



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. E151 OF 2023

BRIDGIT SHIMANYULA

APPELLANT

VERSUS

TREVOR EMBUKANE

RESPONDENT

(Being an appeal arising from the Judgment/decree of Honourable C. Cheruiyot (RM) in Kakamega SCCC. No. E368 of 2023 delivered on 26/9/2023)

JUDGEMENT

Background

1. The Respondent filed a claim before the Adjudicator in which he claimed that he had hired out 185 trappers to the Appellant at Ksh. 160/= per trapper (sic). He stated that the Appellant had stayed with the trappers for 5 months and later declined to return them to him. He urged the court to enter judgement in his favour for Ksh. 600,000/= being the value of the trappers and Ksh.

148,000/= being the total costs of hiring for the 5 months.

2. The Appellant denied the claim by pleading ignorance of the alleged hiring agreement.
3. After hearing the parties, the learned Adjudicator found in favour of the Respondent and entered judgement in the sum of Ksh. 295,250/= being the proven value of the trappers, and Ksh. 148,000/= being the costs of hiring thereof.
4. Aggrieved by the judgement, the Appellant filed an appeal and set down the following grounds of appeal.
 - (a) *THAT the learned trial magistrate grossly erred in law and fact in evaluating the evidence before it.*
 - (b) *THAT the learned trial magistrate erred in fact and law arriving at a decision not backed by faith (sic).*
 - (c) *THAT the learned trial magistrate grossly erred in not giving weight to the fact that there was no agreement entered between the parties and that there was no proof of the existence of the trappers allegedly hired by the appellant.*
 - (d) *THAT the learned trial magistrate exhibited actual bias against the appellant in this matter.*

(e) THAT the final orders and subsequent judgement of the trial magistrate are a complete miscarriage of justice.

5. The parties were directed to file written submissions which the court would consider in disposing the appeal.

Appellant's Submissions

6. The Appellant faulted the decision of the learned Adjudicator and submitted that the Respondent did not provide evidence to prove that there was any agreement between himself and the Appellant. She submitted that there was no evidence to prove that the alleged materials that were purchased by the Respondent were used to make the trappers.
7. She contended that the alleged agreement did not meet the threshold for it to be considered an implied agreement and averred that the Respondent had not proved his case on a balance of probabilities. She relied on the case of **Transnational Computer Technology (Kenya) Ltd v. Principal Secretary the National Treasury & Planning & 2 others [2024] KEHC 2472 (KLR)**.

Respondent's Submissions

8. On his part, the Respondent submitted that he had proven that there existed a contract between the parties and that during cross-examination the Appellant admitted that after receiving a demand letter, she agreed to pay for the trappers and cannot therefore turn around and feign ignorance.
9. The Respondent asserted that he proved that there was an offer and acceptance of the goods delivered; the terms of the agreement were clear; and that there was exchange of goods and property in the goods was delivered to the Appellant. He submitted that he had produced receipt to prove the cost of the trappers.

Analysis and Determination

10. An appeal from the Small Claims Court is strictly limited to points of law as mandated by Section 38 (1) of the Small Claims Court Act which provides:-
“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.”
11. Flowing from the above, it is not open to the appellate court to evaluate the evidence or factual findings of the Adjudicator but to consider whether the trial court correctly applied the law.

12. In as much as this is a first appeal, the principles to be observed in determining the appeal are similar to the principles that guide the Court of Appeal wherein the court only considers matters of law. A matter of law is a matter which involves judicial inquiry into the applicable law and does not entail delving into the truth of the facts that are alleged to have been proven.
13. In **Charles Kipkoech Leting v. Express (K) Ltd & Another [2018] KECA 187 (KLR)**, the Court of Appeal held that where the right of appeal lies on questions of law only, the appellate court is enjoined to accept the findings of fact by the lower court save where it is apparent that, on the evidence, no reasonable tribunal would have arrived at the conclusion, such conclusion being bad in law.
14. In **Bashir Haji Abdullahi v. Adan Mohammed Nooru & 3 others [2014] KECA 621 (KLR)**, the Court of Appeal held that where a memorandum of appeal raised factual issues, the court is at liberty to strike out the offending grounds and to retain the compliant grounds.
15. In rare circumstances, the court can review the factual evidence but only where the court finds that the

decision is completely perverse as no reasonable person looking at the facts would arrive at such decision. Such eventuality would be if the Adjudicator ignored crucial evidence, or if the Adjudicator misapprehended the latent facts of the case thereby rendering a flawed decision.

16. On carefully considering each ground of appeal, the court finds that the issues raised would require the court to revisit the facts of the case. The issues identified for determination in the Appellant's submissions are a pointer to an effort to have the appellate court re-evaluate the evidence before the trial court through the guise of points of law. The issues raised are as follows:-

“1. Is the respondent entitled to the sum of Ksh. 443,000/= Kenya Shillings?

2. Did the respondent prove the existence of an agreement between himself and the appellant and the existence of the trappers?”

17. Looking at the above issues, both would necessitate an inquiry into the factual and documentary evidence adduced before the learned Adjudicator and an attempt

to relitigate the facts rather than legal error. This would be contrary to Section 38 of the Small Claims Court Act.

18. The learned Adjudicator upon analysis of the evidence before her made her finding after careful consideration of the law and with particular reference to Section 107 and 108 of the Evidence Act. By dint of Section 38 of the Small Claims Court Act, this court lacks jurisdiction to revisit the said findings except under the exceptional circumstances earlier pointed out.
19. The Appellant has not submitted that there exist exceptional circumstances to warrant the interference of this court.
20. In the end, I find that the appeal is without merit. It is hereby dismissed with costs assessed at Ksh. 50,000/= to the Respondent.

Dated, signed and delivered at Kakamega this 19th day of February 2026.

**A. C. BETT
JUDGE**

In the presence of:

Ms. Mukolwe for the Appellant

No appearance for Ms. Mukhwana for the Respondent

Court Assistant: Polycap

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