



**Muthoni v Onyuka (Commercial Appeal E318 of 2024)
[2025] KEHC 11448 (KLR) (Commercial and Tax) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E318 OF 2024**

PM MULWA, J

JULY 31, 2025

BETWEEN

JEAN MUTHONI APPELLANT

AND

CALISTUS ONYUKA RESPONDENT

JUDGMENT

Introduction

1. This is an appeal filed by the Appellant against the judgment and decree delivered on 3rd October 2024 by the Small Claims Court in SCCCOMM/E9955 of 2023. In the original suit, the Respondent sought to recover a sum of Kshs. 250,000.00, together with interest and costs, on account of an alleged investment in cryptocurrency. The Respondent averred that the Appellant guaranteed a return of over Kshs. 1,000 per day for three years if the Respondent invested more than Kshs. 150,000.00, which led to the Respondent investing Kshs 250,000.00. However, the Respondent claimed that the agreed investment returns did not materialize, and the Appellant failed to remit the invested funds, despite entering into an agreement to repay Kshs. 10,000.00 per month.
2. In response, the Appellant, vide her statement dated 26th March 2024, denied all the allegations, including the receipt of money from the Respondent or the existence of any form of relationship or agreement. She contended that she did not know the Respondent and had never entered into any investment agreement. The Appellant also challenged the admissibility of the evidence and urged the court to dismiss the claim.
3. Upon evaluating the evidence and the submissions, the trial court entered judgment in favour of the Respondent for Kshs. 250,000.00, together with costs and interest.



4. Dissatisfied with the outcome, the Appellant lodged the present appeal vide the Memorandum of Appeal dated 22nd October 2024, seeking to set aside the judgment and decree of the Small Claims Court. The appeal is grounded on the following:
 - i. The Learned Adjudicator erred in law and in fact by making a finding that the alleged agreement for the repayment of Kshs. 250,000.00 instalments of Kshs. 10,000.00 dated 5th January 2024 between the Appellant and the Respondent and allegedly witnessed by Geoffrey Otieno Ochieng is valid in that:
 - a. the alleged agreement was never produced in the Respondent's list of documents to the Honourable Court.
 - b. The alleged witness to the alleged agreement did not in any way identify or describe the nature and the contents of the alleged agreement.
 - c. The trial court made a false assumption that the alleged document exists.
 - ii. That the Learned Adjudicator erred in Law and fact by failing to take cognizant of the fact that the Respondent failed to produce yet another alleged agreement that was said to have been drafted in a work diary alleging that the Appellant received monies from the Respondent in that:
 - a. The Respondent was said to be in possession of the alleged work diary and he never produced the same for the court.
 - b. The trial court assumed that such a work diary existed.
 - iii. That the Learned adjudicator erred in law and fact by failing to make a finding that the Respondent's claim was false and fictitious.
 - iv. That the learned Adjudicator was overly biased against the Appellant, and he handled the case on basis of conjecture, speculations and surmises.
5. The Respondent opposed the appeal through submissions dated 5th February 2025, contending that the appeal raises only issues of fact, contrary to Section 38(1) of the *Small Claims Court Act*. He maintained that the trial court properly evaluated the evidence and applied the law in entering judgment in his favour. Citing authorities such as Maxcure Hospital Ltd v Okello, *Momentum Credit Ltd v Kabuiya*, and *Amunga v Muisu*, the Respondent argued that appellate courts cannot reassess evidence or substitute factual findings unless the lower court's decision is perverse, which was not the case here. The Respondent concluded that the appeal was frivolous, devoid of merit, and an abuse of process, and urged the court to dismiss it with costs.

Analysis and Determination

6. Upon consideration of the pleadings, record of appeal, and submissions of both parties, the following issues fall for determination:
 - a. Whether the appeal raises matters of law within the meaning of Section 38(1) of the *Small Claims Court Act*.
 - b. Whether the trial court erred in its reliance on the agreement dated 5th January 2024 and the alleged work diary;
 - c. Whether the trial court exhibited bias in its determination



7. Before delving into the merits of the appeal, this Court must first address a preliminary legal question on whether this appeal is properly before the Court in light of Section 38(1) of the *Small Claims Court Act*, 2016, which provides as follows:

“A person aggrieved by a decision or order of the Court may appeal against that decision or order to the High Court on matters of law only.”
8. The jurisdiction of this Court in Small Claims Court appeals is thus limited to legal issues only. It is not the function of this Court to reassess the evidence unless it is shown that the trial court’s findings were unsupported by the law, irrational, or perverse (see *Maxcure Hospital Ltd v Okello* [2023] eKLR).
9. A review of the memorandum of appeal reveals that the core of the Appellant’s complaints revolves around factual findings of the trial court, including the existence of the alleged agreement and work diary. These are inherently factual issues that do not fall within the scope of Section 38(1).
10. On that basis alone, this appeal is for striking out. However, in the interests of justice and to exhaustively deal with the issues raised, I shall proceed to address the substantive merits.
11. On whether the trial court erred in its findings regarding the agreement and work diary, the Appellant contends that the agreement dated 5th January 2024 was not produced. However, a review of the trial court record and the record of appeal discloses that the agreement appears at page 27 and was relied upon alongside other supporting documents and the testimony of Geoffrey Otieno Ochieng.
12. Section 30 of the *Small Claims Court Act* permits the Court to determine matters on the basis of pleadings, written statements, and documentary evidence without necessarily requiring oral testimony. In this regard, the court was properly guided by the statutory framework.
13. The failure to produce the alleged work diary is not, in and of itself, fatal to the Respondent’s case. The trial court relied on other corroborative material which established the Respondent’s claim on a balance of probabilities. The Appellant has not shown that the trial court acted outside its powers or misapprehended the law.
14. The appellant also argues that the trial court was biased. I am alive to the fact that allegations of bias are grave and must be supported by cogent evidence, and meet a high evidentiary threshold. (see *Rawal v Judicial Service Commission & another; Okoiti (Interested Party); International Commission of Jurists & another (Amicus Curiae)* (Civil Appeal 1 of 2016) [2016] KECA 534 (KLR)).
15. The Appellant has not provided any substantiated material to demonstrate either actual or apparent bias. Mere dissatisfaction with the outcome of a case does not constitute proof of bias. The record does not reveal any misconduct or irregularity on the part of the Adjudicator.
16. In the end, I find that the appeal is without merit. The trial court applied the correct legal principles and properly relied on the evidence before it. No error of law has been demonstrated, and the grounds of appeal are, in substance, challenges to factual findings which are outside the permissible appellate jurisdiction under the *Small Claims Court Act*.
17. Consequently, I make the following orders:
 - i. The appeal is hereby dismissed.
 - ii. The judgment and decree of the Small Claims Court in SCCCOMM/E9955 of 2023 is upheld.



- iii. The Appellant shall bear the costs of this appeal and the costs incurred at the Small Claims Court.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:-

Ms. Kanyi h/b for Mr. Njanja for Appellant

Ms Nyandwaro for Respondent

Court Assistant: Carlos

