



**Structural Construction International Limited v Kenya Builders
& Concrete Company Limited (Commercial Appeal E123 of 2024)
[2025] KEHC 1065 (KLR) (Commercial and Tax) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E123 OF 2024
BM MUSYOKI, J
FEBRUARY 28, 2025**

**BETWEEN
STRUCTURAL CONSTRUCTION INTERNATIONAL LIMITED APPELLANT
AND
KENYA BUILDERS & CONCRETE COMPANY LIMITED RESPONDENT**

*(Being an appeal against the Judgment of Hon. Nasimiyu J.W.
Adjudicator delivered on 22-04-2024 in SCC COMM NO. E2325 of 2024)*

JUDGMENT

1. The respondent filed a claim in the small claims court at milimani vide commercial claim number E2325 of 2024 asking for judgment against the appellant for Kshs 299,100.00 being the value of concrete blocks popularly known as cabro blocks which it supplied to the appellant upon its request. The matter was heard through documents and submissions pursuant to Section 30 of the [Small Claims Court Act](#). The adjudicator on 22-04-2024 entered judgement for the respondent for the amount claimed, costs and interest.
2. It is against the above-mentioned judgment that the appellant has brought this appeal raising the following grounds;
 - a. The learned adjudicator erred in law and in fact, misdirected herself and ignored the appellant's submissions in arriving at the judgment to the appellant's prejudice.
 - b. The learned adjudicator erred in law and in fact and exhibited bias when she found that the respondent had discharged its legal burden of proof.



- c. The learned adjudicator erred in law and in fact and misdirected herself when she found that the appellant had admitted to having received goods from the respondent.
 - d. The learned adjudicator erred in law and in fact and exhibited bias when she shifted the evidentiary burden of proof to the appellant whereas the respondent had not discharged its legal burden of proof.
 - e. The learned adjudicator erred in law and in fact and exhibited bias when she completely and blatantly ignored the appellant's submissions on the discrepancies between the respondent's claim and the evidence adduced in support thereof.
 - f. The learned adjudicator failed completely in her duty to analyse the respondent's case based on the evidence produced in court before arriving at the determination that it had proved its case on a balance of probabilities.
3. The case before the trial court was that the respondent supplied the blocks on three occasions. On 18-11-2020 the supply was done twice; the first delivery was worth Kshs 59,820.00 and the second one was worth Kshs 119,640.00. The third supply was on 18-11-2021 for delivery worth Kshs 119,640.00. According to the respondent, none of the three deliveries were paid for. The respondent had stated that it issued invoices for the deliveries which were signed by the appellant. The appellant's main contention in the claim was that it would normally receive, sign and stamp invoices from the respondent but the ones before the court were not stamped or signed.
 4. The appellant filed submissions dated 18th October 2024 while the respondent did not appear or file any submissions. I have read through the submissions by the appellant and I discern therefrom that the appellant is challenging the trial court's decision on two fronts. That is, the respondent did not prove its case on a balance of probabilities and that the evidence of the respondent was in variance with the pleadings.
 5. Appellate jurisdiction of this court on decisions of the small claims court is derived from Section 38(1) of the *Small Claims Court Act*. The said Section restricts the jurisdiction to matters of law only. The submissions by the appellant on whether or not the respondent discharged the evidential and legal burden of proof revolve around the question whether or not the blocks were delivered and paid for. This is in my opinion an issue of fact.
 6. An issue of fact is that which seeks to establish existence of a specified state of affairs while an issue of law is concerned with application of the law in determination of the issues placed before the court. Although it would appear that the appellant claims that the standard of both legal and evidential burden was not achieved, it must be noted that the determination of the achievement of the standard of proof is derived and depended on facts presented before the court.
 7. A finding that the evidence presented weighed against the claim is a question of fact. In my opinion, I do not see any issues of law arising from the appellant's submissions on the issue of discharge of burden of proof.
 8. The issue of evidence being in variance with the pleadings may pass as an issue of law but I do not see the merit of this argument. I am unable to identify where the evidence of the respondent was in variance with its pleadings. According to the appellant, the witness statement asserts that the appellant authored a letter dated 12th February 2017 whilst in its evidence, the same was not produced because what was produced was a letter dated 22-03-2017. It also claims that the invoice ledger statement dated 30-11-2018 comprised of entries of between 18th November 2020 and 18th November 2021 which



was approximately two years after retrieval of the said invoices statement which meant that there was likelihood of forgery on the part of the respondent.

9. I have gone through the judgement of the trial court and it is clear to me that the court relied on delivery notes produced by the respondent and not the letters said to be dated 12th February 2017 and 22-03-2017. Actually, in its judgement, the court stated that the letter dated 22-03-2017 was not what formed the contract between the parties. According to the court, the letter was not relevant to the proceedings and in my view, she was right. It did not matter that there was discrepancy between the dates since in the court's mind, the letter was not the basis of the contract.
10. On the claim of likely forgery, I note that the issue was not taken up before the lower court and in any event, the question whether the statement had the correct date or not was not the basis of the court's judgment. The court dealt with and analysed the probative value of the delivery notes and noted that the respondent had admitted receipt of goods and having claimed that it had paid for them, it should have proved the payment.
11. In the background of the above analysis, I do conclude that the appeal herein lacks merits and the same is dismissed with no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Maranga for the appellant and in absence of the respondent.

