

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL APPEAL NO. E094 OF 2025

JACKSON MOSETI APPELLANT

- VERSUS -

SAM AWUOR 1ST RESPONDENT

FELIX OUTA 2ND RESPONDENT

(Being an appeal from the judgment and decree of **Hon. G.C. Serem**
RM/Adjudicator delivered on the 18/3/2025 in the **Ksm SCC Case No. E090 of**
2025, Sam Owuor & Felix Outa v Jackson Moseiti)

J U D G M E N T

1. The respondents filed a claim through their statement of claim dated **31/1/2025** in which they claimed the sum of **Kshs. 106,000/-** from the appellant for goods purchased (machine cut stones) and paid for but on delivery turned out to be of defective quality. They also sought costs of the claim.
2. The appellant entered appearance and filed a response to the Statement of claim dated **20/2/2025** denying all allegations pleaded against him and conversely counter claimed for **Kshs. 115,000/-** as money owed to him in respect of machine cut stones delivered to the respondent and not paid for.
3. The respondents in rejoinder to the counterclaim, denied owing the appellant any sum of money and proceeded to pray for judgment in their favour as per their claim.

4. In her judgment, the trial adjudicator found in favour of the respondents and stated that they had proved their case on a balance of probabilities whereas the appellant failed to prove his counterclaim. The court thus awarded the respondents **Kshs. 106,000/-** plus cost of the suit with interest.
5. Being dissatisfied with the said judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated **16/4/2025** and raised four (4) grounds of appeal as follows: -
 - a) *The learned magistrate erred in law and in fact in finding that the respondents proved their case against the appellant on a balance of probabilities against the weight of evidence on record.*
 - b) *The learned magistrate erred in law and in fact in failing to find that the appellant had fulfilled his part of the contract by delivering four lorries of good quality machine cut blocks out of 5 and did not the respondents.*
 - c) *The learned trial magistrate erred in law and in fact in failing to find that the appellant had proved his counter claim on a balance of probabilities against the weight of the evidence tendered by the appellant.*
 - d) *The learned magistrate erred in law and in fact in failing to take into account evidence of the appellant in support of his defence and counterclaim.*
6. I have considered the submissions filed by both parties. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See

Selles & Anor vs. Associated Motor Boat Co Ltd & Others [1968] EA 123.

7. Before the trial court the parties agreed to proceed by way of ***Section 30 of the Small Claims Court Act*** which empowers the court, upon agreement of the parties, to 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.
8. It is upon this basis that the trial court proceeded to determine the suit before it.
9. I have considered the evidence tendered before the trial court and the submissions made before me. This being an appeal from the Small Claims Court, it is important to point out that ***Section 38 of the Small Claims Court Act*** provides for the jurisdiction of this Court in determining appeals from the Small Claims Court. It provides thus; -
 1. ***A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.***
 2. ***An appeal from any decision or order referred to in subsection (1) shall be final.”***
10. It is clear from the foregoing that the jurisdiction of this Court from the Small Claims Court is only on matters of law and not factual issues.
11. In this appeal, the question for determination by this Court that arises from the grounds of appeal pleaded by the appellant is whether the trial court

wrongly found in favour of the respondent on a balance of probabilities, which is an issue of fact.

12. In **Wanjiru v Kiilu (Civil Appeal 90 of 2023) [2024] KEHC 8881 (KLR) (19 July 2024) (Judgment)**, the High Court appreciated its appellate jurisdiction in respect of appeals emanating from decisions of the Small Claims Court as follows:

“It therefore follows that appeals originating from the Small Claims Court to this court can only be on the points of law. Consequently, this court cannot, in appeals emanating from that Court, entertain an invitation to interfere with the factual findings of the trial court. The duty of this court when dealing with such appeals, is therefore equivalent to that of the Court of Appeal in its capacity as a second appellate court.”

13. In the case of **Charles Kipkoech Leting v Express (K) Ltd & another [2018] eKLR**, the Court of Appeal clarified that where a right of appeal is confined to questions of law only, an appellate court is duty bound to accept the findings of fact of the lower court and should not interfere with the decisions of the trial court on the factual issues *“unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law”*.

14. In the premises, the Court is not minded to disturb the trial Court’s findings on issues of fact and hereby upholds the same. The appeal is therefore without merit and is hereby dismissed with costs.

It is so ordered.

DATED and **DELIVERED** at Kisumu this 5th day of **February, 2026**.

A. MABEYA, FCI Arb

JUDGE