

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**CIVIL APPEAL NO. E029 OF 2024**

**(CORAM: CHARLES KARIUKI – J)**

**SPRING VALLEY MACHINERY SERVICES LTD.....APPELLANT**

**-VERSUS-**

**PETER MAINA NJUGUNA.....RESPONDENT**

*(Being an appeal from the Judgment in the Small Claim Court at Narok delivered by Hon. E.M. Mutuku – R.M. – Adjudicator on 15<sup>th</sup> October, 2024 in Narok SCC Civil Suit No. E042 of 2024.)*

**JUDGEMENT**

1. The matter arose as stated by the Claimant that the Respondent was employee of the Claimant working as a manager in Narok Branch until 23/11/2020 while the Respondent was working as a manager of the claimant some machinery worth Kshs. 263,900 went missing under Respondent watch. Respondent admitted liability and entered into a mutual agreement that he would pay for the loss in sum of Kshs. 263,900 dated 25/7/2021. It is said he paid Kshs. 12,100 having a balance of Kshs. 251,800/=. He failed to pay balance thus precipitating the claim in small claims court. The Respondents upon being served with claim he denied and matter was fixed for hearing of the claimant Evidence and its witness was heard and was cross examined.
2. The Respondent side did not tender evidence but opted to rely on pleadings and thus escaping the cross examination. The trial court dismissed the claim on basis that the forensic expert ought to have been called to confirm parties made the mutual agreement thus claim not proved on balance of probabilities. This attracted the instant appeal in which the parties were directed to canvass via submissions.

**APPELLANT SUBMISSIONS:**

Parties did not agree to proceed by way on Sec. 30 of SMCC Court Act. Thus, the appellant evidence was uncontroverted. *See Rono Nyaga Case submitted.* Ground 2: On standard of proof. Balance of probability see Ndathi case cited authority

standard of proof. It is on Balance of probability ie It's effect is that it is more probable than not. The respondent was Summarily dismissal of employment over the loss of money and claimed herein. In sum the trial magistrate Ignored mutual agreement which was on record.

#### **RESPONDENT SUBMISSIONS:**

The respondent submits that there was denial for claimant claim. Appeal is strictly on point of law. *See Mogere* The court has no jurisdiction to entertain instant appeal. The trial errors were Placing reliance on response without evidence. Misapply – standard of proof. Failure to shifting burden. See pages 11 of Records of Appeal. There was mutual understanding on payment of Kshs. 262,900/= for machineries errors listed distributed at the resort. Reliance made on Sec. 38 of small claims act, Aburili Judge Decision cited. On reliance on pleadings without tendering of evidence. Respondence just relied on reply. See page 13 of Records of Appeal Pg 58 Respondent not to testify. Section. 60 – Respondent relied on record – 46 – 48 (Judgment). Court relied reliance made on case of Gathery Authority cited. Appellant was duty bound to prove the case. See submitted authority.

See witness statement. The statement was given without .....A party denies the appeal be dismissed. The Statements not adminicles but were produced without objection. The statement was on record.

### **3. ISSUES ANALYSIS AND DETERMINATION**

4. After going through the record of trial court and submissions, I find the issues are whether the pleading s for defence substituted tendering testimony and whether the plaintiff's claim ought to have been allowed with costs.
5. This being a first appeal, it is this court's duty under Section 78 of the Civil Procedure Act to re-evaluate the evidence tendered before the trial court, and arrive at its own conclusion.
6. This principle of law was well settled in the case of *Selle & another v Associated Motor Boat Company & others* 1968 EA 123

***“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are that it has neither seen nor heard the witnesses and should make due***

*allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears based on the demeanor of a witness is inconsistent with the evidence in the case generally”.*

7. An appeal from the Small Claims Court to the High Court is *strictly limited to questions of law*. This means you cannot ordinarily appeal on mere factual or evidential disagreements but must show that there was a legal error in the Small Claims Court’s decision.
8. **Section 38** of the *Small Claims Court Act (2016)* expressly states: 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. An appeal ... shall be final.”
9. This wording clearly limits the **scope of appeal** to *matters of law only* — e.g., incorrect application or interpretation of law, failure to exercise jurisdiction properly, or error in legal reasoning. You do **not get a full rehearing on facts** as in a normal first appeal in other civil matters.

#### **10. What Counts as a Point of Law:**

11. The High Court has interpreted this restriction in several cases. Key principles include:

**Legal issues include** interpretation of statutes, whether the lower court had jurisdiction, whether the court correctly applied legal principles to the facts, or an error of law on the face of the record.

**Factual complaints** (e.g., disagreement with evidence evaluation) normally *do not* qualify for appeal unless they *raise a legal question* — e.g., was the evidence evaluated under the proper legal standard.

12. For example, in **Directline Assurance Co Ltd v Nyawa [2023] KEHC 20201 (KLR)**, the court confirmed that *appeals from the Small Claims Court are on points of law only*, although what exactly constitutes a “point of law” may require legal interpretation.

