



**Obidi v Kuira (Commercial Appeal E137 of 2023) [2024] KEHC 4835 (KLR)
(Commercial and Tax) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4835 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E137 OF 2023**

PM MULWA, J

APRIL 25, 2024

BETWEEN

SYLVESTER OBIDI APPELLANT

AND

MARY WAITHIRA KUIRA RESPONDENT

*(An appeal from the judgment of Hon. D.S. Aswani RM/Adjudicator
delivered on 8th June 2023 in SCCCOMM No. E6983 of 2022)*

JUDGMENT

1. The respondent herein is the claimant in the subordinate court who sued the appellant for the sum of Kshs 171,300/= being the balance of goods sold. The court in its judgment of 8th June 2023 found in favour of the respondent as against the appellant for the sum of Kshs 171,300/= together with interest. The appellant, being aggrieved has appealed the said judgment on the grounds stated in the memorandum of appeal dated 27th June 2023.
2. The appeal was canvassed by way of written submissions. The appellant and the respondent filed submissions dated 17th November 2023 and 6th December 2023 respectively.
3. It was submitted for the appellant that the respondent had failed to establish a prima facie case on a balance of probability to warrant the grant of prayers on the claim. That the decision by the learned adjudicator was null and void and contrary to the provisions of sections 107 and 108 of the Evidence Act as to who bears the burden of proof.
4. The appellant further submitted that the burden of proof in civil cases is on a balance of probability and cited the case of *Miller v Minister of Pensions* (1947) 2 All ER 372. He sought that the appeal be allowed as prayed.



5. In the respondent's submissions, counsel drew the attention of the court to the provisions of section 38(1) of the *Small Claims Court Act* which state that an appeal from the Small Claims Court is limited to matters of law only. That the allegations by the appellant in respect of sections 107 and 108 of the *Evidence Act*, were erroneous and not in tandem with the pleadings and evidence presented before the learned adjudicator.
6. The respondent further contended that he had tendered sufficient evidence which proved on a balance of probabilities that the appellant was indeed indebted in the sum of Kshs 171,300. It was submitted that the appeal be dismissed with costs.

Analysis and Determination

7. I have considered the appeal and the submissions in support and in opposition thereof. The issue for determination is whether the appeal has merit.
8. Pursuant to section 38(1) of the *Small Claims Court Act*, an appeal from a decision of the small claims court is on matters of law. And what constitutes points of law is now well settled. A court limited to resolving matters of law is not permitted to substitute the subordinate court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (see *John Munuve Mati v Returning Officer Mwingi North Constituency and 2 others* NRB CA EPA No 5 of 2018 [2018] eKLR).
9. The central issue for determination by the trial court was whether there existed a legally binding contract between the parties and whether the claimant proved her case on a balance of probabilities. The appellant's case is set out in the memorandum of appeal dated 27th June 2023. He claims, inter alia, that the adjudicator's decision failed to adhere to the provisions of sections 107 and 108 of the *Evidence Act*; was contrary to the weight of evidence which was entirely inadmissible and hence was null and void. The appellant further impugns the judgment on the ground that it was contrary to the judicial precedent and the legal principle established by the courts in *Miller v. Minister of Pensions (supra)*.
10. It is evident that the parties herein entered into an agreement for the supply of ladies' hair. The appellant went further to make a written commitment dated 18th August 2022 as to the mode of payment where he was to pay a sum of Kshs 10,000/- every two weeks until the total amount of Kshs 191,300/- was completed. According to the respondent only two such instalments were honoured.
11. The trial adjudicator was right to note that adequate material had been placed before her to find in favour of the respondent and after appreciating the holding in the case of *Miller v. Minister of Pensions (supra)* stated as follows:

“... the claimant has proved on a balance of probabilities that the respondent owes the amount pleaded, in the absence of evidence to the contrary.”
12. The learned adjudicator went on to find that the counter claim by the respondent had failed for want of evidence.
13. This Court noted that other than admitting to the indebtedness in the sum of Kshs 70,000/- and further making a claim of Kshs 30,000/-, there was no evidence in support thereof as the appellant made no attempt to demonstrate how those amounts had arisen and/or had become due and owing.
14. I have considered the material on record, and bearing in mind the jurisdiction of this court, I find that the decision of the adjudicator was not perverse to warrant interference. The same is consistent with the pleadings, evidence and submissions on record.



15. The appeal lacks merit and is dismissed with costs to the respondent which I proceed to assess at Kshs 30,000/-.

Orders accordingly.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 25TH DAY OF APRIL 2024.

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P. MULWA

JUDGE

In the presence of:

Mr. Jaoko for Appellant

Mr. Kang'ethe for Respondent

Court Assistant - Carlos

