



**Kabiru & another v Njeru (Civil Appeal E068 of 2024)
[2025] KEHC 5511 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E068 OF 2024
RM MWONGO, J
APRIL 30, 2025**

BETWEEN

HENRY KARINA KABIRU 1ST APPELLANT

GRACE MWANGI 2ND APPELLANT

AND

AGNES RUGURU NJERU RESPONDENT

*(Appeal arising from the decision of Hon. M.N. Kinyua in Embu
SCCCOMM No. E046 of 2024 delivered on 24th July 2024)*

JUDGMENT

The Memorandum of Appeal

1. The appellants' memorandum of appeal dated 26th July 2024, seeks the following orders:
 - a) The appeal be allowed with costs.
 - b) That Judgment delivered by the Embu Small Claims Court Claim E046 of 2024 on 24th July 2024 be set aside and the Court does dismiss the respondent's Statement Claim dated 7th May 2024 with costs.
 - c) Any other relief that the Court may deem just.
2. The appeal is premised on the grounds that:
 1. The learned trial Magistrate erred in law and fact by ignoring the appellants' evidence in their response to claim, witness statements and documents filed in response to the claim despite proceeding to give a judgment based on the pleadings, statements and documents filed by the parties;



2. The learned Magistrate erred in law and fact by presuming to existence of a partnership business between the appellants and the respondent without evidence;
3. The learned Magistrate erred in law and fact by misunderstanding the response to claim in finding that the appellants admitted to only owe Kshs.10,000/= an allegation neither or proved by any party;
4. The learned Magistrate erred in law and fact by alleging the appellants had not come to court to give contrary information contradicting herself with her earlier findings that the appellants response to claim was filed on 15th May 2024 and that she considered their submissions;
5. The learned Magistrate erred in law and fact in entering Judgment for 70,000/= against the appellants, costs and interest from date of Judgment yet there was no evidence to support the claim;
6. The learned Magistrate erred in failing to dismiss the respondent's claim with costs yet the appellants evidence on record proved that there was no debt between them the respondent having been paid the same and as exhibited by an Equity Bank Statement admitted by the respondent;
7. The learned Magistrate erred in law and fact by misunderstanding and misapplying Section 30 of the *Small Claims Court Act* Cap 10A by allowing the matter to proceed by way of documents and statements vide directions of 15th July 2024 yet there was no consent from the appellants and the matter was coming up to confirm compliance by the respondent herein who had not complied as the date of mention;
8. The learned Magistrate erred in law and fact by failing to appreciate that conclusion of matters within 60 days is aspirational but /and subject to delivery of justice to the parties; and
9. The learned Magistrate erred in law and fact delivering a Judgment in favor of the respondent without an Iota of proof.

Background

3. The claim in the small claims court proceeded on the basis of documents only pursuant to Section 30 of the *Small Claims Court Act*. The pleadings consisted of the claim and response and written statements of parties.
4. Through her statement of claim dated 07th May 2024, the respondent claimed Kshs.70,000/= from the appellants. It was her case that she entered into a verbal agreement to do a business of buying and selling maize with the appellant, a venture she financed. She gave the appellants, her friends first 40,000/- then, 50,000/- later. Thereafter, she stated, the total amount given reached a total of Kshs.170,000/= in cash which they used to buy maize and sell it for a profit. When it was time to recoup from their business, the appellants only paid her Kshs.100,000/= through her bank account and refused to acknowledge that they owed her the remaining Kshs.70,000/=. She reported the matter to the police and eventually filed her claim at the Small Claims Court.
5. The appellants filed a response to the claim together with their witness statements explaining their side of the story. The 2nd appellant stated that the respondent brought her Kshs.40,000/= in cash for her to buy maize which they would sell for a profit. Later, the respondent brought her another Kshs.50,000/= in cash and she again bought maize. Her husband, the 1st appellant then discouraged the business



and advised her to sell the maize and return the respondent's money. She did so and the 1st appellant sent Kshs.100,000/= to the respondent through her Equity Bank Account.

6. They repaid Kshs.90,000/= and an extra Kshs.10,000/= as goodwill towards the respondent for lending them the money. They availed a copy of the claimant's bank statement showing the amount of 100,000/- paid back. Later, the respondent reported the matter to police claiming that the appellants owed her more money. According to the 1st appellant, he and his wife had started a family business of buying and selling maize. The respondent offered to help them by lending them the money stated by the 2nd appellant. They bought the maize, dried it and then sold it and returned the respondent's money with an additional Kshs.10,000/= through her Equity bank Account. He denied that they owed her any other money as she had claimed.
7. In her Judgment, the Adjudicator found that there was an oral contract between the parties and that the appellant owed the respondent Kshs.70,000/=. It is this judgment that is impugned in the appeal.

Written submissions

8. The appeal was disposed of by way of written submissions.
9. The appellant relied on section 38(1) of the *Small Claims Court Act* and the case of John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others [2018] KECA 700 (KLR) as cited in the case of Crown Beverages Limited v MFI Document Solutions Limited [2023] KEHC 58 (KLR). They argued that the Adjudicator's findings are unreasonable and there is an error in the finding that there was a business partnership between the parties.
10. It was their case that there is no proof of the business partnership between them and that if the Adjudicator had looked at the documentary evidence adduced, she would have been better guided on the matter. That the Adjudicator was misguided on the provisions of section 30 of the *Small Claims Court Act* which demands that both parties have to agree to proceed by way of documents.
11. Further reliance was placed on the cases of Biosystems Consultants v Nyali Links Arcade (Civil Appeal E185 of 2023) [2023] KEHC 21068 (KLR) and Joseph Omondi v Mary Atieno (2020) eKLR. They urged the court to find merit in the appeal and that there is no practicality in completing Small Claims within 60 day if the evidence adduced is not considered properly.
12. On her part, the respondent submitted that the finding of the Adjudicator is merited. She relied on section 31 of the *Small Claims Court Act* which exempts the court from applying strict rules of procedure and evidence. she also relied on section 119 of the *Evidence Act* and stated that the Adjudicator was right in presuming facts in the matter.
13. It was her submission that a business Partnership was rightly implied between the parties in accordance with section 28 of the Partnership Act. That it was important for the matter to be concluded within the statutory timelines provided under section 34 of the *Small Claims Court Act*. This was stated in the case of Kartar Singh Dhupar & Company Limited v ARM Cement PLC (In Liquidation) [2023] KEHC 2417 (KLR).

