



REPUBLIC OF KENYA



Shri Krishna Overseas Limited v Mac's Pharmaceuticals Limited (Civil Appeal E333 of 2023) [2025] KEHC 9024 (KLR) (Civ) (26 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9024 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E333 OF 2023**

**H NAMISI, J
JUNE 26, 2025**

BETWEEN

SHRI KRISHNA OVERSEAS LIMITED APPELLANT

AND

MAC'S PHARMACEUTICALS LIMITED RESPONDENT

JUDGMENT

1. This appeal arises from a suit in the Small Claims Court filed by the Appellant, seeking the following reliefs:
 - i. Judgement in the sum of Kshs 721,873/=
 - ii. Compensation (to be determined by the Court)
 - iii. Costs of the claim
 - iv. Interest on the above at court rates until payment in full
2. The suit was in respect of supply of various packaging items including cofrid cartons. It was the Appellant's case that the Appellant duly performed its part of the contract and supplied the Respondent with the said materials on diverse dates and as per the orders. It was mutually agreed that the Respondent would settle all the credit within 30 days after supply, with any delay attracting an interest at 3% per month.
3. The Appellant averred that in paying for the goods, the Respondent fell into arrears of Kshs 647,204/= . In purported settlement of the debt, the Respondent issued various cheques which bounced due to insufficient funds. As a result, the Appellant incurred costs and penalties. As at the time of lodging the claim, the Respondent owed the Appellant Kshs 721,873/= inclusive of interest.



4. In support of its claim, the Appellant produced copies of numerous invoices and delivery notes, local purchase orders issued by the Respondent as well as the cheques issued on diverse dates. The Appellant also produced an account statement.
5. The Respondent entered appearance and filed a response to the Claim, denying the existence of a contract between the parties and further, denying owing any monies to the Appellant. No witness statement was filed.
6. Parties proceeded with the claim by way of written submissions.
7. In its judgement, the trial court identified two (2) issues for determination:
 - i. Whether the Appellant had proved the existence of a contract between itself and the Respondent;
 - ii. Whether the Respondent breached the terms of the contract
8. In determining the existence of a contractual relationship, the trial court relied on the case of *Intercity Secure Homes Ltd v Jane Njeri Miringu t/a Mango Bar & Restaurant* [2019] eKLR.
9. In dismissing the claim, the trial court opined that it could not ascertain the existence of a contract between the Appellant and Respondent since the Appellant had not provided one. The trial court was, therefore, unable to ascertain whether the claim arose out of the contract.
10. Being aggrieved by the judgment of the trial court, the Appellant lodged an appeal on the following grounds:
 - i. That the Honourable learned Adjudicator erred in law by making a finding that there was no contract between the Appellant herein and the Respondent despite the Appellant adducing overwhelming evidence on the existence of the contract;
 - ii. The Honourable learned Adjudicator erred in law by failing to take into consideration the fact a contract for sale of goods can either be in writing, oral, or partly in writing and partly oral as envisioned under section 6 of the *Sale of Goods Act*;
 - iii. The Honourable learned Adjudicator erred in law in failing to consider that the averments made by the Claimant were not opposed by the Respondent as the Respondent neither adduced any evidence to the contrary nor filed any submissions in support of its allegations in the response;
 - iv. The Honourable learned Adjudicator erred in law by failing to consider the totality of the evidence adduced by the Appellants and its submissions together with the case law.
11. The appeal was canvassed by way of submissions.

Analysis & Determination

12. Section 38 of the *Small Claims Court Act* provides as follows:
 1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;
 2. An appeal from any decision or order referred to in sub section (1) shall be final.



13. In the case of *Otieno, Ragot & Company Advocates v National Bank Kenya Ltd* [2020] eKLR, the Court of Appeal addressed the duty of a court considering points of law.

“This is a second appeal. I am alive to my duty as a second appellate court to determine 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: *Stanley N. Muriithi & Another versus Bernard Munene Ithiga* (2016) eKLR).”

14. Similarly in the case of *Mwita v Woodventure (K) Limited & another* (Civil Appeal 58 of 2017) [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:

-“This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of *Stanley N. Muriithi & Another v Bernard Munene Ithiga* [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR in which it was held that: “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.”

15. The duty of this Court in this instance is similar to that stated herein above, which is essentially limited to points of law. In the case of *JN & 5 Others v Board of Management, St. G School Nairobi & Another* [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a “finding of fact”) usually depends on particular circumstances or factual situations.”

16. Turning to the appeal herein, the Appellant’s grounds can be summarised into one point of law; whether or not the Appellant met the standard of proof required in civil proceedings, which is on a balance of probability. Since the same is a point of law, then the appeal is properly before this Court.

17. *In re HC Minors* [1996] AC 563 at 586, Lord Nicholls explained balance of probability as follows:

“The balance of probability standard means that a Court is satisfied an event occurred, if the Court considers, that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the Court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegations, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the



Court concludes that the allegation is established on the balance of probability. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation

18. In the case of *William Kabogo Gitau vs George Thuo & 2 others* [2010] 1 KLR 526, Kimaru J addressed what amounts to proof on a balance of probability as follows:

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is [more] probable than not, that the allegations he made occurred.”

19. In the instant case, the Appellant produced documents in support of its claim. There were numerous invoices and delivery notes bearing diverse dates, all issued to the Respondent and bearing the Respondent’s stamp. The Appellant produced cheques issued by the Respondent, which were all dishonoured by the Bank and returned unpaid. Further, there were local purchase orders from the Respondent to the Appellant for supply of goods.
20. In their defence, the Respondent merely denied owing money to the Appellant and denying the existence of any contractual relationship between the parties. The Respondent did not file any witness statement. It is trite that pleadings are not evidence. In short, the evidence by the Appellant was uncontroverted.
21. Without a doubt, the evidence presented by the Appellant overwhelmingly proved the existence of contractual relations between the parties. The fact that the Respondent issued local purchase orders and even purported to settle its debt by issuing cheques that later bounced is a clear demonstration that there was a contractual relationship.
22. On this basis, I allow the appeal and set aside the judgement of the trial court and substitute the same with the following orders:
- i. Judgement is hereby entered in favor of the Claimant in the sum of Kshs 721,873/=;
 - ii. Interest on (i) at court rates from 31 May 2023 until payment in full;
 - iii. Costs of the suit and interest thereon at court rates from 27 November 2023 until payment in full;
23. The Appellant is also awarded costs of this Appeal assessed at Kshs 40,000/=.

DATED AND DELIVERED AT NAIROBI THIS 26 DAY OF JUNE 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Appellant: Mr. Bulowa

For Respondent: Ondabu h/b Mr. Bruno for Respondent

Court Assistant: Libertine Achieng

