Omondi v Evolve Logistics Limited (Civil Appeal E1467 of 2024)
[2026] KEHC 585 (KLR) (Civ) (26 January 2026) (Judgment)

Neutral citation: [2026] KEHC 585 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E1467 OF 2024

F ANDAYI, J

JANUARY 26, 2026

BETWEEN

JOHN OGUTU OMONDI ..... APPELLANT

AND

EVOLVE LOGISTICS LIMITED ..... RESPONDENT

JUDGMENT

1. This appeal arises from a judgment of the Small Claims Court (SCC) dated 29th November 2024 in which the court dismissed the appellant's claim for money lent and received against the respondent holding that the respondent had failed to prove his case on a balance of probability.

2. The case by the appellant before the trial court as contained in his statement of claim dated 15th July 2024 and his witness statement dated 15th July 2024 was that the appellant had lent the respondent KShs 500,000/= at the respondent's request but the respondent had failed to repay the same thereby leading to the suit. The appellant stated that in a bid to repay the debt, the respondent had issued him with two cheques each for the sum of KShs 250,000/= on 29th April 2019 and on 27th May 2019. However, the respondent had asked the appellant not to bank the cheques on their due dates.

3. The appellant thereby suffered loss and damage and filed the claim at the Small Claims Court seeking the repayment of his money.

4. The respondent in its response dated 29th July 2024 and witness statement of the same date signed by Shem Okottah Odhiambo denied the appellant's claim that it owed him money as a debt. The respondent's case was that indeed it received the KShs 500,000/= from the appellant but contended that the same was on account of a partnership in which the appellant had entered with the respondent in a business the respondent was operating for purposes of expansion of the business. That therefore, the money was not a debt owed to the appellant to be repaid but the appellant's investment in

the business as a partner. However, the appellant turned around and withdrew his investment and demanded his money back. That the respondent issued the two cheques to refund the amount claimed by the appellant as a result of duress arising from the appellant's incessant phone calls and his political influence and stature as a Member of Parliament (MP) for Embakasi East constituency at the time.

5. The case proceeded by way of the pleadings and witness statements filed by the parties under section 30 of the *Small Claims Court Act* (Cap. 10A) Laws of Kenya. Section 30 of the SCCA provides that:

S. 30. Subject to agreement of all parties to the proceedings, the Court may determine any claim and give such orders as it considers fit and just on the basis of documents and written submissions, statements or other submissions presented to the Court.

6. Upon analyzing the evidence, the learned Adjudicator concluded that the claimant had failed to prove that the money advanced to the respondent was a loan to be repaid but to the contrary the respondent had proved that it was in fact an investment in a business and therefore it was not refundable. Consequently, he dismissed the claim with costs to the respondent thereby eliciting this appeal.

7. In the memorandum of appeal dated 13th December 2024, the appellant raised five grounds as follows:

a. The learned magistrate gravely erred in law and fact by failing to appreciate sufficiently or at all that there is joinder of issues at the close of pleadings and that every party is bound in law to prove by admissible evidence every allegation made and not admitted.

b. The learned magistrate gravely erred in law and fact by presuming the existence of a partnership between these parties contrary to evidence on record.

c. The learned magistrate erred in law by holding that the issuance of a cheque does not constitute an acknowledgment of a debt.

d. The learned magistrate erred in law and fact by in effect holding, without evidence, that the cheques in question were issued under duress and thus did not constitute acknowledgment of a debt.

e. The learned magistrate gravely. erred in law and fact by failing to appreciate sufficiently or at all the evidence on record and thereby arrived at wrong conclusions and judgment.

8. The appeal was disposed of by written submissions filed by learned counsels for the parties. The same are considered in the analysis that follows.

9. An appeal to this court from the SCC is on points of law only as provided for under section 38 of the SCC Act. So, the first issue for this court to consider is whether the grounds of appeal raised by the appellant are on points of law only.

10. Learned counsel for the appellant would do well to refer and be guided by the Court of Appeal's observation in the case of Independent Electoral and Boundaries Commission & another v Mule & 3 others [2014] KECA 890 (KLR) that:

> " Those points in an appeal of the kind before us, being from an election court's decision, are further circumscribed by Section 85A of the *Elections Act* which limits appeals to the Court of Appeal to matters of law only. It is therefore quite strange and improper that each of the seventeen grounds, without exception, commences with a standard expression "the judge erred in fact and law" or "the learned Judge erred in law and in fact." Clearly the drafters of the memorandum did not have the legal provision in active contemplation. Had they done

so, they would have found that by invoking factual errors, they were inviting jurisdictional objections to their entire appeal."

