



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CIVIL APPEAL NO. E027 OF 2024

BETWEEN

SAMUEL MWANIKI..... APPELLANT

AND

COCO BASE COMPANY LIMITED.....RESPONDENT

(Being an Appeal from the judgment and decree in Ol Kalou Principal Magistrate’s PMCC No. E057 of 2023 by Hon. L.A. Mwera, Resident Magistrate.)

JUDGMENT

1. Samuel Mwaniki was the defendant in Ol Kalou Principal Magistrate’s PMCC No. E057 of 2023. He had been sued for Kshs. 42,985.00 for goods he had been supplied. The learned trial magistrate allowed the claim and the costs of the suit. The appellant was aggrieved by the judgment and filed this appeal through Waichungo Martin & Company Advocates. He raised the following grounds of appeal:

- a) The learned trial magistrate erred in law and in fact in allowing the respondent's case and awarding it Kshs. 42,985/- plus costs and interest of the case, yet there was no substantial evidence in support of the case.
- b) The learned trial magistrate erred in law and in fact in adjudging that the appellant did not challenge the invoices. Yet, there was no proof of delivery of construction/building materials, nor of the local purchase order for the said materials.
- c) The learned trial magistrate erred in law and in fact in adjudging that the invoices produced were sufficient evidence to prove the supply and delivery of construction building/ materials.

- d) The learned trial magistrate erred in law and in fact in failing to address the issue of the locus of the director of the respondent. Yet, no special resolution was ever filed by the respondent and/or its director.
 - e) The learned trial magistrate erred in law and in fact in finding that there was a valid contract between the appellant and the respondent, yet there was no evidence to indicate that the construction/building materials were ever supplied and delivered
 - f) The learned trial magistrate erred in law and in fact in failing to consider the evidence and submissions of the appellant.
 - g) The learned trial magistrate erred in law and in fact in misconstruing the law and the facts in the case, thus arriving at an erroneous decision.
2. The respondent opposed the appeal through Martin Gathumbi & Company Advocates. The following were the grounds of opposition:
- a) There was a valid contract between the two parties.
 - b) The respondent supplied the goods to the appellant, but was not paid for them.
 - c) The respondent proved her case to the required standards.
3. 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.
4. The appellant denied that he was supplied with any goods by the respondent. On the other hand, the respondent contended that the goods were supplied. Lucy Wamucii Njuguna (PW1) testified that the goods were delivered at the appellant's site. He only paid Kshs. 17,000.00, and the balance formed the basis of the claim. During cross-examination, she conceded that no delivery note was produced.
5. It is trite law that he who alleges must prove. Section 107 (1) & (2) of the Evidence Act, Cap 80, Laws of Kenya provides that:
- 1) ***Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***

2) *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

6. Because the appellant denied receiving any goods, the respondent was required to prove that the goods were both supplied and received. She claimed they were delivered at the appellant's location, so the best evidence would be signed delivery notes confirming receipt. Since she did not produce such proof, she failed to establish that delivery occurred. Without this evidence, her claim against the appellant has no foundation.
7. I therefore find that the respondent did not prove her claim against the appellant. The judgment of the trial court is hereby quashed, and all consequential orders are set aside. The appeal is allowed with costs.
8. **Delivered and signed at Nyandarua, this 18th day of March 2026**

KIARIE WAWERU KIARIE

JUDGE