

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL APPEAL NO. E061 OF 2024

HAJJI MOTORS LIMITED

APPELLANT

VERSUS

TREADSETTERS TYRES LIMITED

RESPONDENT

(Being an appeal from the judgment of Hon. Lule Anne Kalekye (Adjudicator) delivered on 14th December 2023 in Milimani SCC No. E6721 of 2023)

JUDGMENT

1. The Respondent sued the Appellant before the trial court seeking the payment of the sum of Kshs. 1,000,000 in respect to tyres it allegedly supplied to the Appellant on credit between November 2020 and April 2021.
2. The Respondent's case was that the parties maintained a running account under which goods were supplied on credit, and that despite partial payments, a balance of Kshs. 1,000,000 remained outstanding.
3. On its part, the Appellant denied liability and disputed both the existence of a credit arrangement and the authenticity of the documents relied upon by the Respondent.

4. It was however not disputed that the parties had an ongoing commercial relationship for the supply of tyres. The Respondent maintained that goods were supplied on credit terms through a running account and that delivery was evidenced through invoices and delivery notes bearing stamps/signatures;
5. The Respondent produced an excel statement of account showing: -
 - i) **Total invoices: Kshs. 6,547,210.22**
 - ii) **Payments received: Kshs. 5,547,210.22**
 - iii) **Outstanding balance: Kshs. 1,000,000**
6. The Appellant, on the other hand, disputed the authenticity of some delivery notes and stamps, the existence of a credit arrangement, the accuracy and reliability of the excel statement and liability for the alleged outstanding sum.
7. The trial court however entered judgment in favour to the Respondent for the claimed sum of Kshs. 1,000,000.
8. Dissatisfied with the decision, the Appellant preferred this appeal vide a Memorandum of Appeal dated 16th January 2024.
9. The appeal is premised on the grounds that the learned trial magistrate erred in law and in fact by:
 - a) **Holding that the Respondent had proved its case on a balance of probabilities;**
 - b) **Misapprehending and improperly shifting the burden of proof;**

- c) Relying on unverified and inconsistent documentary evidence, particularly the excel sheet;**
- d) Failing to properly evaluate the evidence on record;**
- e) Selectively relying on the Respondent's evidence while disregarding that of the Appellant;**
- f) Failing to consider material inconsistencies in the Respondent's case;**
- g) Relying on hearsay evidence;**
- h) Determining issues not pleaded by the parties;**
- i) Making findings contrary to the evidence on record; and**
- j) Arriving at a decision against the weight of evidence.**

10. The Appeal was canvassed by way of written submissions which I have considered.

Appellant's Submissions

11. The Appellant submitted that the trial court erred in determining issues that were not pleaded, thereby exceeding the scope of the dispute. Reliance was placed on the decision in **Barclays Bank (T) Ltd vs. Jacob Muro Civil Appeal No. 357 of 2018** where the Court of Appeal cited, with approval, an article by Sir Jack I.H. Jacob at p. 174 for the proposition that a court is bound by the pleadings of the parties.

12. It was further submitted that the trial court misapplied the provisions of the Evidence Act by improperly shifting the burden of proof to the Appellant

before the Respondent had discharged its evidentiary burden.

13. The Appellant took issue with the Respondent's reliance on an excel spreadsheet, contending that the same was unreliable, internally inconsistent, and unsupported by primary accounting records.
14. The Appellant also argued that the trial court failed to interrogate the authenticity of delivery notes and stamps, despite the Appellant's challenge thereto.
15. It was the Appellant's position that the cumulative effect of the above errors resulted in a miscarriage of justice warranting the intervention of this Court.

Respondent's Submissions

16. The Respondent opposed the appeal and submitted that the same is incompetent as it raises matters of fact contrary to Section 38 of the Small Claims Court Act (the Act) which limits appeals to matters of law only. Reliance was placed on the decision in ***Samuel Kamau Macharia vs. Kenya Commercial Bank & 2 Others [2012] eKLR*** on the question of jurisdiction.
17. The Respondent maintained that it had proved its case through delivery notes, invoices and a statement of account showing the outstanding balance.

18. It was submitted that the Appellant failed to produce any documentary evidence to rebut the Respondent's claim and merely issued bare denials.
19. On the issue of the excel sheet, the Respondent submitted that the same was a summary of the running account and was corroborated by primary documents.
20. Citing ***Mbogo & Another vs. Shah [1968] EA 93*** the Respondent urged the Court not to interfere with the trial court's findings.

Issues for Determination

21. Having considered the record of appeal and the submissions by both parties, I find that the issues that fall for determination are:
 - a) Whether this Court has jurisdiction to entertain the appeal;***
 - b) Whether the trial court determined issues not pleaded;***
 - c) Whether the trial court misapprehended the burden of proof;***
 - d) Whether the Respondent proved its case on a balance of probabilities;***
 - e) Whether this Court should interfere with the decision of the trial court.***

Analysis and Determination

22. This being a first appeal, this Court is enjoined to re-evaluate, re-analyse and reconsider the evidence on record and draw its own independent conclusions while bearing in mind the fact that it did not have the opportunity to see or hear the witnesses testify. (See

Selle vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123).

23. Appeals from the Small Claims Court are governed by Section 38 of the Small Claims Court Act which provides as follows:

38. Appeals

(1) A person aggrieved by the decision or an order of the Court may appeal against the 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.