Issue for Determination

14. The issue for determination is whether the appeal has merit.



Analysis

15. It is worth reiterating that the appellate court makes its decision based on the record of the trial court as was held in the case of *Williamson Diamonds Ltd and another v Brown* [1970] EA 1, in which the court held that:

“The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”
16. The respondent’s claim is that she had given a total of Kshs.170,000/= to the appellants toward a joint business venture. She stated that she first gave Kshs.40,000/= then followed up with a further Kshs.50,000/= both amounts given to the appellants in cash. According to her, over a period of time, she gave the appellants a total of Kshs.170,000/=. She however, did indicate how the amount grew to 170,000/- whether it was by individual specific amounts or elsehow.
17. The appellants, in their statements, admit that the respondent indeed gave them Kshs.40,000/= then followed up with a further Kshs.50,000/= which they used for the agreed business. They stated that they returned the money with an additional Kshs.10,000/= as goodwill given their friendship with the respondent. In support of their case, the appellants (then respondents) produced the claimant’s Equity bank statement the amount returned or Kshs.100,000/=. (see Respondent’s List of Documents).
18. The question is whether the respondent indeed lent/gave the appellants an amount of remaining Kshs.80,000/= over and above the 90,000/- admitted, and whether any amount thereof is still owing.
19. In her submissions before the Small Claims Court, the respondent claimed that the parties entered into a partnership as defined under the Partnership Act. That this is the law which binds them and so the court should apply it. On that basis, she submitted that the appellants were bound to disclose profits earned and losses incurred in the partnership’s business and they ought to be shared. She reiterated that she injected Kshs.170,000/= into the business but only recouped a fraction of it.
20. The Adjudicator found that there was a partnership and that the respondent gave money to the appellants for purposes of the business. There is no doubt, however, that the issue before the Small Claims Court was the amount of money given by the respondent to the appellants and whether this was proved. From the documentary evidence, witness statements and submissions before the Adjudicator, there is sufficient proof that the respondent gave the appellants the amounts of Kshs.40,000/= then followed up with a further Kshs.50,000/=. The appellants acknowledge receipt of the same. Hence there is proof that the appellants owed the respondent Kshs.90,000/=.
21. The appellants stated that they repaid the respondent Kshs.100,000/= because they acknowledged the respondent’s help in their new business and they therefore marked up the amount by Kshs.10,000/= as goodwill among friends. The respondent acknowledged receipt of the said Kshs.100,000/= This is proved by her Bank statement which was attached;
22. The respondent’s claim of a further Kshs.70,000/= lent, has not been proved. Sec 24 (f) of the *Small Claims Court Act* provides that every statement of claim shall contain:

“(f) other particulars of the claim as are reasonably sufficient to inform the respondent of the ground for the claim and the manner in which the amount claimed by each claimant or person represented has been calculated.”



In the present case the statement of claim did not avail reasonably sufficient particulars to show the matter in which the alleged 80,000/- was sent and how it was to be repaid. Even though the Small Claims Court is not bound by strict rules of procedure and evidence, it is reasonable and expected for the claim of the additional 70,000/- to be proved before a reasoned decision is made.

23. Moreover, the court is in any event bound by the rules of natural justice in execution of its mandate. Section 17 of the Small Claims Court provides:

“Subject to this Act and Rules, the Court shall have control of its own procedure in the determination of claims before it and, in the exercise of that control, the Court shall have regard to the principles of natural justice.”

24. The appellants herein have claimed that it would have been better if the Adjudicator had taken primary evidence instead of resorting to section 30 of the *Small Claims Court Act*. The wording of Section 30 requires that resort to documents only can only be effected subject to the agreement of all parties. The proceedings show that the appellants were not present or served when the Small Claims Court decided to hear the matter by way of documents only. This is a procedural misstep by the Adjudicator. The prudent way for Adjudicators to handle Section 30 when pressed by the statutory time limitations, as they often are, is to notify the parties at the earliest of Sec 30 and obtain their concurrence that the Court may resort to documents only proceedings. In my view, the Adjudicator gave the parties a fair chance to be heard through their statements, written submissions and documents. Nevertheless, it so happens that there is no proof of the respondent having given the appellants Kshs.80,000/= of which Kshs.70,000/- is still owing.
25. Further, even if their relationship was held to be a business partnership under the Partnership Act, this does not prove existence of the said debt. From the evidence, the amount owing to the respondent was fully repaid and there is no proof of any further debt outstanding.

Conclusions and Disposition

26. Having found that there was no evidence of the respondent lending the appellants the amount of Kshs.80,000/- over and above Kshs.90,000/- there was no basis for the Adjudicator to find that Kshs.70,000/- was outstanding.
27. Accordingly, I find that the appeal has merit and hereby allow it with costs. The adjudicator’s award is therefore set aside.
28. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF APRIL, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Mr. Murithi for Appellants
2. Mr. Mageto for Respondent
3. Francis Munyao - Court Assistant

