



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS COUNTY

COURT NAME: MACHAKOS HIGH COURT

CASE NUMBER: HCCA/E198/2023

GREEN GRO INTERNATIONAL ;LTD AND VICTOR KOBIA AND 1 OTHERS VS AMIT KIRAN SHAH  
AND HEMALI AMIT SHAH

#### JUDGMENT

(Being an appeal from the judgment and Decree of Hon M. Thibaru (Resident Magistrate/Adjudicator) delivered on 24th July 2023 in Machakos Small Claim Court Case No. E143 of 2023)

1. By a Statement of Claim filed on 28th June 2022, the Respondents sued the Appellants for breach of contract for unpaid returns arising from an agreement dated 22nd August 2018, wherein the Appellants were to construct a green house on a parcel of land known as ATHI RIVER/ATHI RIVER BLOCK 19 (DENKO LIMITED/10 belonging to the Respondents, grow produce therein, manage the same and thereafter sell the produce and share the returns with the Respondents. The contract was to be for a renewable term of one year. Each year was to have two seasons of 8.5 months each. The returns were to be kshs432,425 payable 45 days from the end of each season. It is alleged that the 2nd and 3rd Appellants being directors of the 1st Appellant undertook to personally guarantee the returns to the claimants. It was also alleged that the Appellants kept making excuses and did not remit returns due on 6th July 2019 and 21st March 2020. The Respondents therefore sued the Appellants for a sum of kshs864,850, interest and costs of the suit.

2. The Appellants vehemently resisted the claim and blamed the Respondents for frustrating the contract for terminating it prematurely by evicting them from the land. they therefore urged the learned Adjudicator to dismiss the claim with costs.

3. However, upon considering evidence from both sides the Adjudicator found in favour of the Respondents and allowed the claim as prayed.

4. Being aggrieved, the Appellants preferred this appeal. The grounds are that:

**a. That the learned Magistrate erred in law by lifting the 1st Appellant's veil of incorporation in absence of the requisite legal conditions for the same.**



**b. That the learned Magistrate erred in law by finding that the Appellants had breached**



**the contractual provisions in the agreement between the parties herein in absence of the requisite legal conditions for the same.**

**c. That the learned Magistrate erred in law in misinterpreting the contractual provisions in the agreement between the parties herein.**

**d. That the learned Magistrate erred in law by entertaining and hearing this case without jurisdiction to do so, more than three (3) days after the hearing of this case on 19th June 2023.**

**e. That the learned Magistrate erred in law by entertaining and hearing this case without jurisdiction to do so, more than sixty (60) days after 20th February 2023 when the ex parte judgment herein was set aside.**

5. The appeal was canvassed by way of written submissions.

6. In submissions dated 20th June 2026, Counsel the Appellants faulted the Adjudicator for lifting the corporate veil by finding the 2nd and 3rd Appellants liable despite that a company is a juristic person with an identity independent of its shareholders, directors and agents. Counsel submitted that there was no valid claim against the 2nd and 3rd Appellants. To support his submission, he relied on the cases of Jepkemoi-V- Zaburi Enterprises Company Ltd & 2 Others (Miscellaneous Civil Application 43 Of 2023) [2024] KEHC 2343(KLR), Dnan & Another -V- Mbae & 3 Others, (CIVIL CASE 18 OF 2013) [2025] KEHC 8908 (KLR).

7. Counsel further submitted that the agreement was that the Appellants were to farm, harvest the produce and sell it so as to pay the Respondents a return which they could not do because the Respondents evicted them in January 2020 in breach of clause 6 of the agreement. Counsel argued that to uphold this judgment would amount to unjustly enriching the Respondents. It was also argued that there was an intervening event which made growing the crop initially agreed, commercially unviable and necessitated a restructuring of performance. That this event legally affected strict enforcement of the original timelines and output expectations under the contract which the Adjudicator did not consider. Counsel submitted that the event was, just like Covid 19, an act of God. Counsel further faulted the judgment for being rendered outside of the statutory time of 60 days. Counsel urged this court to find that the Adjudicator did not have jurisdiction to deliver the judgment as time for doing so had long lapsed. To support his submissions Counsel relied on the following cases Civil Appeal No. 64 Of 2022 - Jomo Kenyatta University of Agriculture and Technology Vs Kwanza Estate Limited and Artar Singh Dhupar & Company Limited V Arm Cement Plc (In Liquidation) (Civil Appeal 129 OF 2022) [2023] KEHC 2417 (KLR).