11. Learned counsel would also wish to note that the SCC is presided over by an Adjudicator and not a magistrate. It is important to bear these seemingly little but very vital provisions of the SCCA in order to appreciate and always have at the back of the mind the spirit behind the creation of this very distinguished court because, otherwise it gets meshed up with the operations of the magistrate's court and there it loses meaning as a different court. In the Kenyan context, an Adjudicator is indeed a magistrate. However, while presiding over the SCC she must remove the gown of a magistrate and wear that of an Adjudicator. The reasons will come out in the analysis and evaluation of the evidence herein because the operations of the SCC must be distinguished from those of a magistrate's court.

12. In the submissions, the grounds were condensed into two, putting together grounds 1 and 2 then 3, 4 and 5 but without expressly stating as such. From the grounds of appeal, the two can be summed into:

    a. Whether it was correct for the trial to find that the respondent had established the existence of a partnership with the appellant.

    b. Whether the issuance of the cheques by the respondent to the appellant was proof of debt.

13. Looking at the grounds of appeal as set out above, I am satisfied that they all raise issues of law, in as much as learned counsel for the appellant keeps adverting to "erred in law and fact."

14. On an appeal based on points of law only, the Court of Appeal in M'Riungu v. Republic [1983] KLR 455, stated thus:

> " where a right of appeal is confined to question of law, an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the temptation to treat findings of fact as holdings of fact and law and it should not interfere with the decision of the trial court or the first appellate court unless it is apparent that on evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding that the decision is bad in law".

15. I have considered the grounds set out in the Memorandum of Appeal and the submissions by learned counsels for the parties. The point for determination is whether or not the money given to the respondent by the appellant was a debt to be repaid or was on account of a joint business venture in the form of a partnership, between the parties.

16. Another important feature to bear in mind while considering the appeal is that the SCC Act exempts the court's proceedings from the rigid application of the standards of evidence applicable in other court proceedings and permits the court to include as evidence any material that it deems credible or trustworthy (emphasis by underlining supplied). It follows from this provision that it is largely upon the Adjudicator to determine the material to rely upon. Section 32 of the Act provides that the strict evidentiary rules applicable in other courts are not wholly applied in the Small Claims Court. It further, provides that the Court may admit as evidence any oral or written testimony, record, or other material even though the same is not admissible as evidence in any other Court under the law of evidence (emphasis supplied). This means the Adjudicator has the discretion to admit any evidence which may be helpful in establishing whether or not the claim is proved. This provision further limits the province of the appellate court to issues of law only as the appellate court would have no means to overturn the findings of fact by the trial court and substitute them with its own findings. Therefore, the submission by learned counsel for the appellant that this court has to analyze and reassess the evidence on record and reach its own findings as held in the case of Selle vs Associated Motor Boat Company (1969) E.A 123) is misplaced. From the provisions of the Act, it follows that this court cannot proceed with the

case by way of a rehearing and re-evaluation of evidence as is the norm in other civil matters as required under the *Civil Procedure Act* and Rules.

17. The issue of considering the facts before the trial court is further limited by the procedure applicable before the SCC which is unlike the procedure before the magistrates' courts. Section 3 of the SCC Act on the guiding principles of the court provides inter alia that the ourt shall be guided by the principles of judicial authority prescribed under Article 159(2) of *the Constitution* and without prejudice to the same, the Court shall adopt such procedures as the Court deems appropriate to ensure fairness of process and simplicity of procedure (emphasis supplied). The fairness of process is further reinforced under Part IV which is the substantive part that deals with procedure. Section 17 of the Act which falls under Part IV, it provides that:

S. 17. Subject to this Act and Rules, the Court shall have control of its own procedure in the determination of claims before it and, in the exercise of that control, the Court shall have regard to the principles of natural justice.

18. Therefore, the principles of natural justice rather than the technical procedural rules under the CPR take centre stage in a SCC hearing. In Justice Amraphael Mbogholi Msagha v. Chief Justice of the Republic of Kenya & 7 Others Nairobi HCMCA No. 1062 of 2004; [2006] 2 KLR 553; [2006] eKLR, the Court, in discussing the rules of natural justice, cited De Smith and Brazier, Constitutional and Administrative Law 6th Edition (Penguin United Kingdom: 1989) (pages 557-558) which states:

> " The content of natural justice is therefore flexible and variable. All that is fundamentally demanded of the decision maker is that his decision in its own context be made with due regard for the affected parties' interests and accordingly be reached without bias and after giving the party or parties a chance to put his or their case...."

