



**St Theresa Primary School v M'Mukangu (Civil Appeal
E007 of 2025) [2026] KEHC 5906 (KLR) (28 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E007 OF 2025**

HM NYAGA, J

APRIL 28, 2026

BETWEEN

ST THERESA PRIMARY SCHOOL APPELLANT

AND

JOHN KABITI M'MUKANGU RESPONDENT

*(Being an appeal from the judgment and decree of Hon. Habrovinah
Nyamweya (R.M) in Meru SCCCOM No. E763 of 2024 – John Kabiti
M. M' Mukangu vs St Theresa primary delivered on 2nd December 2024)*

JUDGMENT

Background

1. The respondent filed a claim before the small claims court in which he sought judgment against the appellant for Kshs.193,000/= being a sum due and owing from the appellant for goods supplied between 2015 and 2021.
2. The appellant denied the claim.
3. The matter proceeded to full trial and in a judgment delivered on 2/12/2024, the lower court entered judgment in favour of the respondent for Kshs.193,000/= and costs of Kshs.30,000/=.

The appeal

4. Aggrieved by the said judgment, the appellant filed a Memorandum of Appeal dated 22/1/2025 which set out the following grounds:
 - a. That the learned trial magistrate erred in law and misdirected herself in making findings in the absence of any supporting evidence.



- b. That the learned trial magistrate erred in law and misdirected herself in entertaining and allowing the claim in its entirety, whilst it was clear that a substantial part of the claim was time barred by dint of the provisions of the Statute of Limitations Act Cap 22 Laws of Kenya.
 - c. That the learned trial magistrate erred in law and misdirected herself by making findings that were not supported in law or in congruence with well-established legal principles in the purview of the law of contract nor in the conventional sale of goods.
5. The appellant thus sought that the appeal be allowed and the judgment of the lower court be set aside.

Appellant's Submissions

6. It was submitted that this appeal is competent in view of the provisions of section 38(1) and (2) of the *Small Claims Court Act*. That an appeal in matters of law includes re-evaluation of the evidence tendered before the lower court. Cited in support of this submission was the decision in Kitui Flour Mills Ltd vs Kirimi and Another Civil Appeal No. E172 of 2023 (2024).
7. It was also submitted that none of the delivery notes produced by the respondent bore a stamp or signature of the appellant to signify acknowledgement of the deliveries in question. To support this argument the appellant relied on the decision in E.P Communication Ltd vs East Africa Carrier Services LTD (2019) KEHC 1298 (KLR) and Five Continents Ltd vs Mpatata Investments Ltd (2003) eKLR.
8. The appellant also submitted that there were glaring inconsistencies in the claimant's claim and he did not find it prudent to give evidence himself. For instance, the appellant pointed out, the respondent purported to issue an invoice in 2021 for goods that were allegedly supplied in 2015.
9. It was further submitted that respondent's claim was barred by statute of limitation.
10. It was further submitted that the books of accounts produced by the respondent were not sufficient to prove the appellant's liability. Cited in support of this submission was Pramukh Cash and Carry Limited vs Charles Ojwang Milamba t/a Milamba (2024) KEHC 1340 (KLR).

Respondent's Submissions

11. It was submitted that the respondent's documents including delivery notes, invoices and records of transactions duly proved his case. That the appellant failed to challenge and controvert the said evidence. The respondent cited the case of Stuart & Another v Solomon Wao Odhiambo t/a Loi Enterprises (2023) KEHC 20282 (KLR) to support this submission.
12. On the question of limitation, it was submitted that the parties were in a continuous business relation and therefore the argument that part of the claim was time barred does not arise. That there was acknowledgement of the debt and part payment thereof and as such the cause of action accrued afresh under section 23 of the *Limitation of Actions Act* cited in support of this submission was Pareto Sacco Ltd vs Pyrethrum and Other Crops Directorate and Another (2019) eKLR.

