



**Ruiru Mabati Factory Limited v Mwachila (Civil Appeal  
E038 of 2024) [2025] KEHC 11666 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11666 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E038 OF 2024  
FN MUCHEMI, J  
JULY 31, 2025**

**BETWEEN**

**RUIRU MABATI FACTORY LIMITED ..... APPELLANT**

**AND**

**FULGENCE MWACHILA ..... RESPONDENT**

*(Being an Appeal from the Judgment and Decree of Hon. J. K. Tawai (RM/Adjudicator)  
delivered on 9th December 2024 in Ruiru Small Claims Court SCCCOMM No. E608 of 2024)*

**JUDGMENT**

**Brief facts**

1. This appeal arises from the judgment of Ruiru Resident Magistrate/Adjudicator in SCCCOMM No. E608 of 2024 whereby the court entered judgment in favour of the respondent for a sum of Kshs. 329,490/- plus interest at court rates from the date of filing the claim until the date of payment.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 5 grounds of appeal summarized as follows:-
  - a. The learned adjudicator erred in law by failing to take into account the respondent did not table before the Honourable Court evidence to prove the alleged substandard nature of the goods delivered by the appellant.
  - b. The learned adjudicator erred in law by failing to appreciate Section 16(b) of the *Sale of Goods Act* expressly barred the respondent from bringing a claim against the appellant.
  - c. The impugned judgment expressly violates the principle of unjust enrichment as the respondent retained the goods and was awarded compensation for the same goods.
3. Parties disposed of the appeal by way of written submissions.



## The Appellant's Submissions

4. The appellant submits that respondent did not table evidence like an expert report showing the alleged substandard nature of the items delivered. Relying on the case of *Stephen Kinini Wangonde vs The Ark Limited* [2016] eKLR, the appellant submits that due to the respondent's failure to tender cogent factual evidence, it behoved the respondent to avail expert testimony to corroborate the claim for substandard roofing material. Further, the respondent did not call any of the artisans who roofed the house to testify about the complaints of the roofing sheets. The appellant thus argues that the claim is an afterthought as it was brought two years after delivery and installation of the roofing material thus the respondent continued enjoyment and use of roofing material but sought refund on the same.
5. The appellant argues that it produced permits issued by the Kenya Bureau of Standards for the period the respondent purchased the goods in demonstration of the quality of its roofing material. The same was never controverted, questioned or denied. To support its contentions, the appellant refers to the cases of *Linus Nganga Kiongo & 3 Others vs Town Council of Kikuyu* (2012) eKLR; *Simba Commodities Ltd vs Citibank NA* (2013) eKLR and *Nakuru Civil Case No. 34 of 2014 Brian Muchiri Waihenya vs Others* (2017) eKLR and submits that the learned magistrate erred by finding that it did not produce evidence while it is the respondent who did not produce evidence or called witnesses to corroborate the claim for sale of substandard roofing material.
6. The appellant relies on Section 15 and 16(b) of the *Sale of Goods Act* and argues that the respondent through his spouse, an authorized agent, examined and accepted the goods ordered thus the respondent is estopped from raising questions of alleged defects.
7. Relying on the cases of *Vinayak vs Santokh & 2 Others* (Civil Appeal (Application) 175 of 2017) [2023] KECA 1433 (KLR) and *Madhupaper International Ltd & Another vs Kenya Commercial Bank Ltd & 2 Others* (2003) eKLR, the appellant submits that the judgment violated the principle of unjust enrichment as it was silent on the fate of the roofing material which the respondent roofed his house thus retaining ownership and it was ordered to compensate the respondent for the same roofing material.

## The Respondent's Submissions.

8. The respondent relies on Section 15 and 16 of the *Sale of Goods Act* and submits that he ordered goods from the appellant namely 1.10m roofing nails, 32 6.00m S Profile G30Gray, 56 3 m Europe Tile Gray G30, 27 4.00M Europe Tile, 25 6.00m Europe Tile Gray G 30 Ruiru Mabati Factory and the appellant supplied Alfa Mabati Factory 0.23m batch no. 6 July 25 OF SD. The respondent maintains that he reached out to the appellant through their sale executive and even went physically to the factory raising his concerns that the products were not the same supplied. The sales executives, driver and witnesses called by the appellant confirmed that what he stated was true. The respondent submits that he testified that the quality of goods supplied are poor and exhibited depressions causing him loss and damage which is a clear breach by the appellant. Further, the delivery note was not signed by himself or anyone in particular. To support his contentions, the respondent relies on the cases of *Pradip Enterprises (EA) Limited vs Magic Chemicals Inc* [2019] eKLR and *Varley vs Whipp* [1900] 1QB 513 and argues that a buyer is entitled to reject goods not matching the description or of unmerchantable quality. Further the appellant failed to show any misdirection or misapplication of the law by the trial magistrate as the evidence was properly evaluated and the trial court was satisfied that the contract had been breached.
9. The respondent further argues that the principle of unjust enrichment cannot be invoked to force a buyer to retain goods that were not agreed upon and which are of inferior quality. The respondent argues that he suffered loss by receiving non-conforming goods and was denied the benefit of the



bargain. Upon reaching out to the driver who delivered the goods, he was not assisted. Neither did the sales agent assist him nor was he assisted when he visited the factory physically forcing him to report the matter to the police station. Thus, the appellant cannot be said to have benefited from his own breach. To support his contentions, the respondent relies on the case of Kenya Ports Authority vs Modern Holdings [EA] Limited [2017] eKLR and submits that a claim of unjust enrichment is defeated when there is a valid claim in contract or tort as is the case herein.

10. The respondent submits that the appellant's reliance on Section 16(b) of the *Sale of Goods Act* is misguided as the provision deals with implied conditions of merchantable quality where goods are sold by description and the goods in the instant case did not conform to the description.

### **Issues for determination**

11. The main issues for determination are:-
  - a. Whether the appeal is properly before this court.
  - b. If so, whether the respondent proved its case on a balance of probabilities.

### **The Law**

12. The Court of Appeal while referring to a second appeal, which is essentially on points of law and thus similar to the duty of this court under Section 38 of the *Small Claims Court Act*, set out the duty of the second appellate court in the case of Otieno, Ragot & Company Advocates vs National Bank of Kenya Limited [2020] eKLR as follows:-

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 that they should have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.

13. In distinguishing between matters of law and fact the Court of Appeal stated in Kenya Breweries Ltd vs Godfrey Odoyo [2010] eKLR as follows:-

I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of retrial and facts must be revisited and analysed a fresh. See *Selle and Another vs Associated Motor Boat Company Limited and Others* (1968) EA 123. 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.

### **Whether the appeal is defective.**

14. Section 38 of the Act provides:-

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.



15. I have perused the grounds in the memorandum of appeal and noted that the grounds relate primarily to questions of fact. The appellant is aggrieved that the learned adjudicator found that they breached the sale of goods contract with the respondent by delivering goods that were substandard. The grounds as raised by the appellant relate to matters of fact which will require this court to scrutinize and re-evaluate the evidence once more in order to make its determination on various issues. Section 38 of the *Small Claims Court Act* which provides for appeals only on matters of law does not confer jurisdiction on this court to hear appeals on matter of fact.
16. Consequently, I find that this appeal misconceived and incompetent and is hereby dismissed with costs to the respondent.
17. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**F. MUCHEMI**

**JUDGE**

