



**Muriungi v Meru Highlands Dairy Limited (Civil Appeal
E113 of 2023) [2026] KEHC 5912 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E113 OF 2023
HM NYAGA, J
APRIL 30, 2026**

BETWEEN

PETERSON MURIUNGI APPELLANT

AND

MERU HIGHLANDS DAIRY LIMITED RESPONDENT

*(Being an Appeal from the Judgement of Hon. L. Wangari Maina
(Adjudicator) delivered on 22nd June, 2023 in Meru SCCC No. E162 of 2023)*

JUDGMENT

1. This Judgment arises out of a Judgment of the Small Claims Court delivered on 22nd June, 2023 by Honourable L.W Maina in Meru Small Claims Case No. E 162 of 2023.
2. The Small Claims Court entered Judgment for the Respondent for Kshs.1, 000,000/- plus costs and interest.
3. The background of the matter is that the Respondent through a statement of claim filed on 10th May, 2023 pleaded that on or about 31st May, 2021, through its supply team, supplied to the Appellant, LISHA & MAZPOA UHT Milk whose amount he was to pay without default.
4. The Respondent alleged that the Appellant failed to pay the outstanding amount or part thereof, arrears to a tune of Ksh. 1,184,267.26 despite several demands.
5. The Appellant on his part through his Response to the statement of claim dated 8th June, 2023 denied owing the Respondent the aforesaid amount and being its customer.
6. In his counterclaim, he averred that the Respondent employed him in October, 2019 at a salary of Ksh.25,000/- as a sales representative on contract terms for one month which contract was later renewed to one year vide a letter dated 28th February, 2020.



7. It was his case that he was required to supply milk to customers in various market on behalf of the Appellant and that in the month of March and April,2019, he was made the Appellant's procurement officer and afterwards he resumed his sales representative's duties.
8. It was his case that the Appellant terminated his job as a sales person vide a letter dated 27th May,2021 without paying his full salary.
9. He averred that throughout the period that he worked for the Appellant, the Appellant owed him a total sum of Ksh. 93,661/=.
10. He thus prayed for judgement to be entered in his favour for a sum of Ksh.93661/= plus costs and interest.
11. The matter then proceeded to full trial.
12. After the trial, the trial court entered judgement in favor of the Respondent in the sum of Ksh. 1 million plus costs and interests.
13. Dissatisfied with the Judgment, the Appellant filed this Appeal on 13th July,2023, premised on the following grounds: -
 1. That the Learned Magistrate erred in Law and fact in finding that it was the willful duty of the Respondent to collect the proceeds of sale.
 2. That the Learned Magistrate erred in Law and fact in finding that the discrepancies in the statements were the Responsibility of the Appellant and no one else.
 3. That the Learned Magistrate erred in Law and fact in awarding the claim in its entirety ignoring the evidence by the Appellant.
 4. That the Learned Magistrate erred in Law and fact in her application and interpretation of the law regarding the suit.
 5. That the Learned Magistrate erred in Law and fact in failing to consider and/or disregarding the Appellant's evidence, submissions and case law cited.
 6. That the Learned Magistrate ruling was biased in favour of the Respondent against the Appellant, is full of errors, against the weight of evidence and a travesty of justice.
14. The Appellant thus prayed that the Appeal be allowed and the trial's court judgement be set aside and the costs of this Appeal and in the lower court be awarded to him.
15. The Appeal was canvassed by way of written Submissions. Both parties filed their respective submissions.

Appellants' Submissions

16. The Appellant submitted that it is trite law that parties are bound by the terms of their contract and the courts cannot re-write contractual obligations under the guise of interpretation. To support this proposition, the Appellant placed reliance on the case of Promotions Limited v Standard Group PLC [2025] KEHC 1693 (KLR)
17. The Appellant argued that the trial court erred by adopting the Respondent's unsupported claim that he was responsible for collecting sale proceeds specifically on milk taken on credit by customers yet no contract was produced to ascertain the same.



18. He posited that his role was limited to delivery and handling of cash sales, and he had no basis to recover any arrears and/or amounts from the Appellant.
19. The Appellant submitted that considering he was terminated from employment effective from 31st May, 2021 on grounds of redundancy, the Respondent's claim that he was still expected to collect proceeds of sale on its behalf after his termination was illogical.
20. He thus argued that the trial court erred in holding him liable for collecting the proceeds and debts as he had neither the mandate nor capacity to collect.
21. The Appellant submitted that the Respondent failed to prove the alleged discrepancies and that the trial court blatantly disregarded all evidence placed before her and failed to consider his submissions.