24. It is therefore clear that this Court's jurisdiction is confined strictly to matters of law and does not extend to re-evaluation of factual findings unless such findings disclose an error of law.

Jurisdiction

25. It is trite that appeals from the Small Claims Court lie to the High Court on matters of law only pursuant to Section 38 of the Small Claims Court Act.

26. The distinction between matters of law and matters of fact is well settled. A matter of law concerns the application or interpretation of legal principles, while a matter of fact concerns the evaluation of evidence. In ***Independent Electoral and Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others Civil Appeal No. 219 of 2013 [2014] eKLR***, the Court of Appeal emphasized that where an appeal is confined to

matters of law, it does not permit a re-evaluation of evidence or a reconsideration of factual findings by the trial court.

27. A perusal of the grounds of appeal reveals that while some grounds touch on points of law, the bulk of the appeal however invites this Court to re-evaluate evidence, which falls outside its jurisdiction.

28. While this Court agrees that challenges to burden of proof and pleadings raise questions of law, much of the appeal relates to re-evaluation of evidence, which fall outside jurisdiction.

29. On the issue of whether the trial court determined unpleaded issues, the Appellant contended that the trial court ventured into issues not pleaded, particularly on the question of credit supply and authenticity of documents.

30. I have carefully considered the pleadings and I find that the issue before the trial court was whether the Respondent was entitled to the sum claimed for goods supplied.

31. In my humble view, the question whether the goods were supplied on credit, whether delivery was effected and whether payment was made were issues incidental and central to the determination of that claim.

32. I therefore find no merit in the contention that the trial court determined unpleaded issues or ventured outside pleadings.

3. Burden of Proof

Burden of Proof

33. Sections 107-109 of the Evidence Act (Kenya) place the burden of proof upon the party who asserts a fact. The record reveals that the Respondent produced documentary evidence demonstrating supply and partial payment.

34. I find that the Respondent discharged its initial burden by producing delivery notes, invoices and a statement of account. At this point, the evidential burden then shifted to the Appellant to rebut that evidence.

35. I note that the Appellant did not produce any documentary evidence to demonstrate full payment to rebut the Respondent's claim.

36. On evaluation of the evidence, this court notes that the delivery notes bore stamps attributed to the Appellant and that no expert evidence was adduced to prove forgery. I also note that the Appellant produced no rebuttal documents.

37. My view of the excel sheet is that while it is not primary evidence, it was corroborative of invoices and payments. Its probative value was properly assessed by the trial court which found that the Respondent had proved its claim on a balance of probabilities and rendered itself as follows: -

“24. The Claimant produced an excel sheet to explain the transactions by the Respondent since the time they began their business engagements to when they ended. Section 37 of the Evidence Act provides that “Entries in

books of account regularly kept in the course of business are admissible whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.” I note that section 37 allows only entries in books of account regularly kept in the course of business to be admissible. While the excel sheet tendered is not itself a book of account regularly kept in the course of business, it details the transactions made by the Respondent as recorded by the Claimant. I wish to admit the excel sheet adduced by the Claimant and marked as FA-SW-1 under section 32(1) & (2) of the Small Claims Court Act for purposes of establishing transactions that were made by the Respondent between November 2020 and April 2021.

25. The excel sheet shows that the following invoices are unpaid:

- a) Invoice no 5743 dated 23/04/2021 for Kshs.30,400/=;**
- b) Invoice no 5729 dated 23/04/2021 for Kshs.88,480/=;**
- c) Invoice no 5694 dated 22/04/2021 for Kshs.315,000/=;**
- d) Invoice no 5693 dated 22/04/2021 for Kshs.336,000/=;**
- e) Invoice no 868 dated 4/11/2020 for Kshs.21,110/=;**
- f) Invoice no 5751 dated 23/04/2021 for Kshs. 20,300/=;**
- g) Invoice no. 5745 dated 23/04/2021 for Kshs.84,960/=; and**
- h) Invoice no. 5744 dated 23/04/2021 for Kshs.100,150/=.**

26. There is also a record of 2 cheques which were paid by the Respondent and bounced. The Claimant's Witness testified that the Respondent issued a cheque of Kshs. 420,000/= and another of Kshs. 421,800 both which bounced and bank charges of Kshs, 1,800/= for each of the bounced cheques were loaded.

27. I have examined the payments made by the Respondent as recorded in the statement of the Respondents transaction account with the Claimant. I have added up the total sum of the invoices that are yet to be paid and those with pending balances as well as the bank charges incurred for the 2 cheques that bounced. They add up to the Claim Amount. The Statement does not disclose corresponding payments for specific invoices raised."

38. I am satisfied that the trial court did a proper and in-depth evaluation of the documentary evidence presented before it and I therefore find no basis to fault the trial court's conclusion.

39. The principles upon which an appellate court may interfere with the decision of a lower court are well settled in **Mbogo vs. Shah** (supra). In this case, I find that there is no evidence to show that the trial court acted on wrong principles, misapprehended the law or reached a plainly wrong conclusion.

40. I find that there is no evidence to show that the trial court misdirected itself or acted on wrong principles.

41. This Court therefore finds no justification for interfering with the impugned judgment.

Disposition

42. In the end, I find that this appeal is devoid of merit and I hereby dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

HON W. A. OKWANY
JUDGE

In the presence of
Amimo for Ometo for Appellant
Kagunyi for Kareithi for Respondent
Abdirzak - Court Assistant