REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT KERUGOYA
COMMERCIAL CASE NO. E251 OF 2025

FESTUS NJERA ……

CLAIMANT

VERSUS

CLASSIC STEEL EAST AFRICA LTD ……

RESPONDENT

JUDGMENT

1. The dispute presently before this court concerns a contract for supply of goods and services by the respondent to the claimant. Specifically, the respondent was engaged by the claimant to supply and install stainless steel staircase railings with runners and steel balustrades on balconies, which were to be fitted with glass. The contract between the parties was reduced into writing on 16th June 2025 and was duly executed by both parties.

2. The agreed costs for the project was Kshs. 117,000/= which was to be paid in installments. The initial installment of 70 per cent was required to facilitate the purchase of the materials needed and the balance of 30 per cent was to be paid after installation and inspection. The parties also expressly agreed that the delivery, the technician's fare and transportation costs would be fully catered for by the client, in this case the claimant.

3. It is common ground that the claimant paid the initial deposit of 70 per cent on 16th June 2025. It is also an agreed fact that when the claimant paid the initial deposit, the respondent sent its

technician to fix the steel rails for both the staircase and the balconies. That bit of the project was done to the claimant's satisfaction as he described the technician's work as perfect. The stale mate between the parties arose when the respondent demanded transportation costs for the tuff glasses to be fixed on the railings.

4. According to the claimant, he sent the respondent a sum of Kshs. 7,500/= for transportation of the materials to his construction site on 16th June 2025 as requested by the respondent in a quotation issued on the same day. The description of the quotation read;

> *"transportation of materials from office/workshop industrial area to nairobi CBD (courier services) and to kerugoya and fare for the technician"*

5. To his mind, the quotation sent by the respondent was with respect to all materials that were to be installed by the respondent including the glasses that were to be fixed on the railings. The claimant was therefore unamused when a subsequent demand for transport costs for the glasses was made after he had sent the sum of Kshs. 7,500/= on 16th June 2025.

6. In his testimony before this court, the claimant described the respondent's director, as difficult and rude. The screenshots of the parties' conversation produced by the respondent, show that attempts to iron out the issue amicably were unsuccessful.

7. On the other hand, the respondent asserted that it was clear that the project was to take place in phases. The respondent's director, Judy Wangeci Kamau (RW1) referred this court to clause 1 of the agreement which stated;

> ***"1. COMPLETION OF WORK***
>
> *a) Stainless Steel Staircase Railing installation will take 3-7 days to fully install the steel Balustrades on the balconies plus glass Brackets and another 5-9 days working days (Sic) to install the glass of the receipt of 1st installment."*

8. Wangeci Kamau insisted that the terms of the agreement and the quotation for the construction materials clearly indicated that the client was to provide transport. She told the court that once railings were installed measurements would normally be taken for the glasses to be fixed onto the railings. She testified that she contacted the claimant and requested him to recommend a courier service of his choice due to the fragile nature of the goods. When she called the claimant a few days later to inform him that the glass was ready for transportation, he refused to cater for the additional costs for transportation.

9. The disagreement on the payment of the transport costs for the tuff glasses resulted in additional expenses for both sides. The claimant told the court that due to the stalemate with the respondent and the time constraints on his work, he had to get another company to finalize the pending works at a cost of Kshs.

64,946/=. His claim against the respondent as set out in his statement of claim dated 14th July 2025 was for special damages of Kshs. 72,446/= being the sum of the subsequent contractor's fees and the transport costs of Kshs. 7,500/=. He also sought general damages, interest and costs of the suit.

10. For her part, the respondent claimed that it had incurred expenses when it placed an order with its supplier, Cannon Aluminium Ltd., for the glass. In its response and counter claim dated 23rd July 2025, the respondent demanded, among other things, the unpaid balance of Kshs. 35,100/=, storage fees of Kshs. 15,000/= imposed by its supplier for the cut glass, and Kshs. 10,000/= needed to transport the glass to the claimant's construction site.

ISSUES, ANALYSIS AND DETERMINATION

11. From the foregoing summary of the pleadings and the evidence adduced before this court, the main issue arising for the analysis and determination of the court is who between the claimant and the respondent was in breach of the agreement. As already noted, the dispute between the parties arose upon the demand by the respondent of additional costs for transportation of tuff glasses to the claimant's construction site.

