

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL APPEAL NO. E020 OF 2025

FANUEL TOLO APPELLANT

- VERSUS -

JOY KINANU RIUNGU RESPONDENT

(Being an appeal from the judgment and decree of **Hon. G.C. Serem**
RM/Adjudicator delivered on the 10/07/2025 in the **Ksm SCCCase No. E651 of**
2025, Joy Kinanu Riungu v Fanuel Tolo)

J U D G M E N T

1. The respondent filed a claim against the appellant seeking judgment in the sum of **Kshs. 14,000/-** being monies owed by the appellant plus costs of the claim with interest.
2. The appellant entered appearance and filed a response denying owing any sums to the respondent.
3. The matter proceeded to trial and in its judgment, the trial court found in favour of the respondent whom it deemed to have proven her case against the respondent. It awarded the respondent the sum of **Kshs. 14,000/-** plus costs of the suit and interest from the date of filing suit till full payment.

4. Being dissatisfied with the said judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated 5/08/2025 and raised seven (7) grounds of appeal as follows: -

- a) That the learned and noble magistrate erred in law and fact in upholding the claimant's case as against the respondent and particularly in disregarding the Tenancy Agreement dated 8/1/2025.*
- b) That the trial magistrate gravely erred in law and fact in allowing and upholding the claimants case as against the respondent in spite of the very clear, express and uncontroverted stipulations in the Tenancy Agreement.*
- c) That No Notice of Termination of Tenancy Agreement was furnished by the Tenant/Respondent herein as necessary and stipulated by law/*
- d) That the learned and Noble trial court gravely erred in law by allowing the claim YET no assessment of the shop was undertaken to ascertain the extent of damages/repairs that would have been necessary in the circumstances.*

- e) That the learned and noble trial magistrate gravely failed in totally disregarding the Rental Agreement executed between the respective parties.*
- f) That the learned and noble magistrate misdirected herself in law and fact by awarding interest and costs against the appellant without regard to the true justice and merits of the matter.*
- g) That the judgment was against the weight of the evidence adduced at trial.*
5. The parties agreed to dispose the appeal by way of written submissions. However, as at the time of writing this judgment, there were no submissions in the CTS. In any case, submissions are not evidence and this being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See **Selles & Anor vs. Associated Motor Boat Co Ltd & Others [1968] EA 123.**
6. Before the trial court, the respondent testified as **Cw1**. It was her testimony that she rented some premises from the appellant and on the **20/4/2025**, she paid rent for 4 months. That she had a delay of pay and on the **20.2.2025** the

premises were closed. That she appeared on the **24/2/2025** and paid the fine but she was told not to open the premises until she was registered.

7. That she continued paying the rent in March and April as she followed up on the issue but the premises remained closed. That on the second week of April, she received a call informing her that she could enter. That she went to the appellant and requested him to give her security as she was almost done with the payment.
8. That since she was opening in May, she did not want to risk again. That the appellant told her to give him 3 days but after the days lapsed, the appellant began giving excuses. That on the **21/4/2025**, the appellant told her to remove her things and to sign out the following week. That she complied and removed the shelves and her drugs. That she tried to reach out to the appellant but he did not pick his calls.
9. That the appellant eventually picked up and as she was in a hurry to leave he informed her to surrender things to the caretaker. That on the **1/5/2025**, the appellant texted her to go to the office and hand over officially so she proceeded to the office where she gave him the keys. That she inquired about her deposit and the appellant informed her that he needed time to do the refund but the week which he had promised to call he did not.

10. That when the appellant eventually picked her call, he accused her of destroying the premises but she produced a video of the premises showing that she had not destroyed the premises as claimed but merely removed the lighting she had installed when entering the premises. That the appellant threatened her not to call or text him again and urged her to proceed to court.
11. In cross-examination **Cw1** admitted that she did sign the contract and understood the content of the contract. In re—examination, it was her testimony that she signed the contract but that there is always an emergency.
12. The appellant testified as **Rw1** confirming that the respondent was his tenant and that she had paid a deposit of rent plus 3 months' rent in advance. That the respondent signed a contract of Tenancy but did not agree to the clause providing for rent increment at 12 months.
13. That the respondent called and informed him of her intention to vacate the premises and also that she would need her deposit back. That she had an emergency however that was not his business. That the premises was in a good condition but the respondent perforated the walls using nails and even cut wires.
14. That she breached the contract as she did not give him notice and demanded the deposit. That the respondent did not lock the doors when she left the

premises thus exposing the premise to vandalism. That he was still to assess the damages.

15. In cross-examination, he stated that the respondent failed to inform him that she was vacating the premises and later informed him that thieves broke into the premises. That he needed to inspect the premises so as to pay the deposit.
16. In re-examination, the appellant testified that the respondent was to move in with moveable shelves and that he told her not to perforate the walls as the premises had been renovated. That the place was left vulnerable.
17. I have considered the evidence tendered before the trial court. This being an appeal from the Small Claims Court, it is important to point out that **Section 38 of the Small Claims Court Act** provides for the jurisdiction of this Court in determining appeals from the Small Claims Court. It provides thus; -

“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.”

18. It is clear from the foregoing that, jurisdiction of this Court from the Small Claims Court is only on matters of law and not factual issues.
19. A perusal of the Grounds of Appeal elucidated by the appellant reveals that they are all matters of fact. They invite this Court to consider the issues of facts which were proven or not proven before the trial court. These are matters that this court has no jurisdiction to entertain. This Court cannot re-look or second guess the trial court's findings on evidence.
20. Further, this court has similarly gone through the proceedings by the adjudicator and has not come upon any instance of whimsical exercise of discretion.
21. The upshot of the above is that the Court finds the appeal to be without merit and dismisses the same with costs.

It is so decreed.

DATED and **DELIVERED** at Kisumu this 25th day of **March, 2026**.

A. MABEYA, FCI Arb

JUDGE