



REPUBLIC OF KENYA



**Razan Enterprises Limited v Doyo & another (Civil Appeal
E026 of 2024) [2025] KEHC 710 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 710 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E026 OF 2024
JM OMIDO, J
JANUARY 30, 2025**

BETWEEN

RAZAN ENTERPRISES LIMITED APPELLANT

AND

ABDI AMIN DOYO 1ST RESPONDENT

FLORIDA MBAYA 2ND RESPONDENT

*(Being an Appeal from the Judgement and Decree of Hon. E.W. Ndegwa,
SRM delivered on 23rd October, 2023 in Githongo SPMCC Case No.
E033 of 2022 Razan Enterprises Limited v Abdi Amin Doyo & another)*

JUDGMENT

1. The Appellant, Razan Enterprises Limited has brought this appeal, being aggrieved by the judgement and decree of Hon. E.W. Ndegwa, SRM delivered on 23rd October, 2023 in Githongo SPMCC Case No. E033 of 2022 Razan Enterprises Limited v Abdi Amin Doyo & another.
2. The Appellant has presented the following grounds of appeal vide the undated Memorandum of Appeal, filed in court on 26th February, 2024:
 1. That the learned Magistrate erred in law and fact by failure to appreciate the consequence of interlocutory judgement that the Plaintiff had no more to prove on liability in respect of the purchase of petrol.
 2. That the learned Magistrate erred in law and fact lifting the bar of proof of a civil matter to beyond balance of probabilities.



3. That the learned Magistrate erred in law and fact by failure to observe that the failure of the Defendant to file a defence and deny liability as attributed to him by the Appellant in the plaint amounted to admission of the same.
 4. That the learned Magistrate erred in law and fact by failing to frame issues to be determined at the trial in accordance with Order 11 Rule 3 and Order 15 Rule 2 of the Civil Procedure Rules 2010 thereby rendering the hearing before the court to be defective.
 5. That the learned Magistrate erred in law and fact by failing to ensure that the Appellant received a trial based on correct legal principles.
 6. That the whole judgement is flawed and is against the weight of evidence and the principles guiding the writing of judgements and the conduct of a formal proof.
 7. That the learned Magistrate erred in law and as a result arrived at a wrong decision and in all circumstances failed to do justice to the Appellant.
3. This being the first appellate court, I am required under Section 78 of the Civil Procedure Act and as was espoused in the case of *Sielle v Associated Motor Boat Co. Ltd* [1969] E.A. 123 to reassess, reanalyze and reevaluate the evidence adduced in the Magistrate’s Court and draw my conclusions while bearing in mind that I did not see or hear the witnesses when they testified.
 4. In *Sielle*, Sir Clement De Lestang observed that:

“This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.

However, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”
 5. The matter before the lower court was commenced by way of a plaint dated 1st November, 2022. The Appellant pleaded that on diverse dates between the months of May and June, 2022 and at the request of the Respondents, the Appellant sold and delivered to the Respondents petroleum and petrol products worth Ksh.83,278/-.
 6. The Appellant further averred that the Respondents, despite demands made by the Appellants, failed to pay the said amount of Ksh.83,278/-, thereby necessitating the Appellant’s suit in the lower court.
 7. The Appellant sought for the following reliefs:
 - a. The sum of Ksh.83,278/-.
 - b. Interest and costs.
 - c. Any further or other relief this Honourable Court may deem necessary.
 8. The Respondents were served with summonses to enter appearance but failed to do so within the time that was prescribed therein, prompting the Appellant to formally request for interlocutory judgement. The request for judgement was filed on 16th November, 2022 and the same is dated 15th November,



2022. On 1st December, 2022, being satisfied that the Respondents were properly served, the trial court entered interlocutory judgement against both Respondents in the following terms:

“The Defendants Abdi Amin Doyo and Florida Mbaya having failed to enter appearance and/or file defence within the stipulated period, an affidavit of service duly filed and upon the Plaintiff’s Counsel’s application for judgement in default of appearance and defence, interlocutory judgement be and is hereby entered for the Plaintiff against the Defendants as prayed pending formal proof.”

