

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL APPEAL NO. E063 OF 2024

BILL BRIGHTON CHEBON.....
APPELLANT

VERSUS

HABAKUK NYONGESA NANGEMI.....
RESPONDENT

**(Appeal from the judgement and decree, of Hon. Kassim Akida,
Resident Magistrate, RM, delivered on 7th November, 2024, in Busia
SCCCOMM No. E018 of 2024)**

JUDGEMENT

1. The matter, at the trial court, had been initiated by the respondent against the appellant. It was for Kshs. 914,000.00. The claim was resisted, and a trial was conducted. Judgement was eventually entered, on 7th November 2024, for Kshs. 601,200.00.
2. The appellant was aggrieved, hence the appeal. The grounds are that there was no material evidence to support the finding of the court; the fact that there was no valid contract between the parties was ignored; the award made was not specifically pleaded; and the decision was based on matters that there neither pleaded nor proved.
3. Directions, on the disposal of the appeal, were taken on 27th October 2025, for disposal by way of written submissions. I see submissions by the appellant, but not the respondent. I have read through those submissions, and noted the arguments made.
4. I will determine this matter, not on the basis of the matters pleaded, or submitted on, but on a technicality of procedure, founded on jurisdiction.
5. The suit, before the trial court, was a small claim, founded on the Small Claims Court Act, Cap 10A, Laws of Kenya. Under section 34(1) of the Small Claims Court Act, the jurisdiction of the adjudicator, to hear and determine the matter, is limited to 60 days. beyond 60 days, there would be no jurisdiction.

6. The claim was filed on 30th January 2024. 60 days, from that date, lapsed on or about 30th March 2024. A determination made after 30th March 2024 was without jurisdiction. In this case the determination came on 7th November 2024. It was, therefore, made without jurisdiction, and was null. Since the judgement was null, it should not be available for execution.
7. I shall allow this appeal, on the ground that the judgment was a nullity. The declaration of nullity would mean that the matter at the Small Claims Court is still live. The claim for Kshs. 914,000.00 would be within the jurisdiction of the Magistrate's Court, and I do hereby order that the said claim be transferred out of the Small Claims Court, to the Busia Magistrate's Court, for hearing and final disposal. As the appellant did not cause the making of the determination outside jurisdiction, I shall not make an order on costs.
8. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
BUSIA, ON THIS 27TH DAY OF FEBRUARY 2026.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the appellant.