8. The Respondent's submissions are dated 18th August 2025. Counsel for the Respondents raised two issues. First, that it is the Appellants who occasioned the delay in the finalization of this matter out of the 60 days period provided for under section 34 (1) of the Small Claims Act because although they were duly served, they took no action until an auctioneer was instructed to execute the default judgment entered against them. That the Appellants filed an application to set aside the judgment and having benefitted from the Adjudicator's discretion, both in being allowed to file their response out of time and in having the interlocutory judgment set aside they cannot be heard to impeach the judgment on that ground. To buttress this point, reliance was placed on the case of Biosystems Consultants versus Nyalii Links Acarde (Civil Appeal E185 of 2003) [2023] KEHC 21068 (KLR), Crown Beverages Limited vs MFI Document Solutions Limited (Civil Appeal E833 of 2021) [2023] KEHC 58 (KLR), Wekesa v Matata (Civil Appeal E685 of 2022) [2024] KEHC 8284 (KLR) .

9. Secondly, it was submitted that both parties were bound by the terms of the contract and as



stated in the cases of National Bank of Kenya Ltd vs. Pipe Plastic Samkolit (K) Ltd (2002) 2 E.A. 503, (2011) eKLR, Pius Kimaiyo Langat vs. Co-operative Bank of Kenya Ltd (2017) eKLR courts cannot rewrite contracts for the parties. Counsel urged this court to dismiss this appeal with costs. Counsel placed reliance on the case of Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR.

Analysis and determination.

10. As the first appellate court I have considered the record of the court below, the grounds of appeal, the rival submissions and the law. Appeals to this court from the Small Claims Court are on matters of law only. See Section 38 of the Small Claims Court Act which states;

“38. Appeals

(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.

11. The jurisdiction of the High Court based on the above section is limited to matters of law only. From the record, there are three issues for determination;

a. Whether delivery of the Judgment outside the 60 days statutory period was fatal.

b. Whether there was breach of contract.

c. Whether finding the 1st and 2nd Appellants liable amounted to lifting the corporate veil.

Whether delivery of the Judgment outside the 60 days statutory period was fatal.

12. Section 34 of the Small Claims Act provides that;

“ (1) All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.

(2) Judgment given in determination of any claim shall be delivered on the same day and in any event, not later than three (3) days from the date of the hearing.

(3) The Court may only adjourn the hearing of any matter under exceptional and unforeseen circumstances which shall be recorded and be limited to a maximum of three adjournments.

(4) When considering whether to allow an adjournment on the grounds of exceptional and unforeseen circumstances referred to in subsection (3), the court may in particular take into consideration where appropriate any of the following exceptional and unforeseen circumstances

— (a) the absence of the parties concerned or their advocate or other participants to the proceedings required to appear in court for justified personal reasons which may include sickness, death, accident or other calamities;

(b) an application by a party for the Adjudicator to withdraw from hearing the matter;

(c) a request by parties to settle the matter out of court;

(d) an appeal filed in the matter where orders of stay of proceedings have been granted;

(e) an application by a party to summon new witnesses to court, collect new evidence, new inspection or evaluation or supplementary investigation on the subject matter of the case; and

(f) any other exceptional and unforeseen circumstances which in the opinion of the court justifies or warrants an adjournment.”

13. There is no dispute that the judgment in this case was delivered outside of the statutory limits. However, it is evident from the record that the said delay was occasioned by the conduct of the Appellants after they claimed not to have been served. The Adjudicator therefore had to hear their application to set aside the default record. Surprisingly, the record shows that they



delayed in prosecuting that application and it was dismissed- see the proceedings for 28th December 2022.



They then filed another application which was allowed by consent on 1st February 2023. They were however to pay thrown away costs agreed at KShs15,000 which they did not pay within the timeline given by the court. This therefore delayed the hearing as the court could not proceed before the condition for setting aside the judgment was fulfilled.

14. it is also evident that on the day the hearing was to commence, it transpired that Counsel for the Appellants had not filed their documents and the case had to be adjourned. Thereafter, the following events took place;

- a. On 20/03/2023 and 03/04/2023, the Respondents advocates sought an adjournment.
- b. On 05/04/2023, none of the parties appeared in court
- c. On 08/05/2023, there was a notice of change of Advocates for the Respondents herein
- d. Hearing took place on 19/06/2023 and judgment was delivered on 24/07/2023

15. Clearly therefore, the Appellant contributed to the delay which resulted in the judgment being delivered outside the statutory time. Whereas, there are two schools of thought in regard to judgments rendered outside of the sixty days, one school of thought being that such a judgment is fatal, I am more persuaded by the decision in the case of *Wekesa v Matata* (Civil Appeal E685 of 2022) [2024] KEHC 8284 (KLR) where the court stated;

"I take the view postulated in the latter case that non-compliance with the section is not fatal to a case. The court has to look into what the intention of the legislature was when it passed the section. I do not think that the legislature intended to mean that the court ceased to exercise jurisdiction over a matter filed in that court which was not finalized within 60 days. If that were the case, it would defeat the purpose of the whole Act. I thereby dismiss the argument that the judgment of the Adjudicator in this matter was a nullity."

