



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. E021 OF 2025**

**BETWEEN**

**SAMUEL MWANGI MWAURA**

**T/A**

**ALISAT GENERAL STORES & WACLAIRE INVESTMENTS..... APPELLANT**

**AND**

**BOARD OF MANAGEMENT, TULAGA SECONDARY SCHOOL.....RESPONDENT**

*(Being an appeal from the judgment and decree in the Engineer Senior Principal Magistrate's Court, SPMCC No. E032 of 2023 by Hon. H. Adika – Senior Principal Magistrate.)*

**JUDGMENT**

1. Samuel Mwangi Mwaura, trading as Alisat General Stores & Waclaire Investments, was the plaintiff in Engineer Senior Principal Magistrate's SPMCC No. E032 of 2023. He filed a claim for Kshs. 1,975,793, representing the remaining amount for goods supplied to the respondent. The claim was dismissed because the legal process was unlawful.
2. The appellant was dissatisfied with the judgment and filed this appeal through Ruchatha Mwaniki & Associates Advocates. He raised the following grounds for appeal:
  - a) The learned trial magistrate erred in law and fact in dismissing the plaintiff's suit on the basis of non-compliance with public procurement procedures dispute overwhelming and uncontroverted evidence of actual supply of goods and part-payment by the respondent.
  - b) The learned trial magistrate erred in law by misapplying the doctrine of conflict of interest and imputing illegality to the contract, notwithstanding that there was an executed sale agreement between the appellant and the former owner of Waclaire Investments dated 14<sup>th</sup> February, 2023, which effectively transferred beneficial interest prior to or during the period of supply.

- c) The honourable magistrate failed to appreciate and properly analyze the material evidence adduced by the appellant, including documentary evidence of supply and partial payments, thereby arriving at a decision that was against the weight of the evidence.
  - d) The learned magistrate erred in law by holding that the absence of a formal written contract or tender was fatal to the appellant's claim, contrary to the principles of quasi-contract and unjust enrichment applicable where goods are delivered, received, and partially paid for.
  - e) The learned magistrate erred in law and fact in failing to consider or apply the principles of equity, specifically the doctrines of part-performance and estoppel, which were clearly applicable in light of the conduct of the respondent in accepting and paying for the supplied goods.
  - f) The honourable court erred by failing to consider the appellant's further list of documents and submissions on record, thus denying the appellant a fair and impartial consideration of his case.
  - g) The learned trial magistrate misdirected himself in replying solely on technical procurement violations without considering the merits of the claim and the actual loss occasioned to the appellant for which no fault was attributed to him in the performance of the contract.
3. The respondent opposed the appeal through J. Ngumo Mbogo & Company Advocates. It was contended that:
- a) The tendering process was disregarded, and the appellant was not eligible for payment.
  - b) The CR13 used to supply goods bears the name of Catherine Wairimu Waraga, but her connection with the appellant was not demonstrated.
4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123**, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
5. According to the appellant's evidence, he purchased Waclaire Investments from Catherine Wairimu Wangu on 14 February 2023. However, this is contradicted by CR13, dated 5 June

2023, which lists the proprietor as Catherine Wairimu Waraga. When the respondent contends that they did not know the appellant, the onus was on him to prove that he had transacted with them as he had contended. In my analysis of the evidence on record, he failed to do so. He conceded that the company's ownership had not changed. He therefore lacked the locus standi to file any suit in the name of Waclare Investments.

6. The Tulaga Secondary School Board of Management, like other school boards, does not handle daily operations. Therefore, the law requires that the procurement of goods and services comply with legal requirements. It is also curious that the appellant asserts he conducted business by telephone. In **Pakatewa Investment Company Limited v Municipal Council of Malindi [2016] KEHC 1953 (KLR)**, the High Court at Malindi stated:

*I do agree with the findings of the trial court that the proper procedure to procure the goods was not followed. Although it is not the work of a supplier to find out the internal workings of a public organization or a company as established in the Turquand's case, at least the ordinary processes have to be followed. A supplier cannot expect to receive a phone call from an assistant supply officer to supply goods and jump into the process of supplying. One has to be pre-qualified. If the supplier is one of the pre-qualified, i.e., retained, suppliers, that is understandable. That would mean that the suppliers' prices are known. Suppliers are pre-qualified for various goods depending on their area of specialization and prices.*

7. Even if the appellant showed he had the right to sue the respondent, he still had to prove that the goods supplied followed public procurement procedures. I believe he was acting on behalf of Catherine Wairimu Wangu.
8. The conclusion of this analysis of the evidence on record is that the appeal has no merit. The same is dismissed with costs.

**Delivered and signed at Nyandarua, this 3<sup>rd</sup> day of March 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**