19. Indeed, technicality of procedure and strict rules of evidence as apply in the magistrates' court were excluded so that the Adjudicator could be able to achieve one of the main objectives of the court which is provided under section 34 of the Act on expeditious disposal of cases with quite onerous provisions that:

S. 34 (1) All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.

(2) Judgment given in determination of any claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.

(3) The Court may only adjourn the hearing of any matter under exceptional and unforeseen circumstances which shall be recorded and be limited to a maximum of three adjournments.

20. While proceeding under the CPR before the magistrate's court, it is practically impossible to hear and determine every case that comes before it in a day's sitting. It is only through strict compliance of the provisions of the SCCA with the exclusion of the strict evidentiary rules and technicalities of procedure under the CPR through adoption of a flexible procedure by the learned Adjudicator that this can be achieved. For me, the provisions of the SCCA would best be applied with the court proceeding more through the alternative means of dispute resolution of negotiation, and conciliation between parties with the court's guidance as well as or summary determinations rather than laborious taking of notes from witnesses, analyzing evidence, sifting through pages of lengthy submissions by learned counsels and rendering lengthy judgments. Provided that the rules of natural justice are adhered to in considering a claim, I do not think a judgment of the SCC should be more than three two pages long.

21. My thinking therefore is that the responsibility of this court when considering an appeal from the SCC is to consider the legality and reasonableness of the decision of the learned Adjudicator. If this court is satisfied that the law was properly considered and applied and a reasonable evaluation of the facts had, then it will not interfere with the findings and determination of the trial court. The converse would also be true. That where the law was not properly considered and/or applied or where the decision does not seem reasonable from the facts before the court, then this court will interfere. Given the provisions of the SCC Act excluding to a large extent the strict provisions of the law of evidence and the technicalities of the CPR, I would find that the standard of reasonableness would be that of ordinary man on the street.

22. The primary facts in this case were not in contest. They were that the appellant gave the respondent KShs 500,000/= to be applied by the respondent in its business. In a bid to repayb the money when the appellant wanted it back, the respondent issued him with two cheques to settle the amount. The respondent later asked the appellant not to cash the cheques and since then the respondent has never paid back the money.

23. According to the appellant, the money was advanced to the respondent as a loan. According to the respondent, the money was advanced to the respondent as an investment by the appellant in the respondent's business as a partnership. There being no contest that the money was advanced to the respondent, the legal issue that arose here, and which the trial court considered was whether there was indeed a partnership between the appellant and the respondent on the basis of the appellant advancing the money to the respondent.

24. The existence or otherwise of a partnership is a matter of both law and fact. The Court of Appeal, while considering this issue in the case of J K Kinoti v G J Kibanga [2013] KECA 85 (KLR) stated thus:

The learned authors of Halsbury's Laws of England, 4th Edition Volume 35 state at paragraph 2,

> " Partnership involves a contract between parties to engage in a business with a view to profit. As a rule each partner contributes either property, skill or labour but this is not essential. A person who contributes property without labour and has the rights of a partner is usually termed a sleeping or dormant partner. A sleeping partner may have contributed nothing. The question whether there is a partnership is one of mixed law and fact."
>
> Having considered the evidence on record we concur with the trial Judge that there is no evidence of an existing partnership between the appellant and the respondent. Why do we say so? This is because firstly, from the evidence the conduct of the parties was such that the appellant was selling the business goods as an agent. The appellant did admit in his evidence that he earned a commission based on the sales he made. He did not tender any evidence that he used to share in the profits or losses of the said business. Secondly, the fact that the respondent authorised the appellant to be a signatory to the business bank account held with National Bank did not of itself infer a partnership. All the evidence pointed to the fact that the respondent was the sole proprietor of the said business ... We further find, contrary to the appellant's allegations, that the letter dated 17th July, 1989 written by the respondent suspending the appellant from acting on behalf of Shamba Chemicals did not acknowledge that the appellant was a partner in the business. Thirdly, it is clear from the minutes produced by the appellant at the trial court that the parties intended to incorporate a company, with capital of Kshs. 400,000/=, to be equally contributed by both parties. The said company was never incorporated. The appellant did not tender any evidence that he contributed part of his capital towards the business. We further find that

the mere existence of an intention by the parties to form a company or partnership cannot warrant the declaration of the existence of a partnership between the parties."