Respondent's Submissions

22. The Respondent submitted that it is undisputed that there existed a contractual relationship between it and the Appellant whereby the Appellant was tasked with distributing and selling milk to third parties on its behalf, and as such the Appellant was duty bound to remit proceeds from his dealings to it. To buttress its submissions, the Respondent relied on the case of Lucy Nungari Ngigi & 4 others v National Bank of Kenya Limited & another [2015] eKLR
23. The Respondent cited the case of SYT v TA [2019] eKLR where the court held that the party's pleadings remain mere unsubstantiated statement of fact if a party fails to call evidence in support of his case, and argued that the Appellant's contention that he was required to compute and submit all the debt that the customers owed and their contacts to its Credit and Finance Department which would thereafter demand from the customers was not backed by any evidence.
24. The Respondent thus posited that the Appellant acted outside his scope as an agent in selling milk on credit sale and unreasonable of him to expect it to demand the debt from third parties who are strangers to it.
25. The respondent submitted that the appellant was thus in breach of his contractual duties and it is entitled to recover the loss suffered. In buttressing its submissions, the Respondent relied on the case of Dormakaba Limited v Arcitectural Supplies Kenya Limited [2021] KEHC 210 (KLR)
26. The Respondent further argued that the Appellant ought to have enjoined the alleged debtors in issue as third parties considering the alleged liability against them in his Response to the statement of claim. To support this position, reliance was placed on the case of Kenya Commercial Bank v Suntra Investment Bank Ltd [2015] eKLR
27. Regarding the Appellant's counterclaim for Ksh.96, 661/=, the Respondent submitted that the trial court lacked jurisdiction to determine the same as it was founded upon employment and labour relations. In support of this position, the Respondent relied on Section 13(5) of the Small Claims Act and case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR).
28. In light of the above, the Respondent urged this court to dismiss the Appeal with costs.

Analysis and Determination

29. The court has carefully considered the appeal, the entire record of the trial court, and the parties' rival submissions.



30. This court is reminded of the provisions of Section 38 of the *Small Claims Court Act* which limits appeals from the Small Claims Court to matters of law only. Therefore, I must first address the issue as to whether this Appeal is on matters of law.
31. Section 38 of the Act provides;
- “ 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.”
32. A matter of law or issue of law is a question of law as defined in the 9th Edition Black’s Law Dictionary as follows:
- “ An issue to be decided by the judge, concerning the application or interpretation of the law; or A question that the law itself has authoritatively answered, so that the court may not answer it as a matter of discretion; or
- An issue about what the law is on a particular point; an issue in which parties argue about, and the court must decide, what the true rule of law is.”
33. In the case of *J N & 5 Others -vs- Board of Management, St. G School Nairobi & Another* [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:
- “ In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts. In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations.”
34. In *Kitui Flours Ltd vs Kirimi and Another Civil Appeal No. E172 of 2023*, the court examined the above provision and held as follows;
- “ It is trite that an appeal on a matter of law includes the inquiry whether the conclusions of the trial court are sound on the evidence availed before it and, therefore, with respect to counsel for the respondents, this involves the re-evaluation of the evidence. In the very decision cited by Counsel for the Respondents, *Peter Gichuki King’ara v IEBC & 2 Others* [2014] eKLR, the Court of Appeal (Visram, Koome(as she then was) & Odek,JJ.A.) where after considering the authorities held “Having established that we have jurisdiction to determine only issues of law as per the provisions of Section 85A of the *Elections Act*, to us the whole question of whether the trial Judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence with of course the usual caveat, that we did not see the witnesses demeanor is an issue of law.”
35. Having perused the Memorandum of Appeal, I note that the grounds therein are on both fact and law. However, guided by the foregoing authorities, this Court finds that the appeal is competent and will



identify the issues for determination and confine itself strictly to matters of law. Therefore, the issues arising for determination are;

- a. Whether the trial court had jurisdiction to determine the Appellant's counterclaim.
- b. Whether the respondent proved his case against the appellant on the balance of probabilities.

36. I will now proceed to determine the above issues.

37. It is trite law that jurisdiction is everything, and without (Kenya) Limited (1989) eKLR, where the Court held that:-

Owners of Motor Vessel 'Lillian S' vs Caltex Oil locus classicus on jurisdiction is the celebrated case of it, the court cannot take one more step in the case. The

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings.”

38. The Appellant in his counterclaim claimed Ksh. 301,428/= from the Respondent, citing that he was underpaid, denied medical cover and not granted 24 days' annual leave which he was entitled to.

39. The trial court held that the Appellant had proved his case against the Respondent on a balance of probabilities but did not award him the claimed sum.