Analysis and Determination

13. This is an appeal from the Small Claims Court which is established under section 4(1) of the *Small Claims Court Act*.
14. Section 38 of the said Act provides for appeals. It states as follows:



1. Any 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.
15. It is apparent that the right of appeal from a decision of the said court is limited to matters of law.
16. In *Kitui Flours Ltd vs Kirimi and Another* (supra) the court examined the said 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.” [emphasis added]

17. The said provision was also addressed by the High court in *Wanjiru vs Kiilu* (2024) KEHC 8881 (KLR) where it was held as follows:

“It therefore follows that appeals originating from the Small Claims Court to this court can only on the points of law. Consequently, this court cannot, in appeals emanating from that Court, entertain an invitation to interfere with the factual findings of the trial court. The duty of this court when dealing with such appeals, is therefore equivalent to that of the Court of Appeal in its capacity as a second appellate court.

In *Kenya Breweries Ltd v Godfrey Odoyo* [2010] eKLR the Court of Appeal distinguished between matters of law and matters of fact and stated that:

“First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of a retrial and facts must be revisited and analysed a fresh, - see *Selle and Another vs. Associated Motor Boat Company Ltd and Others* (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.” [Emphasis added].

Again, in *Charles Kipkoech Leting v Express (K) Ltd & another* [2018] eKLR the Court of Appeal further clarified that where a right of appeal is confined to questions of law only, an appellate court is duty bound to accept the findings of fact of the lower court. The appellate Court should not interfere with the decisions of the trial court on the factual issues ‘unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law’. The court stated that;

“This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the Court. See *Maina versus Mugiria* [1983] KLR 78, *Kenya Breweries Ltd versus*



Godfrey Odongo, Civil Appeal No. 127 of 2007, and Stanley N. Muriithi & Another versus Bernard Munene Ithiga [2016] eKLR, for the holdings inter alia that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the Courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. See also the English case of Martin versus Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511 where in, it was held inter alia that, where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.”

Applying the above decisions to the instant appeal, it is therefore clear that when dealing with this appeal, this court will only confine itself to the issues of law as raised in the memorandum of appeal. That the findings of the trial court are to be accepted, unless it becomes apparent, on evidence, that the conclusions on facts reached by the trial court, are so unreasonable that no reasonable court or tribunal could arrive at the same conclusion.”

18. It has to be conceded that the line between issues of law and facts is very fine indeed. I think that what the provision is stating is that a finding on issues of fact by the trial court is not appealable. Does that make it clearer? Hardly.
19. Going by the decisions cited above, it appears like an erroneous finding of the trial court on a fact is a question of law and is thus within the ambit of the said provision.
20. I am of the considered view that the appeal is competently before the court.
21. The appellant has raised a question of whether the claim by the respondent or part thereof was time barred by statute.
22. The respondent’s claim was based on contract and therefore such a claim has a limitation period of six (6) years.
23. The respondent’s argument is that there was a continuous business relationship between the parties from 2014 to 2021 and as such the appellant cannot claim that part of the claim is time barred.
24. From the evidence adduced, the alleged deliveries occurred over a period. It is thus not proper to sever one particular delivery from the other. They all form one chain of a transaction.
25. It is not clear if there was a date set for payment since limitation accrues from that date or the date of default of payment or breach of the contract. The limitation period does not run from the time the goods were supplied.
26. Having looked at the evidence, the last delivery was in 2021. Therefore, the cause of action could only accrue after that date. Thus, the suit was not time barred as alleged by the appellant.
27. The next issue for consideration is whether the trial court erred in finding that the respondent had proven his case.
28. The respondent’s evidence was clear that goods were supplied to the defendant. The law does not require a party to testify in person. What is required is that the evidence adduced is sufficient to prove the claim on a balance of probability whether by him/her or any available witness.



29. Having looked at the evidence, I find no reason to depart from the finding made by the trial court that indeed goods were supplied to the appellant.
30. The appellant may criticize the record keeping of the respondent but all in all there is credible evidence that goods were supplied. There is no evidence of payment and as such the amount stated was due and owing.
31. In conclusion, I find that this appeal lacks merit and it is dismissed with costs.

DATED, SIGNED & DELIVERED AT MERU THIS 28TH DAY OF APRIL, 2026.

H.M. NYAGA

JUDGE

