



**Mitithiru Company Ltd v Kiprotich (Civil Appeal E548 of 2022)
[2024] KEHC 9281 (KLR) (Civ) (15 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9281 (KLR)

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

CIVIL

CIVIL APPEAL E548 OF 2022

H NAMISI, J

JULY 15, 2024

BETWEEN

MITITHIRU COMPANY LTD APPELLANT

AND

KISSINGER KIPROTICH RESPONDENT

*(Being an Appeal against judgement of Hon. B. J Ofisi, Adjudicator in
Nairobi Small Claims SCCC No. E1553 of 2022 delivered on 24th June 2022)*

JUDGMENT

Introduction

1. This appeal arises from a suit in the Small Claims Court for recovery of repair costs amounting to Kshs 467,429.50 relating to premises LR 209/8336/28 situated in Kileleshwa, Nairobi County. The Appellant filed the said suit against the Respondent, who had leased the suit premises from the Appellant from December 2013 to March 2020. It was the Appellant's case that upon vacating the said premises, the Respondent left the same in a sorry state, necessitating extensive repair work to return the property to good condition.
2. The Respondent did not enter appearance nor file any response to the claim. Judgement in default was entered against the Respondent and the matter proceeded for formal proof.
3. The trial court delivered its judgement on 24th June 2022. In dismissing the claim, the trial court noted that the Appellant had failed to prove its cases to the required standard. The court observed that the Local Purchase Order and repair costs that the Appellant sought to recover dated back to 2018, and that the Claimant had failed to avail evidence of the state of the premises after the Respondent had moved out.



4. The Appellant, being aggrieved by the judgment of the trial court, filed a Memorandum of Appeal dated 22nd July 2022 on the following grounds:
 - i. That the learned Adjudicator erred in law in holding that the Appellant had failed to prove its claim;
 - ii. That the learned Adjudicator erred in failing to consider the uncontroverted evidence submitted by the Appellant of its claim;
 - iii. That the learned Adjudicator misdirected herself in dismissing the claim with costs
5. On 9th May 2024, parties were directed to dispose the appeal by way of written submissions. The Appellant filed submissions dated 29th May 2024. The Respondent did not file any submissions.
6. 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.
7. 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 v Bernard Munene Ithiga* (2016) eKLR).”

8. 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.”

9. 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."

10. 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.
11. I have looked at the evidence that was presented by the Appellant. The Valuation Report is dated 21st November 2014. As observed by the trial court, there is no evidence on record showing the state of the premises at the time the Respondent vacated in March 2020. Although it is clear that the Appellant spent a lot of money on the premises, it is not clear whether or not the said repairs and/or renovations were necessitated by the Respondent's prior occupation of the premises. The trial court cannot be faulted for reaching the decision it did based on the evidence that was presented before it.
12. The upshot of the foregoing is that the Appeal lacks merit and is consequently dismissed. Each party shall bear its own costs.

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

HELENE R. NAMISI

JUDGE

In the presence of:

....Mr, Njiru h/b Mr. Makori..... for the Appellant

.....N/A..... for the Respondent