40. Section 13(5) of the Small Claim's Act expressly provides that:

“A claim shall not be brought before the Court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations”

41. Additionally, the Chief Justice vide the gazette notice number 6024 of 2018 issued on 10th June, 2018, appointed all Magistrates of the rank of Senior Resident Magistrates and above as Special Magistrates designated to hear and determine the employment and labour relations cases within their respective areas of jurisdiction and specifically where the employees' salaries fall below 80,000/=.

42. From the foregoing, it is evident that the Appellant's claim was founded on employment. Taking into account the provisions of the above section and the fact that the trial magistrate was not of the prescribed rank, I am of the opinion that the trial court lacked jurisdiction to determine the counterclaim and this court equally lacks jurisdiction to determine the Appellant's counterclaim. Therefore, the prayer sought has no legal basis.

43. The law on the burden of proof is found under Section 107(1) of the [Evidence Act](#) which provides:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

44. In other words, a party claiming a right or asserting a liability carries the burden of proving the facts on which the claim is based.

45. In civil matters, the standard of proof is on a balance of probabilities, and the court must be satisfied that the facts asserted are more likely than not. See *William Kabogo Gitau v George Thuo & 2 Others* [2010] eKLR.

46. From the respondent's pleadings filed in the lower court, the impression created was that the appellant was one of its clients who had been supplied with goods but failed to pay for them. However, the



- respondent's own witness admitted that the appellant was actually an employee of the respondent. This is a complete departure from its own pleadings.
47. There is no dispute that the Appellant was employed as a Sales Supervisor, to sell milk on behalf of the Respondent. The respondent was not clear if the appellant was allowed to collect money on behalf of the company or the clients were required to pay for the goods directly to it.
 48. The evidence adduced clearly establishes that the appellant acted as an agent of the Respondent in carrying out these transactions, as was rightly held by the trial court.
 49. In *Mboga (Deceased) v Kenya Forest Service; Nyamwea Mamboleo Advocates (Interested Party)* (Cause 2 of 2014) [2024] KEELRC 2677 (KLR) (29 October 2024) (Ruling) agency is defined as a 'Fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf subject to his control, and the other manifests assent so to act.
 50. In *Waica Reinsurance (Kenya) Limited v Commissioner of Legal Services and Board Coordination* (Tax Appeal E543 of 2023) [2025] KETAT 124 (KLR) (7 February 2025), it was held that for a principal/agency relationship to exist, there must be a fiduciary relationship where the agent undertakes to act for the principal.
 51. In *International Air Transport Association & another v Akarim Agencies Limited* [2014] KEHC 7523 (KLR), court noted that fiduciary relationships may arise in contractual contexts requiring disclosure and accountability.
 52. In *KCB Bank Limited v Odhiambo t/a Karo Wholesalers & another* [2023] KEHC 17948 (KLR), the court emphasized that an agent has a fiduciary duty to the principal, which includes full disclosure and non-enrichment at the principal's expense.
 53. It is my view that although a fiduciary duty arises in the instant case where the Appellant, as an agent, was entrusted to supply milk on behalf of the Respondent, there is nothing produced by the respondent that shows that the appellant was allowed to supply milk to clients on credit, to collect funds on behalf of the respondent and if goods were sold on credit, he was liable to the respondent if there was no payment by the customers/clients. The letter of employment does not place any details on the onus on him in that respect. The appellant would only be liable if it was shown that he was not authorized to deliver goods on credit, or had collected payment for the goods delivered to the clients and failed to remit the money to his principal, the respondent.
 54. The Appellant asserted that what he was required to do was to reconcile outstanding customer debt and forward the customers' names and contacts to the Respondent's Credit and Finance Department for follow-up, which he did. That evidence was not controverted by the respondent.
 55. I have perused the document relied upon by the respondent to prove its case, tabulating the amount claimed.
 56. It is a statement of account running from 16th October 2019 to 4th June 2021. During that period the appellant was in employment of the respondent. The balance as at the latter date is Ksh.1,184,267.26 which is the sum claimed by the respondent in the lower court.
 57. Now, that statement has some very interesting transactions, like "airtime, fuel, offloading fee, weekly facilitation, Machakos County Parking fee, night parking, night out, " and so on.



58. Clearly that statement could not form a basis for the respondent's claim, to show the amount of goods allegedly received by the appellant. In fact the statement demonstrates that the respondent is claiming sums paid to the appellant in the course of his employment among other claims.
59. In the absence of proper evidence as to how the amount claimed arose, I find that the respondent did not prove its case as required.
60. In the upshot, I find that this appeal has to succeed. The appeal is allowed. The judgment of the lower court is hereby set aside and is substituted with an order that the suit in the lower court is dismissed with costs.
61. The appellant shall have the costs of this appeal.
62. It is so ordered.

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

HESTON M. NYAGA

JUDGE

In the presence of;

Mr. Kerubo for applicant

Mr. Omamba for respondent