13. Similarly, in **Jepco Ltd v Mungai & Another [2023] KEHC 26432 (KLR)**, the High Court stressed that appellants must clearly frame their memorandum of appeal with precise legal grounds — vague or fact-based grounds will not suffice.
14. Other decisions (e.g., Civil Appeal E056 of 2023) have drawn on *Peter Gichuki King'ara v IEBC & 2 Others* to emphasise that **judicial discretion exercised below is itself a legal issue** for appeal, not a simple disagreement with factual findings.
15. Moreover, **Njoroge v Kimani [2024] KEHC 7834 (KLR)** reaffirmed that the High Court, on appeal from a Small Claims Court, may *only* interfere with the decision where there is a legal issue (e.g., perversity, misapplication of law), rather than substitute its own factual findings.
16. Thus, in the instant matter, court picked the issue as to whether the pleadings for defence substituted tendering testimony and whether the plaintiff's claim ought to have been allowed with costs.
17. In Kenyan law, it is a well-settled, trite principle that pleadings (the plaint and defence) and written submissions do not constitute evidence and cannot substitute for oral testimony or formal production of documents. A party must prove the facts pleaded through evidence in court.
18. There is a plethora of cases and holdings in Kenya regarding the principle that pleadings do not substitute testimony: in the case of **Githaiga v Mwangi [2024] KEHC 13449 (Civ.)** the Court held that submissions cannot take the place of evidence. When a party fails to tender evidence, their case is "cooked" (unproven), regardless of what is stated in the pleadings. Without evidence, pleadings are merely "bare" statements.
19. In the case of **Abdul v Mookua (Civil Appeal E077 of 2023) [2025] KEHC 4105**, the court reiterated that submissions do not constitute evidence. What is stated in submissions cannot help a party who has not proven their claim with evidence.
20. In the case of **Ibui & another v Ibui & 2 others [2023] KEELC 19200** the court stated that pleadings are not evidence and parties must provide direct evidence through witness testimony as required by the Evidence Act.

21. In **Kahora v Ng'ang'a (Civil Appeal E956 of 2023) [2025] KEHC 11888**: Citing the Supreme Court, the court affirmed that evidence cannot be considered without pleadings, but pleadings themselves are not the evidence. **Makanda v Osita (Civil Appeal E213 of 2023) [2025] KEHC 8510 Holding**: The court clarified that a witness statement is not a pleading, and even if expunged, the party must still prove their case with other evidence.
22. **Magunga General Stores v Pepco Distributors Limited [1987] 2 KAR 89 (Appellate Case) Held that**, A simple denial in pleadings is insufficient; a defendant must provide evidence to show a good defence.
23. Thus, in Summary Principles from Kenyan Case Law: Pleadings summarize facts to be proved. Submissions are not evidence. Parties are bound by pleadings, but pleading a fact does not prove it. The burden of proof is on the party who would lose if no evidence is presented.
24. The Respondent was working as a manager of the claimant for some machinery worth Kshs. 263,900 went missing under Respondent watch. Respondent admitted liability and entered into a mutual agreement that he would pay for the loss in sum of Kshs. 263,900 dated 25/7/2021. It is said he paid Kshs. 12,100 having a balance of Kshs. 251,800/=. He failed to pay balance thus precipitating the claim in small claims court.
25. The Respondents upon being served with claim he denied, and matter was fixed for hearing of the claimant Evidence, and its witness was heard and was cross-examined. The Respondent side did not tender evidence but opted to rely on pleadings and thus escaping the process of cross examination.
26. Parties did not agree to proceed by way of Sec. 30 of SMCC Court Act. Which deals with Proceeding by documents only and provides that, ***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.*** Thus, the appellant evidence was uncontroverted. *See Rono Nyaga Case.*
27. *The appellant was supposed to prove on standard of probability is on Balance of probability see Ndathi on standard of prove.ie Balance of probability which is its effect is that it is more probable than not. Then note which appellant is charged*

and faced Summary dismissal of employment. The sum the trial magistrate Ignored mutual agreement crystallized in an agreement.

28. This court relying on the case of **Magunga General Stores v Pepco Distributors Limited [1987] 2 KAR 89 (Appellate Case)** do come to conclusion that, A simple denial in pleadings is insufficient; a defendant must provide evidence to show a good defence. In this case he failed to testify and, shied away from being subjected to cross-examinations.

29. Thus, the appellant testimony was uncontroverted and thus court makes the orders that:

- i) **The trial court order of dismissal of claim is quashed and set aside and in lieu substituted with judgement for the appellant for Kshs. 251,800/=. Balance unpaid.**
- ii) **The penalties agreed in agreement was 10% for 3 months which court awards on simple rate  $251800 \times 10/100 \times 3/12 =$  Kshs. 6,295/=.**
- iii) **The appellant will get costs of the trial court and for the appeal**
- iv) **Interest at court rates from date of this judgement.**

**DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS  
THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2026.**

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**CHARLES KARIUKI  
JUDGE**