

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CIVIL CASE NO. E137 OF 2024

LANTANA AFRICA LIMITED

----- **APPELLANT**

-VERSUS-

HIPSTONE LIMITED

----- **RESPONDENT**

(Being an Appeal from the Judgment delivered by Hon. Emily Cherop Jerotich (Adjudicator) on 31st October 2024 in Naivasha Small Claims Commercial Case No. E198 of 2024)

JUDGMENT

- 1.** The Respondent herein was the Claimant before the trial court where sued the Appellant seeking the following reliefs: -
 - (a) Judgment in the sum of Kshs. 550,825/=***
 - (b) Compensation to be determined by the court***
 - (c) Costs of the claim***
 - (d) Other appropriate reliefs***

- 2.** The Respondent's case before the trial court was that on 3rd and 5th April 2024, the Appellant, through its agents, visited its quarry in Mai Mahiu and was supplied with stones valued at Kshs. 1,361,825/=. Upon loading the stones onto the Appellant's vehicles, the Appellant's director issued two cheques dated 3rd and 5th April 2024 for Kshs. 724,325/=

and Kshs. 637,500/= respectively. The Respondent released the stones and accepted the said payment due to their past engagements.

- 3.** It was the Claimant's case that they allowed the transaction on the belief that the Appellant had enough funds in their bank account to meet the price of 1,361,825/= but regrettably on 5th April 2024, when attempting to deposit one of the cheques, the Claimant was informed that the Appellant's bank account did not have sufficient funds to satisfy the Appellant's obligation and thus, they could not cash the remaining cheque. The Claimant added that despite a lot of back and forth, the Appellant only disbursed Kshs. 811,000/= to its account leaving a balance of Kshs. 550,825/= that became the subject of the case before the court.
- 4.** In its defence dated 1st September 2024, the Appellant admitted the existence of a contract but contended that it had only been supplied with stones worth Kshs. 811,115/= as shown in an invoice dated 16th September 2023, which it claimed to have settled. The parties proceeded under Section 30 of the Small Claims Court Act by way of documents.
- 5.** The trial court found that the Respondent had proved its case and entered judgment for Kshs. 550,825/= plus costs and interest.
- 6.** Aggrieved by the said decision, the Appellant lodged the present appeal challenging the finding on liability and alleging misapprehension of the burden of proof, improper

evaluation of documentary evidence, failure to distinguish between existence and performance of contract, and delivery of an unreasoned judgment.

7. The appeal was canvassed by way of written submissions.
8. I have considered the parties' rival submissions and the record of appeal. I find that the principal issue for determination is whether, within the confines of Section 38 of the Small Claims Court Act, the trial court erred in law in finding that the Respondent proved supply of stones and whether the Appellant failed to fully discharge its payment obligations.
9. Section 38 of the Small Claims Court Act provides as follows: -

“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. The scope of what constitutes a matter of law was discussed in ***Peter Gichuki King'ara vs. IEBC & 2 Others, Nyeri Civil Appeal No. 31 of 2013***, where the Court of Appeal stated:

“It was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the

Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law of evidence with the caveat that the appeal court did not see the witness demeanor- is an issue of law.”

11. Section 32 of the Small Claims Court Act provides:

“32. Exclusion of strict Rules of evidence
(1) The Court shall not be bound wholly by the Rules of evidence.
(2) Without prejudice to the generality of subsection (1), the Court may admit as evidence in any proceedings before it, any oral or written testimony, record or other material that the Court considers credible or trustworthy even though the testimony, record or other material is not admissible as evidence in any other Court under the law of evidence.”

12. The Appellant relied on Sections 107 and 109 of the Evidence Act regarding burden of proof and cited ***Athi River Mining Ltd vs. Total Kenya Ltd (2024) KEHC 7841 (KLR)*** on proof of performance of contract.

13. The Respondent, on the other hand, relied on ***Otieno Ragot & Company Advocates vs. National Bank of***

Kenya Ltd (2020) KECA 894 (KLR) and ***Mwita vs. Woodventure (K) Ltd & Another (2022) KECA 628 (KLR)*** for the argument that appeals from the Small Claims Court must be confined strictly to matters of law.

Analysis and Determination

- 14.** It was not disputed that a contractual relationship existed between the parties. The dispute is centered on whether stones valued at Kshs. 1,361,825/= were supplied between 3rd and 5th April 2024 and whether payment was made in full.
- 15.** The trial court relied on two cheques dated 3rd and 5th April 2024 for Kshs. 724,325/= and Kshs. 637,500/= respectively. The cumulative sum matched the Respondent's pleaded claim. The Appellant did not deny issuing the cheques.
- 16.** The trial court reasoned that the issuance of cheques on the same dates as the alleged supply could not be coincidental. It further found that the Appellant failed to provide a plausible explanation as to why it issued cheques exceeding the amount allegedly due under the September 2023 invoice.
- 17.** I agree with that reasoning. The logical inference from the documentary trail is that the cheques related to a fresh transaction in April 2024. I find that the subsequent partial

payments of Kshs. 500,000/= through Pesalink dated 15th May 2024 and Kshs. 311,000/= through RTGS dated 16th June 2024, corroborate the existence of an outstanding balance.

- 18.** I find that the Appellant's argument that the Respondent failed to produce delivery notes and transport logs must be considered in light of Section 32 of the Small Claims Court Act. The trial court was expressly empowered to admit and rely on credible documentary material without strict adherence to evidentiary technicalities.
- 19.** The challenge mounted by the Appellant essentially invites this Court to re-evaluate factual findings and re-weigh documentary evidence. Under Section 38 of the Act, this Court's jurisdiction is confined to matters of law. The trial court's inference from the issuance of cheques and subsequent payments was a permissible legal conclusion drawn from the material before it.
- 20.** I am satisfied that the learned trial magistrate properly appreciated the distinction between existence and performance of contract and reached a conclusion supported by the documentary evidence.
- 21.** I find that the appeal raises no pure question of law warranting interference under Section 38 of the Small Claims Court Act.

22. In sum, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondent which I hereby assess at Kshs. 20,000.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF MARCH, 2026.

**HON. W. A. OKWANY
JUDGE
05/03/2026**

FOR APPELLANT Okoth
FOR RESPONDENT Omuyoma
COURT ASSISTANT Karani

**W.A. OKWANY
JUDGE**