

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NUMBER E223 OF 2024

MAISHA STEEL (EA) LIMITED.....APPELLANT

-VERSUS-

COUNTRY HARDWARE.....RESPONDENT
*(Being an appeal from judgment and decree in Small Claims Court at Ruiru
(Hon. J.K. Tawai Adjudicator/RM) claim number E354 of 2024 dated 26-07-
2024)*

JUDGMENT

The appellant's claim against the respondent in the lower court was for Kshs 383,826.00 plus interest and costs. The principal amount was said to have been the value of goods the appellant delivered to the respondent on or about 1st January 2020 which the respondent had failed to pay. After the respondent was served with claim documents, it filed a response in which it denied the claim and averred that it never received any goods from the appellant which remained unpaid. It averred that it had transacted with the appellant but for each transaction, payments had been made and it owed the appellant no money.

On 15-07-2024, the parties consented to proceed by way of documents under Section 30 of the Small Claims Court Act. The judgment of the trial court indicates that, as at the time she was writing the judgement none of the parties had filed its submissions. The lower court file forwarded to me does not have the copies of any of the parties' submissions. The appellant has however in its record of appeal included its submissions appearing at pages 49 to 51 which do not have endorsement of when or whether they were properly filed and as such I have no reason to doubt the lower court's statement that no submissions had

been filed. The appellant has in submissions before me conveniently failed to address this issue.

The impugned judgment dismissed the appellant's claim prompting this appeal in which the following grounds are raised;

1. That the learned Magistrate erred in finding that the claimant had failed to adduce sufficient evidence to prove its claim on a balance of probabilities.
2. That the trial Magistrate erred in making its decision against the weight of evidence.
3. That the Honourable Magistrate erred in reaching a decision disregarding the rules of evidence.
4. That the esteemed Magistrate erred in failing to find that the issuance of cheques by the respondent's director was in law an admission of indebtedness.
5. That the learned Magistrate erred in relying on procedural technicalities to dismiss the claim against the weight of evidence.

I have read the submissions of the appellant dated 18th July 2025. The respondent has not filed any submissions in this appeal. The appellant argues that the trial court erred by failing to acknowledge that the respondent had drawn cheques in favour of the appellant which were dishonoured which according to the appellant was an admission of the debt. It adds that upon production of these cheques, the evidentiary burden fell on the respondent to provide credible explanation that it ought not to be made liable.

The appellant has submitted further that the trial court erred by applying the Civil Procedure Act, section 31 of the Small Claims Court Act and provisions of the Evidence Act when it dismissed the claim for failure by the appellant to produce documents in proof of transactions for the year 2020. It avers that its statement of accounts, invoices and delivery notes and return cheque image it produced were enough to establish that there existed a debt owed by the respondent. The appellant adds that section 33 of the Small Claims Courts Act provides for exclusion of strict rules of evidence and by demanding strict proof as stated above, the court erred.

Appeal to this court from the Small Claims Court are restricted to matters of law only. A matter of law is identified as that which involves analysis and application of the law to pleaded facts while issues of facts involve establishing the truth of the pleaded facts. I have looked at the arguments advanced by the appellant and I am satisfied that a matter of law exists in this appeal. The appellant claims that the lower court erred in applying strict procedures provided in the Civil Procedure Act and the Evidence Act instead of applying section 33 which directs that the court should not be governed by strict rules of evidence.

From my analysis of the trial court's judgment, I discern that her decision was influenced by the fact that the statement of account produced by the appellant was for the period between 1-01-2019 to 5-11-2019 despite it pleading that the debt was for goods supplied on 1-01-2020 or thereabout. The court also observed that there were no documents adduced in court for the transaction of the year 2020. She concluded that since the claim was specific in nature, it ought to have been specifically proved and that the evidence produced by the appellant was speculative.