16. Similarly in the case of *Crown Beverages Limited vs MFI Document Solutions Limited* (Civil Appeal E833 of 2021) [2023] KEHC 58 (KLR) the court rendered itself as follows: -

"Although section 34(2) of the SCCA is couched in mandatory terms, the court must look at the context of the provision in light of the guiding principles which include, inter alia, the timely disposal of all proceedings before the court using the least expensive method. The provision as to delivery of judgment is meant to be directory and not mandatory as it is not the intention of the SCCA to invalidate any proceedings that violate the statutory timelines. To adopt such a position would undermine the statutory objects and cause injustice to the parties as the case would have to be reheard.

The issue of breach of timelines for delivery of judgment is not a novel issue and has been dealt with by our courts in reference to order 21 rule 1 of the Civil Procedure Rules which provides that judgments must be delivered within 60 days upon conclusion of the hearing. In *Nyagwoka Ogora alias Kennedy Kemoni Bwogora v Francis Osoro Maiko* Civil Appeal No 271 of 2000 (UR) the Court of Appeal observed as follows:

**"The real question is what is the consequence of non-compliance therewith? no doubt that rule is an important one in the expeditious dispensation of justice. And it is made to be obeyed. However, if non-compliance with the rule were to have the effect contended for by the appellant, we think the overall result would be more injustice than justice to the parties. A lot of time and resources spent in litigation would come to naught if judgments delivered after the expiry of 42 days were to be voided or declared void ipso facto. The rule cannot and in our view could not have been intended to deprive a trial judge of his jurisdiction to write and pronounce judgment in a case he has heard. In our considered view, while non-compliance with the rule and particularly persistent non-compliance**



**or inordinate delay in compliance should call for censure of the judicial officer concerned**



**from those in-charge of judicial administration, it should not be a ground for vitiating a duly delivered judgement.”**

17. The justice of this case demands that this court disregard the submission in regard to time, reason being that, to do otherwise would be to allow the Appellants to benefit from their own indolence. It would also encourage parties against who claims are brought in the Small Claims court, to deliberately delay the proceedings just so that they could get away with it. That would defeat the spirit of the Act and it should not be encouraged. In the premises I find no merit in the first issue. Whether the erred in holding the 2nd and 3rd Appellants liable.

18. As correctly submitted by Counsel for the Appellants, a company is a separate legal entity from its directors and shareholders and as such, its directors and shareholders cannot be held personally liable for the debts incurred by the company except that the corporate veil be lifted. This is done in exceptional cases as was held in the case of Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited [2016] eKLR, where the court stated-  
“The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.

19. It is my finding that no exceptional circumstances were demonstrated to hold the 2nd and 3rd Appellants personally liable. There was also no application to lift the veil properly made before the Adjudicator. Further, the averment that they undertook to personally pay the Respondents is not borne by evidence as nowhere, whether in the agreement did they make such an undertaking. It is instructive that the Respondents did not allude to fraud: only breach of contract. The Adjudicator therefore erred in law at arriving at such conclusion and this issue is therefore answered in favour of the 2nd and 3rd Appellants.

Whether the 1st Appellant breached the contract between it and the Respondents.

20. The contract between the parties was express and clear in its terms. There is no evidence that it was varied by the parties. From the evidence in the court below the 1st Appellant did not fulfil its part of the contract and could not prove that there was an intervening act of God which prevented it from doing so.

21. The contract stated as follows-

**“the period commencing from the effective date and shall cover the planting, growing and harvesting of produce, which shall be eight and a half months for tomatoes and any other crop as consented to by the parties in writing.” Further; “the service provider agrees to remit the proceeds to the vendor for onward transmission to the purchaser as agreed and detailed in schedule one REGARDLESS of any occurrences or circumstances that may arise within the term of this agreement that would impede or affect yields or production levels of the crops.”**

22. It is trite that a court cannot rewrite a contract for the parties. The agreement was that no intervening circumstances could affect the agreement. I find no ambiguity in the above clause and in the premises, I find that the Appellant’s averment that it was prevented from fulfilling the agreement because of a disease that affected the crops, to be without basis. I also find that the Respondents were entitled to terminate the contract as they did.



23. The upshot is that this appeal is dismissed, save that this court finds the 2nd and 3rd Appellants not personally liable, at least not until the corporate veil is lifted.

24. The costs of the appeal shall be borne by the 1st Appellant.

**Judgment signed, dated and delivered on this 19th day of March 2026.**

SIGNED BY/FOR:  
HON. LADY JUSTICE E.N. MAINA



THE JUDICIARY OF KENYA.  
MACHAKOS HIGH COURT  
HIGH COURT DIV  
DATE: 2026-03-27 14:19:11