12. Both parties agree and it is indeed an express term of the contract, that the claimant was to cater for all delivery and transport costs. The claimant sought and obtained a quotation from the respondent for transportation of materials to his site.

The excerpt of the description of the transport quotation cited verbatim elsewhere in this decision, does not distinguish between the steel railings that were supplied and the glasses that were never delivered to the claimant. It simply referred to ***"transportation of materials."*** The claimant paid the quoted amount of Kshs. 7,500/= for what he believed was all of the materials to be installed by the respondent.

13. Conversely, the respondent rightly points out that the project was to be done in phases. The first phase involved the installation of the steel railings on the stair cases and balconies while the second phase involved the installation of the glasses. Although this fact was clearly communicated to the claimant and was a term of the contract, the respondent's assertion that the claimant knew that he was only paying for transportation of steel railings is not factual. This court has combed through the documents availed by the parties and did not see clear communication to the claimant that the quoted sum of Kshs. 7,500/= was exclusive of transportation for the glasses.

14. At this point, it is apparent that there was no meeting of minds between the parties with respect to the transportation of the glasses to the claimant's construction site. Faced with a similar issue, the court in the case of ***Housing Finance Company of Kenya Limited v Gilbert Kibe Njuguna, HCCC No.1601 of 1999 (unreported)*** held;

"Courts are not fora where parties indulging in varying terms of their agreements with others will get sanction to enforce the varied contracts. Contracts belong to the parties and they are at liberty to negotiate and even vary the terms as and when they choose and this they must do together and with a meeting of the minds. If it appears to the Court that one party varied terms of the contract with another, without knowledge, consent or otherwise of the other, and that other demonstrates that the contract did not permit such variation, the Court will say no to the enforcement of such contract."

15. Under the agreement dated 16th June 2025, the claimant was responsible for the cost of transporting the goods to the site. However, by their subsequent conduct, specifically the claimant's request for a transportation quotation and the respondent's provision thereof, the parties varied the agreement and delegated the task of transportation to the respondent. The evidence demonstrates that the claimant expected all materials to be availed at the site on the basis of the transportation quotation provided, whereas the respondent assumed that the claimant understood that some materials would be delivered a few days later, with the claimant bearing the transportation costs in line with the agreement. Considering all the facts in this case, there was no firm agreement between the parties with respect to the transportation of the glasses to be enforced by the court.

16. While this court appreciates that the project was time-sensitive, it is also of the considered view that, rather than resorting to litigation, the parties ought to have engaged in concerted negotiations and made reasonable compromises to avert the losses ultimately incurred by both parties as a result of their inflexibility and failure to accommodate each other.

17. In the case of ***Mukuru Munge v Florence Shingi Mwawana & 2 others [2016] KECA 54 (KLR)*** the court held;

> *"It is axiomatic that a cause of action founded on contract accrues when breach takes place and not when damage is suffered. (See CHITTY ON CONTRACTS, Sweet & Maxwell, 23rd Ed. Vol. 1 page 732 and MWANGI V. KIIRU [1987] KLR 324). And a breach of contract occurs when one or both parties fail to fulfill their obligations under the terms of the contract."*

18. This court has found that there was no *consensus ad idem* between the parties on the transportation of the glasses to the claimant's construction site. Both parties averred that they had suffered damages as a result of the premature termination of the contract but are not entitled to damages as none proved breach of the agreement, there being none. This court further notes that according to Clause 10 of the contract, the claimant (customer) would not be liable for any amount of supplies or services he had not accepted. Consequently, the respondent's claim against the claimant would fall on that ground as well.

19. The inevitable finding from the above analysis of the facts is that the claim dated 14th July 2025 and counterclaim dated 23rd July 2025 lacked merit. Both are therefore dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 6TH DAY OF MARCH 2026.

HON. GRACE WAITHĨRA

SENIOR RESIDENT MAGISTRATE/ADJUDICATOR

JUDGMENT SENT VIA CTS PLATFORM IN ACCORDANCE WITH RULE 23 (4) (B) OF THE SMALL CLAIMS COURT RULES.
THE EXECUTION OF THIS JUDGMENT IS STAYED FOR 30 DAYS.
ANY AGGRIEVED PARTY HAS LEAVE TO EXERCISE THEIR RIGHT OF APPEAL WITHIN 30 DAYS OF THE DATE HEREOF.