



REPUBLIC OF KENYA



**Kanyori v Eringo (Civil Appeal E632 of 2022)
[2024] KEHC 9280 (KLR) (Civ) (15 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9280 (KLR)

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

CIVIL

CIVIL APPEAL E632 OF 2022

H NAMISI, J

JULY 15, 2024

BETWEEN

ANN WANJIKU KANYORI APPELLANT

AND

ELIJAH MUKIIRA ERINGO RESPONDENT

*(Being an Appeal against the Judgement and decree of Hon. Martin Mutua,
Resident Magistrate delivered on 22nd October 2021 in SCCC No. 310 of 2021))*

JUDGMENT

1. This is an appeal against the judgement of Hon. Martin Mutua, Adjudicator, in which the Appellant has raised the following grounds:
 - i. That the learned Magistrate erred in law by omitting to take into account that it was the Respondent who breached the contractual terms of the sale of the car wash by his inability or refusal to complete payment of the purchase price and was not therefore entitled to benefit from his own default;
 - ii. That the learned Magistrate erred in law by his completed failure to take into account the fact that the Respondent had benefited from the use of the car wash for two years and that in law the earnings for that period ought to have been set off against any claim against the Appellant;
 - iii. That the learned Magistrate did not take into account the Appellant's counterclaim/set off and which was a misdirection in law on the part of the trial Magistrate;
 - iv. That the learned Magistrate misdirected himself in law by taking into account matters that were extraneous to the issue before him when he took into account the sale of the car wash to a third party while this was irrelevant in law to the dispute before the trial Magistrate;



2. Parties canvassed the Appeal by way of written submissions.
3. In her submissions dated 22nd May 2024, the Appellant relied on the case of *Chase International Investment & Anor -vs- To Laxman Kesbra & 3 Others* in which the Court of Appeal addressed the issue of unjust enrichment. It was the Appellant’s submission that the Adjudicator erred in law by failing to apply the principle of unjust enrichment, which is a matter of law.
4. On his part, the Respondent filed his submissions dated 16th May 2024 and submitted that this Court has no jurisdiction to hear and determine this appeal on matters of fact. The Respondent relied on several cases, including *Owners of Motor Vessel “Lillian S” -vs- Caltex Oil (Kenya) Ltd* [1989] eKLR, on the issue of jurisdiction.
5. Section 38 of the *Small Claims Court Act* provides as follows:
 1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;
 2. An appeal from any decision or order referred to in sub section (1) shall be final.
6. In the case of *Otieno, Ragot & Company Advocates -vs- National Bank Kenya Ltd* [2020] eKLR, the Court of Appeal addressed the duty of a court considering points of law.

“This is a second appeal. 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 they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: Stanley N. Muriithi & Another versus Bernard Munene Ithiga (2016) eKLR).”

7. Similarly in the case of *Mwita v Woodventure (K) Limited & another* (Civil Appeal 58 of 2017) [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:

-“This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of Stanley N. Muriithi & Another v Bernard Munene Ithiga [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also Kenya Breweries Limited v Godfrey Odoyo [2010] eKLR in which it was held that: “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.”

8. The duty of this Court in this instance is similar to that stated herein above, which is essentially on points of law. In the case of *JN & 5 Others -vs- Board of Management, St. G School Nairobi & Another* [2017] eKLR, in addressing a point of law and a point of fact, Justice Mativo stated thus:

“In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.



In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations."

9. Turning to the grounds of appeal, these relate primarily to questions of fact and evidence before the trial court. The trial court is entitled to evaluate the evidence and determine the evidence that it believes. The trial court cannot be faulted for reaching the decision it did based on the evidence that was presented before it.
10. The Appellant has not raised a single issue of law.
11. The upshot of the foregoing is that the Appeal lacks merit and is consequently dismissed with costs of Kshs 40,000/= to the Respondent.

DATED AND DELIVERED AT NAIROBI THIS 15 DAY OF JULY 2024.

HELENE R. NAMISI

JUDGE

