



REPUBLIC OF KENYA



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**Royal Mabati Factory Limited v Odero (Commercial Appeal E117 of 2024)
[2025] KEHC 9051 (KLR) (Commercial and Tax) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9051 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E117 OF 2024**

BK NJOROGE, J

JUNE 26, 2025

BETWEEN

ROYAL MABATI FACTORY LIMITED APPELLANT

AND

ANN ATIENO ODERO RESPONDENT

JUDGMENT

1. This is a judgement arising out judgement and decree of the Learned Adjudicator Ho, C.A. Okumu in the Small Claims Court at Milimani delivered on 15th September, 2023 in SCCOMM No. E1589 of 2023.

Background Facts

2. The Respondent filed a claim in the Small Claims Court against the Appellant seeking judgment in the sum of Kshs.958,000. The Appellant denied the claim. The Trial Court delivered its judgment on 15th September, 2023 in favour of the Respondent as against the Appellant in the sum of Kshs.958,000 plus costs and interest.
3. The Appellant has appealed against the whole of the above-mentioned decision on the following grounds;
 - a. The Learned Magistrate misdirected herself by misapprehending the provisions of Section 12 (1) of the *Small Claims Court Act*, 2016 and failing to find and hold that the Court lacked the jurisdiction to hear and determine the Respondent's claim as it does fit into any of the five categories of cases enumerated in Section 12(1) of the Act.



- b. The Judgement is a nullity, bereft of any force or effect in law because it was delivered outside the 60 days statutory timeline set out under Section 34 of the *Small Claims Court Act*, 2016 and hence was made without jurisdiction.
 - c. The Honourable Magistrate erroneously entertained and determined a claim that she had no jurisdiction to entertain since the same was time barred by effluxion of time by dint of Section 4(1) of the Limitations of Actions Act, Cap 22 Laws of Kenya.
 - d. The Learned Magistrate erred both in law and in fact in misapprehending the provisions of Section 16 of the *Sale of Goods Act* Chapter 31 of the Laws of Kenya.
 - e. The Learned Magistrate erroneously relied on photographic evidence which did not comply with the import and tenor of the provisions of Section 106B of the *Evidence Act*, Chapter 80 Laws of Kenya.
 - f. The Learned Magistrate contravened the law by delivering a Judgement devoid of any points for consideration by the Court, points for determination and reasons for the said decision in contravention with the mandatory requirement of Order 21 Rule 4 of the Civil Procedure Rule, 2010.
 - g. The learned Judge acted unreasonably and unfairly by delivering a Judgement that is bad in law and contrary to public policy.
4. The Appellant prayed for orders that;
- a. The Appeal be allowed and Judgement entered against the Appellant on 15th September, 2023 together with the consequent Decree and/or orders thereto be set aside.
 - b. Costs of this Appeal be granted to the Appellant.
 - c. Any other relief that this Honorable Court may deem fit to grant.

Issues for Determination

5. The Appeal was canvassed by way of written submissions, which the Court has carefully considered. The broad issues for determination before this Court therefore, are: -
- a. Whether the Trial Court erred in law in arriving at the judgement.
 - b. Whether the jurisdiction of the court had ceased at the time of delivery of the judgment, thus rendering the judgment a nullity.

Analysis

6. In determining this Appeal, the Court is conscious of the provision of Section 38 of the *Small Claims Court Act* that;
- a. 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.
 - b. An appeal from any decision or order referred to in subsection (1) shall be final.
7. The Appellant faulted the Trial Court for misapprehending the provisions of Section 12 (1) of the *Small Claims Court Act*, 2016 and failing to find and hold that the Court lacked the jurisdiction to hear and determine the Respondent's claim as it does fit into any of the five categories of cases enumerated in Section 12(1) of the Act.



8. Section 12(1) of the Act provides;

Nature of claims and pecuniary jurisdiction

- (1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—
- (a) a contract for sale and supply of goods or services;
 - (b) a contract relating to money held and received;
 - (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
 - (d) compensation for personal injuries; and
 - (e) set-off and counterclaim under any contract

9. It is common ground that there was a contract for the sale and supply of goods (Eurotile mabati roofing sheets) between the Appellant and the Respondent. Therefore, the Trial Court had jurisdiction to hear and determine the claim.

10. The Appellant further submitted that the Judgment delivered by the Trial Court on 15th September, 2023 was done outside the statutory timelines set under Section 34 of the *Small Claims Court Act* and hence made without jurisdiction. It is therefore a nullity, bereft of any force or effect in law.

11. It was the Appellant's argument that this claim was filed on 6th March, 2023; it follows that it should have been determined on or before 6th May, 2023. The case was first mentioned on 20th March, 2023, and thereafter on 11th April, 2023. It was then set down for hearing on 30th May, 2023, at which point the sixty (60) days had lapsed and the jurisdiction of the court also ended.

12. It is trite that Section 34(1) of the SCCA provides as follows:

34(1) All proceedings before the Court on any particular day, so far as is practicable, shall be heard and determined on the same day or on a day-to-day basis until final determination of the matter, which shall be within sixty days from the date of filing the claim.