Reading the submissions, I understand the appellant as saying that the court should not have restricted its judgment to the period stated in the statement of claim. If the appellant was to be understood well, all trial court needed to look at was whether there was once a business relationship between it and the respondent which was established by the documents it produced then call upon the respondent to prove that it had paid. This line of argument goes against the established principle that the burden of proof lies on the shoulders of the party who wishes the court to believe in existence of certain set of facts. It is also trite law that, the burden of proof in a particular issue lies with the party who would fail if no evidence was produced at all. The Court of Appeal held in ***Mbuthia Macharia v Annah Mutua Ndwiga & another [2017] KECA 290 (KLR)*** that

‘The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence.’

Further, in ***JRS Group Limited v Kennedy Odhiambo Andwak [2016] KEHC 1552 (KLR)***, it was held that;

‘As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue.’

It is true that the proceedings before the Small Claims Court should not be governed by strict rules of evidence. However, this does not mean that the court

should throw all the care about the law through the widow and operate with informal procedures. The restriction provided in section 33 of the Act is not the same as entertaining failure to adherence to the provisions of the law. It is trite that liquidated claims must not only be specifically pleaded but also strictly proved. Paragraph (c) of the statement of claim was clear that the appellant was claiming debt for goods supplied on 1-01-2020 which in my view excluded any period prior to the pleaded date. It would have been different if the appellant had pleaded that the debt was due as at 1-01-2020. Again, as rightly observed by the trial court, the statement of account showing the debt as Kshs 386,825.50 ran up to 5-11-2019.

The purpose of pleadings is to give the opposing party notice of the nature of the claim or defence they will be facing in court. The respondent had been notified through the paragraph (c) of the statement of claim that the case being mounted against it was for supply of good delivered on 1-01-2020 or thereabout. It cannot therefore be right to expect the respondent to defend any supplies which happened before the 1-01-2020. Restricting parties to their pleadings is a matter of substantive law and not a matter of rules of evidence. In the circumstances, the appellant cannot hide under the cover of section 33 of the Small Claims Court Act.

The appellant has faulted the trial court for failing to acknowledge that the respondent issued it with cheques which were dishonoured and that the conduct amounted to an admission. It is notable that the respondent did not deny that it had business relationship with the appellant and it had averred that the appellant supplied goods which were paid for. I have looked at the cheques the appellant claims were for payment and which the court should have treated as an admission. Three of these cheques which appear on pages 37 and 38 were issued between 30-04-2018 and 6-04-2018 while one does not bear a date.

There is only one return cheque image which for Kshs 50,000.00 which was transacted on 9-05-2018.

The appellant claims that the amount it claimed was carried forward from the earlier year and that is why the statement of account begins on 1-09-2019. In my opinion, cheques issued and dishonoured in 2018 cannot be treated as admission of liability in respect of statement which starts in January 2019 without supporting documents or evidence. Cheques numbers 316, 314, 362 and 315 do not appear to have been banked since there is neither bank's receipt stamp or evidence of deposit nor a return cheque image for them. The appellant should have produced a statement dating back to the period the cheques were issued and dishonoured if at all, with documents in respect of supply that reconciles with the statement.

In any event the only cheque that is shown to have been dishonored had value of 50,000.00 only whereas the other four amount to Kshs 668,650.00. The appellant did not tell the court what happened to the rest of Kshs 616,650.00. The cheques are shown to have been drawn on account of Cecilia Wangari Karugi and not the respondent in this matter. Although there was a CR12 form showing that one Cecilia Wangari Karugi was a member and a director of the respondent holding 300 shares out of the 1000 shares, there is no evidence that the same were payments for goods in question.

There may have been business relationship between the parties but it must be remembered that it is not the business of the court to piece together the case or evidence of the parties. Where the evidence is jumbled, mixed up and is disconnected from the pleadings such that the court is unable to reconcile the facts, the suit must be lost. Small Claims Courts remains courts of law and are required in their adjudication to apply the law.

Based on the above, I find that the trial court's judgment was right based on the nature of evidence produced before it. This appeal therefore, has no merits and it is dismissed with no orders as to costs.

Dated signed and delivered at Nairobi this 25th day of **March** 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Mburu holding brief for Mr. Michuki for the appellant and in absence of the respondent.