9. Subsequent to the judgement that was entered in the above manner, the matter proceeded for formal proof on 26th July, 2023 whereby the Appellant called one witness – Diana Makena – who described herself as the Appellant’s Manager at its Zygu petrol station. The witness proceeded to adopt the contents of her brief witness statement dated 1st November, 2022. She produces a demand letter and a police report as exhibits.
10. In her statement, the witness stated that in the months of May and June, 2022, the Respondents procured fuel from the Appellant on credit but failed to pay for the same, despite demands being made by the Appellant. The Appellant filed the suit before the lower court to recover the sum of Ksh.83,278/- being the amount owed to it by the Respondents.
11. The trial court in its judgement reached a finding that the Appellant did not prove its case as is required under Sections 108 and 109 of the Evidence Act, Cap 80 Laws of Kenya as no evidence was adduced to prove the existence of the Appellant.
12. The learned trial Magistrate also stated in the judgement that the Appellant did not present evidence to establish or prove its relationship with Zygu Petrol station and that further, that the Appellant presented no evidence to prove that it was engaged in supplying petrol and petroleum products and that it supplied the Respondents. The trial court dismissed the suit on the basis of the foregoing reasons.
13. The appeal proceeded by way of written submissions. I have had the occasion to peruse and consider the grounds of appeal as set out in the Appellant’s Memorandum of Appeal, the Appellant’s submissions and the record of the lower court. The single issue that is brought forth by the Appellant in this appeal is whether the learned trial Magistrate fell into error in reaching the determination that the Appellant did not prove its case on a balance of probabilities and in dismissing the Appellant’s suit as a result.
14. Being well versed with the matter before me, I will shortly state below why it is not necessary for this court to proceed to dwell on and determine the above issue that has been presented by the Appellant.
15. It is instructive from the plaint that the Appellant’s principal prayer was a liquidated claim for Ksh.83,278/-. Costs and interest were sought as consequential reliefs. It would appear that when the Appellant filed its formal request for judgement in default of appearance and defence against the Respondents, the learned trial Magistrate treated the same as a request for interlocutory judgement pending formal proof, and directed that the matter proceeds for formal proof.
16. The law on default judgements is to be found under Order 10 Rules 4, 5, 6 and 7 of the Civil Procedure Rules which provides as follows:
 - 4.1. Where the plaint makes a liquidated demand only and the defendant fails to appear on or before the day fixed in the summons or all the defendants fail so to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against the defendant or defendants



for any sum not exceeding the liquidated demand together with interest thereon from the filing of the suit, at such rate as the court thinks reasonable, to the date of the judgment, and costs.

2. Where the plaintiff makes a liquidated demand together with some other claim, and the defendant fails, or all the defendants fail, to appear as aforesaid, the Court shall, on request in Form No. 13 of Appendix A, enter judgment for the liquidated demand and interest thereon as provided by sub-rule (1) but the award of costs shall await judgment upon such other claim.
 5. Where the plaintiff makes a liquidated demand with or without some other claim, and there are several defendants of whom one or more appear and any other fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against any defendant failing to appear in accordance with rule 4, and execution may issue upon such judgment and decree without prejudice to the plaintiff's right to proceed with the action against such as have appeared.
 6. Where the plaintiff is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and any defendant fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against such defendant, and the plaintiff shall set down the suit for assessment by the court of the damages or the value of the goods and damages as the case may be.
 7. Where the plaintiff is drawn as mentioned in rule 6 and there are several defendants of whom one or more appear and any other fails to appear, the court shall, on request in Form No. 13 of Appendix A, enter interlocutory judgment against the defendant failing to appear, and the damages or the value of the goods and the damages, as the case may be, shall be assessed at the same time as the hearing of the suit against the other defendants, unless the court otherwise orders.
17. From the above rules, particularly Rule 4(1), when a request for judgment in default of appearance and/or defence is filed in respect of a liquidated claim, the judgment that is entered pursuant to such a request is a final judgment for any sum not exceeding the liquidated demand together with interest thereon from the date of filing of the suit, at such rate as the court thinks reasonable, to the date of the judgment, and costs.
 18. Under Rule 4(2), where the claim is partly liquidated and partly unliquidated, upon formal request and upon being satisfied that there was proper service of summons, the court will enter a final judgment in respect of the liquidated claim and the balance of the claim(s) will proceed for formal proof.
 19. Thus then, a matter where a request for judgment is made, where the claim is liquidated in nature, once acceded to by the court does not proceed for formal proof, unlike one in which the claim is not liquidated, which under Rules 5, 6 and 7 proceeds for formal proof.
 20. I am thus of the view that the trial court fell in error when it directed that the matter proceeds for formal proof. The court ought to have entered a final judgment for Ksh.83,278/-. It is for this reason, in my view, that it will be an academic exercise to proceed to consider and determine the point presented by the Appellant in the present appeal as the matter before the lower court ought not to have proceeded for formal proof.
 21. Being of the foregoing inclination, I will allow the appeal, albeit on grounds different from those proffered by the Appellant in the following terms:
 - a. The judgment entered on October 23, 2023 by the trial court dismissing the Appellant's suit is hereby set aside and substituted with an order that judgment is entered for the Appellant against the Respondents jointly and severally, for the liquidated sum of Ksh.83,278/-,



which judgement shall be deemed to have been entered on December 1, 2022 (the date of endorsement of the request for judgement) with interest at court rates from the date of filing the suit in the lower court.

- b. The Respondents shall bear the costs of the suit before the trial court, on the lower scale.
- c. I make no order as to costs of this appeal.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 30TH DAY OF JANUARY, 2025.

JOE M. OMIDO

JUDGE

For the Appellant: Mr. Mungania.

For the Respondents: No appearance.

Court Assistants: Mr. Ngoge & Mr. Juma.

