



**Joinery Planet Interiors Ltd v Njogu (Civil Appeal E502 of 2022)
[2024] KEHC 4024 (KLR) (Civ) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4024 (KLR)

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

CIVIL

CIVIL APPEAL E502 OF 2022

DAS MAJANJA, J

APRIL 24, 2024

BETWEEN

JOINERY PLANET INTERIORS LTD APPELLANT

AND

SUSAN NJOGU RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. Keyne Gweno RM/Adjudicator at the Small Claims Court at Milimani, Nairobi dated 20th June, 2022 in SCCC No. E2110 of 2022)

JUDGMENT

1. This Appeal stems from the judgment of the Small Claims Court dated 20.06.2022. The court awarded the Respondent Kshs 330,800.00 against the Appellant and further directed the Respondent to allow the Appellant to collect the items installed in the Respondent's kitchen. The Appellant, who was the claimant before the trial court, filed this Appeal.
2. The Appellant's case is set out in the statement of claim dated 01.04.2022. It was contracted by the Respondent to install kitchen cabinets at her residence in Ridgeways by a contract signed on 21.11.2022. The Appellant stated that the contract was signed after the Respondent had been shown and approved the designs and materials. Thereafter, the Appellant purchased the material and started the installation. The Appellant further stated that sometime in February 2022 after completing the work, the Respondent refused to pay it the balance. The Appellant accused the Respondent of breaching the contract by failing to follow the termination procedure in the contract and illegally dismantling the kitchen cabinets without permission after being issued with demand. The Appellant claimed Kshs 248,018.19 being the cost and/or compensation for goods sold and delivered and Kshs 142,200.00 for services rendered all totaling to Kshs 390,218.19.



3. The Respondent filed a response to the statement of claim and a counterclaim dated 26.04.2022. She denied owing the Appellant any money and stated that it is the Appellant who owed her Kshs 963,260.00 on account of damages for breach of contract, loss of rental income, additional costs of flight changes and accommodation occasioned by the Appellant's delay. She further claimed for additional costs for the Kitchen fit-out works, plumbing, electrical and painting contractors due to the Appellant's poor workmanship as set out in the counter claim. The Respondent stated that the Appellant failed to execute its contractual obligation by procuring defective material which were not fit for purpose as well as not adhering to the design specification as agreed upon.
4. The Respondent stated that she notified the Appellant about the breach of the contract on both WhatsApp and email which it admitted on 30.12.2022 and promised to make the necessary adjustments but never repaired, corrected nor modified the fit-outs as per the agreed specifications. In denying the Appellant's claim for goods sold and delivered, the Respondent stated that the materials were purchased with her own money which she paid to the Appellant for that purpose hence that did not confer it any proprietary rights to the materials. She further stated that, the Appellant having failed to repair the cabinets, she was left with no choice other than to demolish the unsafe and unfit cabinet.
5. At the hearing, the Appellant called one of its directors, Benjamin Kibuchi (PW1) as its witness while the Respondent called Susan Njogu (DW1) and Anthony Njogu Mathenge (DW2). In the final determination, the Adjudicator found that the Appellant breached the contract and that the Respondent was justified in removing the cabinets installed by the Appellant having been given sufficient time to rectify the defects which it failed. Consequently, the court found that the best recourse for parties was to restore them to their original position thus the court's decision.
6. Dissatisfied by the decision of the trial court, the Appellant filed this appeal. The appeal was argued by way of written submissions. The Appellant's case is set out in the Memorandum of Appeal dated 01.07.2022 and sets out 12 grounds of appeal. It claims, inter alia, that the Adjudicator failed in finding that the Appellant was liable to pay the Respondent Kshs 330,800.00 despite its evidence that the money was used to purchase materials and that the Adjudicator failed to consider the binding contract signed by both parties, that the Adjudicator erred in finding that the Appellant's workmanship was poor without evidence and concluding that the Appellant deviated from the original plans despite the Appellant's evidence in court, that the Adjudicator erred in relying on a report prepared by a person who was not in court for cross-examination and allowing a witness to produce a document which he did not make or author and lastly that the Adjudicator failed to consider the Appellant's evidence.
7. From the foregoing, it is evident that the main issue for determination by the trial court was whether the Appellant proved its case against the Respondent. The jurisdiction of this court in relation to appeals from the Small Claims Court is circumscribed by section 38(1) of the *Small Claims Court Act*, 2016 ("the SCCA") which provides that an appeal against that decision or order to the High Court shall be on matters of law. The Court of Appeal in the case of *Peter Gichuki King'ara v Independent Electoral and Boundaries Commission & 2 others* [2014] eKLR described a matter of law as follows:

(T)he question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanor – is an issue of law.
8. It is not in dispute, that the Appellant and the Respondent were in a contractual relationship subject to an agreement dated 23.22.2021. The Respondent contracted the Appellant to install kitchen cabinets at the Respondent's residence. The layout design was part of the contract. The Respondent made



a down payment of Kshs 330,800.00 which the Appellant used to purchase materials to be used in installing the Kitchen cabinets.

9. According to the Appellant, the work commenced on 19.12.2021. On 30.12.2021, the Respondent stopped the project on the ground that the work was not in accordance with contract specifications. The Appellant acknowledged this ground. According to the Appellant's evidence, the project did not continue until 16.01.2022 after inspection of the site. The installation was completed on 31.01.2022 and the handover date set for 01.02.2022. On that day while at the site, the Respondent raised other issues which the Appellant sought to correct but never did so as it was not granted access to the premises thereafter. The Appellant maintains that it completed the project in accordance with the agreed plan.
10. The Respondent produced emails and WhatsApp conversations with the Appellant where she complained about the Appellant's workmanship. From the conversations, it is evident that the Appellant acknowledged the defects and promised to rectify them but failed to do so. The Respondent's allegations were corroborated by an assessment report. The Appellant complains that the Adjudicator relied on this report. However, the Appellant did not object to its production. In fact, the Appellant cross examined DW2 on its veracity.
11. According to the Respondent's evidence, the Appellant's work was unfit, unsafe and did not meet the design specifications. The Appellant did not produce any evidence to rebut the Respondent's allegations. From PW1's testimony, on the day of handover, there were still some defects which could only be construed to be as a result of poor workmanship.
12. It is therefore apparent that the Appellant breached the contract and more specifically clause 13 of the contract by failing to deliver what was agreed upon. The result is that the parties must be taken to the status quo ante; the position prior to performance. In the circumstances, I cannot fault the Adjudicator's determination.
13. The appeal lacks merit. It is dismissed with costs of Kshs 20,000.00.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL 2024.

D. S. MAJANJA

JUDGE

Joseph Kiarie and Company Advocates for the Appellant.

Rachier and Amollo LLP Advocates for the Respondent

