



REPUBLIC OF KENYA



**Kimathi v Zapida Communications Ltd (Civil Appeal E130 of 2023)  
[2024] KEHC 3550 (KLR) (21 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3550 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E130 OF 2023  
TW CHERERE, J  
MARCH 21, 2024**

**BETWEEN**

**MARTIN KIMATHI ..... PLAINTIFF**

**AND**

**ZAPIDA COMMUNICATIONS LTD ..... RESPONDENT**

*(Appeal against judgment and decree in Meru SCC NO.  
E052 of 2023 by Hon. L.W.Maina (RM) on 11th July, 2023)*

**JUDGMENT**

1. By judgment dated 11<sup>th</sup> July, 2023 rendered in Meru SCC NO. E052 of 2023, Respondent was awarded the sum of KES. 168,230/- which is inclusive of KES. 5,000/- for the demand letter.
2. Appellant has appealed on the ground that the sum of KES. 5,000/- was not supported by a receipt and was therefore not specifically proved.
3. Respondent concedes that no receipt for the sum of KES. 5,000/- was tendered and relies on the demand notice dated 22<sup>nd</sup> November, 2022 wherein Respondent's advocate demanded the sum of KES. 5,000/- for writing the said demand letter.
4. I have considered the appeal in the light of the evidence on record and the submissions filed on behalf of both parties.
5. Section 38 of The *Small Claims Court Act* Chapter 10A provides
  - (1) 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.



6. I entirely agree with the persuasive decision of Magare J in Palms Resort Limited V Qureshi & 2 Others (Civil Appeal E167 of 2022) [2023] KEHC 23644 (KLR) that an appeal over evidence is an appeal of fact.
7. From the foregoing analysis, I find that this appeal which is on an issue of fact is unmerited and it is dismissed with costs to the Respondent.

**DATED AT MERU THIS 21<sup>ST</sup> DAY OF MARCH 2024**

**WAMAE.T. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munrne

For Appellant -Mr. Mutegi for Mutegi Mugambi & Co. Advocates

For Respondent - Mr. Muriuki for Mbogo & Muriuki Advocates

