limited has challenged the judgment of the High Court at Nyeri (Matheka, J.) dated 18th January 2019 in Nyeri HCCA No. 79 of 2014. The appeal before the



High Court arose from the Nyeri Chief Magistrate's Court, Civil Case No. 80 of 2013, in which the appellant, by a plaint dated 14th March 2013, sought Kshs. 992,878.80, plus costs, and interest from the respondent.

4. In the suit, the appellant claimed that on or about 8th June 2010, the respondent engaged the company to build a dormitory. He further argued that, according to the contract, the appellant was to provide labour, and the District Works Officer was to determine the amount, which the respondent would pay upon presentation of certificates at specific stages of the building's construction.
5. The appellant maintained that it completed the contract, which was certified by personnel from the Ministry of Public Works; however, upon presenting its last bill for the sum of Kshs. 992,878.80, representing the amount due at the contract's completion as certified by the contract supervisors, the respondent refused to settle the same.
6. In response, the respondent filed a defence dated 12th April 2013, denying that the amounts payable to the appellant were based on certificates issued by the District Works Officer. The respondent contended that the labour contract was for a fixed amount of Kshs. 2,910,210 as confirmed by the appellant in a letter dated 15th June 2010. Furthermore, the respondent argued that the District Works Officer's role was solely to ensure quality and conformity of the work according to architectural specifications, and he was not responsible for determining or proposing the amounts payable. Labour consideration, the respondent asserted, had been predetermined between the appellant and the respondent. Ultimately, the respondent contended that it owed no money to the appellant, having fulfilled all its contractual obligations.
7. The matter proceeded to a hearing. Joseph Ngunjiri Wahome (PW1) is the Managing Director of the appellant. He testified that the appellant and the respondent entered into a labour contract for the construction of a dormitory. That, after the completion of the contract, the respondent failed to pay the appellant the balance due and owing under the contract. He claimed that the appellant was to be paid 35% of the value of materials, the total outstanding balance being Kshs. 982,878.90.
8. On cross-examination, he confirmed having received the sum of Ksh. 2,910,210 as seen in the letter he wrote to Ruthagati Secondary School dated 15th June 2010. However, he claimed that he had done extra work, amounting to the unpaid balance of Kshs. 982,878.90. He admitted that the alleged extra work was not specified in his original letter dated 15th February 2011, but stated that the school board approved the additional materials in a boardroom meeting. However, he cannot remember the exact date.
9. John Mugo Githae (PW2) was the District Works Officer for Mathira East. He was assisting the District Works Officer in 2010 and described his role in advising the school's management committee on construction matters. He confirmed that he was aware of the project, its subject matter, and the issuance of payment vouchers for work done by the appellant. The first payment was for Kshs. 120,844.20 dated 13th September 2010, and the second was for Kshs. 1,503,222.10 dated 2nd February 2011. These amounts were based on physical site inspections, materials supplied, and the actual work completed on site. He confirmed that the appellant operated under a labour-based contract, and the valuations were used to determine the amount due. The vouchers directed the school to pay the appellant.
10. Mr. Joseph Wachira Mwai, Principal of Ruthagati Secondary School and Secretary to the Board of Management, testified as DW1. He testified that in 2010, the government allocated the school Kshs. 10,000,000, under the Economic Stimulus Program, due to increased enrollment, and the board decided to use the funds to construct a dormitory. As a result, the appellant was awarded a labour



contract for the construction initially for Kshs. 3,831,732, but before the commencement of the project, it was realized that the project exceeded the available funds, necessitating a meeting with the appellant, where the scope of work was revised and the labour contract was reduced to Kshs. 2,910,210, which the appellant accepted and issued a commitment letter dated 15th June 2010.

11. He further testified that in February 2011, the appellant wrote requesting additional payment for labour, citing increased costs which the witness denied having authorised, as the respondent had not issued an LPO for any extra work beyond the contract.
12. Further, he clarified that the Ministry of Public Works' role was strictly technical, limited to ensuring the construction standards were adhered to, while the board approved payments.
13. In its judgment, the trial court found that there was no variation in the contract; further, the fact that the prices of the building material had escalated in the process of building was no justification for additional labour costs being demanded; it therefore dismissed the case with costs.
14. Aggrieved by the trial court's decision, the appellant appealed to the High Court, and in a judgment dated 18th January 2019, the High Court upheld the trial court's decision, thus precipitating this second appeal. The grounds of appeal are contained in the memorandum of appeal dated 18th March, 2019, premised on three grounds as follows: the learned Judge erred in law by failing to conduct a fresh and thorough analysis of the entire evidence and failing to arrive at her independent conclusion on the issues that arose for consideration; misapprehending the significance of the evidence presented, thus arriving at a wrong conclusion; and failing to consider the new evidence that was admitted, without valid legal basis. The appellant, therefore, sought to have the first appellate court's judgment reviewed and set aside, with an order allowing the appellant's appeal.
15. Learned counsel for the appellant filed submissions dated 1st March 2023, wherein he acknowledged that the school received funding to the tune of Kshs. 10,000,000, which was not adequate for the construction of the dormitory as had been envisaged by the parties, necessitated a meeting between the parties and the Ministry, where the scope of work was revised to fit within the available funds, which formed the basis of the letter of commitment dated 15th June 2010.
16. Counsel submitted that it was agreed that the labour contract would be based on 35% of the material cost all along. Furthermore, the role of the Ministry of Work was not superficial but instrumental in supervising, overseeing, valuing, and calibrating the amounts due and payable. Further, while the respondent acknowledges that additional work was completed beyond what was initially agreed upon, it claims to have engaged other independent contractors in addition to the appellant. Conversely, the appellant testified that they indeed carried out and completed the revised works along with Joeju Merchant Limited, and therefore, they were demanding payment for the extra work performed. Reference was made to a judgment in HCCA No. 4 of 2013, the court found that the contractor supplied excess materials to the respondent, amounting to Kshs. 2,853,099.
17. Counsel for the appellant asserted that, since the two contracts, i.e. material and labour, were closely intertwined, the labour costs increased by the agreed percentage, as material costs escalated. If there were any doubts regarding the interpretation of the evidence already presented by the appellant, the above-cited case confirmed and reinforced this interpretation.
18. Additionally, he submitted that PW2 elucidated how the sum claimed in this matter was determined, noting that the first appellate court overlooked the fact that the labour contract was not comprehensively documented in writing. However, the parties, while agreeing to the letter of commitment, had reduced the scope of work. Nevertheless, by mutual consent, additional works were undertaken, supported by the supply through a Local Purchase Order (LPO), for which extra labour



