



**Elite Earth Movers Limited v Okech (Civil Appeal E095 of 2025)
[2026] KEHC 4731 (KLR) (Commercial and Tax) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4731 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E095 OF 2025**

LP KASSAN, J

APRIL 13, 2026

BETWEEN

ELITE EARTH MOVERS LIMITED APPELLANT

AND

KENNEDY OMONDI OKECH RESPONDENT

RULING

1. This court has been called upon to determine a PO that relates to the jurisdiction of a high court in an appeal from small claims courts and the section being cited is 38(1) of the Act. I have read the submissions and considered common law including several others by myself and I shall be brief in determining this PO.
2. It is now a well-established principle that an appeal from a small claims court may lie to a high court on matters of law or facts which are intertwined in law. For example, I have seen the memorandum of appeal and noted that some of the issues raised are apportionment of liability, validity of a contract, authenticity of documents and so on. These are not just factual issues because they require interpretation or application of law.
3. Section 38(1) of the small claims Act has not elevated the Small Claims Court to a Supreme Court nor has it usurped the High Court's supervisory jurisdiction on lower courts. A memorandum of appeal cannot be struck out where only one of its prayers cannot be determined by an appellate Court but for the interest of justice the Court will retain the Appeal so that other issues raised can be determined.
4. On the issue that the Appeal is time barred and that the memorandum of appeal was not served, there is an affidavit of service dated 4th of February 2025 which triggered a response by the Applicant herein meaning that he was aware of the Appeal. The memorandum of appeal was filed on time as per records.



It was filed on the 19th day of December 2024, 15 days after issuance of decree and directions given on the 23rd day of December 2024.

5. The onset of the above is that the PO is dismissed with a costs.

DATED DELIVERED VIRTUALLY, AND SIGNED AT NAIROBI THIS 13TH DAY OF APRIL, 2026

L. P. KASSAN

JUDGE