13. On this issue, the Court reiterates and associates itself with the determination in the case of *Crown Beverages Limited v MFI Document Solutions Limited (Civil Appeal E833 of 2021) [2023] KEHC 58 (KLR) (Civ) (17 January 2023) (Judgment)*, where the Court stated as follows: -

“Although section 34(2) of the SCCA is couched in mandatory terms, the court must look at the context of the provision in light of the guiding principles which include, inter alia, the timely disposal of all proceedings before the court using the least expensive method. The provision as to delivery of judgment is meant to be directory and not mandatory as it is not the intention of the SCCA to invalidate any proceedings that violate the statutory timelines. To adopt such a position would undermine the statutory objects and cause injustice to the parties as the case would have to be reheard.

The issue of breach of timelines for delivery of judgment is not a novel issue and has been dealt with by our courts in reference to order 21 rule 1 of the Civil Procedure Rules which provides that judgments must be delivered within 60 days upon conclusion of the hearing. In *Nyagwoka Ogora alias Kennedy Kemoni Bwogora v Francis Osoro Maiko Civil Appeal No 271 of 2000* (UR) the Court of Appeal observed as follows: The real question is what



is the consequence of non-compliance therewith? no doubt that rule is an important one in the expeditious dispensation of justice. And it is made to be obeyed. However, if non-compliance with the rule were to have the effect contended for by the appellant, we think the overall result would be more injustice than justice to the parties. A lot of time and resources spent in litigation would come to naught if judgments delivered after the expiry of 42 days were to be voided or declared void ipso facto. The rule cannot and in our view could not have been intended to deprive a trial judge of his jurisdiction to write and pronounce judgment in a case he has heard. In our considered view, while non-compliance with the rule and particularly persistent non-compliance or inordinate delay in compliance should call for censure of the judicial officer concerned from those in-charge of judicial administration, it should not be a ground for vitiating a duly delivered judgment. Being of that persuasion we would reject ground 1 of appeal.

There may be instances where the delay is inordinate and such delay prejudicial to the parties. In such cases, the court may set aside the judgment as was held by the Court of Appeal in *Manchester Outfitters Services Limited and Another v Standard Chartered Financial Services Limited and Another* [2002] eKLR. The appellant does not contend that the failure to deliver the judgment within the stipulated timelines was prejudicial or that the delay was inordinate. I therefore reject the appellant's contention that the judgment is null and void."

14. In the instant case, the Appellant has not demonstrated how the delay in delivery of the judgment was prejudicial to it. Thus, this ground fails.
15. Ground 3 of the Appeal - Whether the claim brought by the Claimant/Respondent was time-barred by dint of Section 4(1) of the Limitations Act. Section 4(1)(a) of the Limitations Act provides;

that the following actions may not be brought after the end of six years from the date on which the cause of action accrued—

 - a. actions founded on contract.
16. The Respondent entered into an agreement with the Appellant by purchasing the goods, Eurotile roofing materials, on 30th November 2017. It is undisputed that the Appellant issued a 15-year warranty and guarantee on the said products. In 2020, the Respondent raised a complaint with the Appellant concerning the fading roof, and the Quality Assurance Manager assured her that they would address the issue, which they failed to do.
17. Be that as it may, on 28th October 2022, there was an acknowledgment by the Appellant that they had agreed to do roof repainting as the resolution to the stated complaint upon reaching a consensus. That the remedial action was to be taken within the shortest time possible.
18. Therefore, by dint of Section of Section 23(3) and 24(1) of the Limitations of Actions Act the right accrues on and not before the date of the acknowledgement which in this case is 28th October 2022. Thus, the claim was not time-barred.
19. On whether the Trial Court erred in law in misapprehending the provisions of Section 16 of the *Sale of Goods Act*. This Section provides;

No implied warranty as to fitness, except in certain cases



Subject to the provisions of this Act and of any Act in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows—

- a. where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for that purpose:

Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

- b. where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which that examination ought to have revealed;

- c. an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- d. an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

20. Pursuant to the above provision, the Appellant had made it known to the Respondent that the quality of the roof would last for 15 years and that it would last this long without fading. Given that the Appellant specializes in the sale of roofing products, there was an implied condition that the goods were of merchantable quality thus there was an implied warranty as to their fitness.

21. With regard to grounds 5 and 6 of the Appeal, Section 17 of the act, the law requires that the Court exercises its own procedure, having regard to principles of natural justice. The said section states: -

“Procedure of Small Claims Court 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.”

22. The import of the foregoing is that the *Civil Procedure Act* and rules does not apply to the Small Claims Court. Indeed, even the application of the *Evidence Act* is severely restricted by Section 32 of the Act which provides: -

“Exclusion of strict rules of evidence

1. The court shall not be bound wholly by the rules of evidence.”

23. On the twin issues framed, the Court finds in the negative and thus is unable to uphold the Appeal.

24. On costs, the same follow the event and the unsuccessful Appellant should meet the costs of the Appeal.

25. The upshot is that the appeal lacks merit.



Determination

26. The Appeal is dismissed in its entirety for lacking in merits.
27. The Respondent is awarded the costs of the Appeal, to be agreed upon or taxed at the lower scale.
28. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JUNE, 2025

NJOROGE BENJAMIN K

JUDGE

In the presence of;

Miss Nasimiyu for the Appellant.

Miss Kamau holding brief for Mr. Ogola for the Respondent.

Mr. Luyai – Court Assistant