was utilised. Moreover, ministry personnel assessed and concluded that the school owed the stated sum for the works conclusively completed by the appellant. Learned counsel concludes by submitting that it was incorrect for the learned Judge to assume that the two contracts were severable, especially in light of the findings by a court of equal jurisdiction.

19. In opposing the appeal, learned counsel for the respondent on his part filed submissions dated 5th April 2019, asserting that the first ground of appeal lacks merit as the learned Judge carried out her mandate as demonstrated in the judgment. Even if this ground was found to have merit, it is doubtful that the alleged error would have altered the outcome, given the evidence presented at the trial stage.
20. Regarding the second ground of the appeal, counsel submitted that it is too general and vague to warrant a sufficient response in the absence of specific details regarding any misunderstanding of the evidence.
21. On the third ground of the appeal, counsel contended that the learned Judge rightly chose not to follow the judgment in the related case of Joeju General Merchants vs. Ruthagati Secondary School (Nyeri High Court Civil Appeal No. 4 of 2013), and provided compelling reasons for the decision, stating that the ruling in Joeju General Merchants was based on Local Purchase Orders issued, in contrast to the circumstances of the current appeal, where the appellant's claim is founded on a unilateral decision to alter the clearly expressed terms of the contract agreed upon by both parties.
22. We have considered the record of appeal, rival submissions of counsel, case law cited and the law and having in mind our limited mandate as set above, we form the opinion that the only issue turning for our consideration is whether the learned Judge properly examined, evaluated and analysed the evidence on record to arrive at an independent decision.
23. The record of the first appeal is evident that the learned Judge re- considered, evaluated, and analysed the evidence that was adduced at the trial court. Indeed, upon reviewing the judgment, the learned Judge effectively summarised the facts of the case, considered her duty as the first appellate court, and examined the witnesses' evidence and documents presented when arriving at her determination, agreeing with the trial court. It is not the length of the summary that matters but whether, in summarising the facts of the case and evidence adduced, the court appreciates and evaluates the same in such a manner as to capture the substratum of the case, which, in our view, the learned Judge did effectively. Indeed, we concur with the findings and analysis of the facts and evidence presented by the two courts below.
24. The appellant's counsel, in his submissions, was not clear what new evidence the court failed to consider. We, however, deduce that in HCCA No. 4 of 2013, the respondent was found to owe the supplier of the construction materials an additional Kshs. 2,853,099. The 'new evidence' was crafted as an issue for consideration in the High Court's judgement, and in her own words, the learned Judge stated:

“It is important to note that whereas the Appellant in Civil Appeal No. 4 of 2013 sought for extra payment based on LPO's issued, the Appellant in the instant 'appeal seeks for extra payment for labour works based on payment vouchers by the District Works Officer. Civil Appeal No. 4 of 2013 determined the effect of duly issued and executed LPO's in a transaction between the parties. The Court in that case correctly held that an LPO is a legally binding document between a supplier and a buyer. That case does not apply in the instant appeal as the same is distinguishable. The Appellant in the instant case seeks for payment beyond the amount it committed to undertake labour works yet in Civil Appeal No.4 of 2013 the Appellant sought for extra payment based on LPOs issued by the client itself. For



labour works, it is important to note that the scope of work was agreed by all the parties based on the limited finances available to the Respondent for the construction, of the dormitory. Fr variation there ought to have been Local Service Orders to indicate an acknowledgment of variation from the agreed scope of work.”

25. The above extract is evidence that the appellant’s claim is misguided. The learned Judge at length considered the evidence in question. We must also acknowledge that we agree with her reasoning that the two cases were distinct and their findings could not be similar.

26. In the end, we find that the appeal has no merit and dismiss the same with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF DECEMBER, 2025.

W. KARANJA

.....

JUDGE OF APPEAL

J. LESIIT

.....

JUDGE OF APPEAL

ALI-ARONI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