25. Extrapolating the findings in the above case to the present one, it is not disputed that the parties did not have a partnership deed. That leaves what the respondent was alleging as an oral agreement that they were entering into a partnership. The facts available are quite limited given that none of them testified and so their statements were not subjected to cross-examiantion. However, since they agreed to have their case determined on the basis of their witness statements and documents filed, it means that these bore the truth. So that from the respondent's statement it emerges that the parties met at Ole Sereni and had some discussions about the respondent's existing business after which the appellant advanced the respondent the KShs 500,000/= after the respondent had provided him with a business proposal.

26. The respondent through its witness referred to the document titled "Investment Proposal In Warehousing & Distribution as at 18th October 2017," which it said he provided to the appellant for funding of the business. The last section of that document sub-titled "Our proposal on Joint Venture" is material. It is apparent from the document that the parties were exploring a joint business venture and the respondent's proposal was that the existing business "can be converted to shareholding. It was proposed that they start with a new business name to be known as Evolve Warehousing & Distribution Limited with the defendant owning 51% and the appellant 49%. It was even proposed that they start a new bank account at DTB or bank of the appellant's choice. It ended by stating that upon agreement, Joint Venture Agreement shall be drafted with clea provisions by lawyers for both parties.

27. There is no mention of the joint business venture being a partnership. Even then, there is no indication that any agreement was reached on the proposed joint business venture.

28. The respondent also produced screen shots of Whatsapp communication between the appellant and the respondent as follows:

Appellant: (sends screenshots of the two cheques and writes): That is what you owe.

Respondent: The cheques were not banked?

We need to have a meet up.

We invested in expansion, Immediately you pulled out Koreans refused to refund the money.

Appellant: Good evening! You had given me three weeks which elapsed so many days ago. What is the position now. Otherwise will introduce you to Mr. Mungla as from tomorrow to do the follow up.

29. There is nothing in that communication that shows that the two were engaged in a partnership as provided for under the Partnership Act (Cap. 29) Laws of Kenya. The mere statement by the respondent that they invested in expansion and immediately the appellant pulled out the Koreans refused to refund the money cannot infer the creation of a partnership between the parties. Even a financier or donor for a business could pull out at any time. It would not make such a financier or donor a joint owener of the business at hand leave alone a partnership.

30. The trial court found that the appellant did not extend a loan to the respondent rather they embarked on a joint business venture that subsequently failed. That finding was erroneous because from the evidence on record, it is clear that there was no form of business venture that was agreed upon by the parties, leave alone a partnership. I note that the trial court failed to consider the respondent's clear assertion that the business venture was a partnership. Had it done so, it would have clearly found that the same was not proved. If the parties had an intention of entering into any form of joint business venture, the same never concretized into a binding agreement between the parties. It is however clear

that the respondent applied the funds received from the appellant to expand its business but due to intervening factors, the same did not succeed.

31. Finally, there is no indication that appellant shared in any profits or losses that were made by the respondent in the business. That would be a material element to demonstrate that he was indeed a partner in the business.

32. The appellate court may interfere with the findings of the trial court where it is demonstrated that there was no evidence at all upon which such findings were based or that the evidence relied upon was of such a nature that no reasonable tribunal, properly addressing its mind on it, could have made such findings as has been held in numerous decisions. (see for instance Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others [2014] eKLR. I am satisfied that in the present case, there was no evidence upon which the trial court could have found as it did that there existed a business venture between the appellant and the respondent where the appellant was investing the money that he advanced to the respondent especially where the respondent being a limited liability company yet there was no evidence of a resolution by the directors to that effect to enter into a partnership with the appellant. I find that the money advanced to the respondent and which was admittedly applied to its expansion the same was a debt repayable by the respondent.

33. Consequently, I find the appeal succeeds. The order of the learned trial Adjudicator is set aside in its entirety and substituted with an order that the claim by the appellant (claimant in the SCC) succeeds and judgment be and is hereby entered for the appellant against the respondent in the sum of KShs 500,000/= with costs to the appellant both in the lower court and in this appeal.

34. Orders accordingly.

DELIVERED, DATED AND SIGNED ON THE VIRTUAL PLATFORM, TEAMS THIS 26TH DAY OF JANUARY 2026.

ANDAYI W. F.

JUDGE

In the presence of:

Mungla for the Appellant.

Cheboi for the Respondent.

Ummu: Court Assistant.

ANDAYI W.F.

JUDGE