



**Skyline Sacco Society Limited v Odundo & another (Civil Appeal
E003 of 2024) [2025] KEHC 6408 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CIVIL APPEAL E003 OF 2024
RB NGETICH, J
MAY 15, 2025**

BETWEEN

SKYLINE SACCO SOCIETY LIMITED APPELLANT

AND

COLLINS ODUNDO 1ST RESPONDENT

JOYCE EKIMUMBUKU 2ND RESPONDENT

*((Being an Appeal from the Judgment of the Honourable Court Senior Principal Magistrate
Hon. Richard Koech made on the 27.6.2024 in Eldama Ravine Chief Magistrate's Civil
Case No. E072 OF 2022; Collins Odundo & Another versus Skyline Sacco Limited))*

JUDGMENT

1. The 1st and 2nd Respondents who were plaintiffs in the lower court filed suit seeking general and aggravated damages from the Appellant/defendant for seizure and /or attachment of the respondents' property in the form of livestock from their Kampi ya moto home within Nakuru county. By judgment delivered on 27th June 2024, the trial court found the Appellant/defendant 100 liable and awarded general damages of kshs 300,000.
2. The Appellant being aggrieved by the Judgement and consequential orders filed this appeal against the whole of the said decision on the following grounds:
 - a. The Learned Trial Magistrate erred in law and in fact in making a judgement that was not at all supported by the evidence adduced at the trial.
 - b. The Learned Trial Magistrate erred in law and in fact in arriving at a decision in favour of the Respondent in total disregard of the abysmal failure of the Respondents to adduce evidence in support of their allegations.



- c. The Learned Trial Magistrate erred in law and in fact in failing to appreciate that the Respondents had failed to discharge their evidentiary burden of proof to the required standard in law.
 - d. The Learned Trial Magistrate erred in law and in fact in failing to recognize that the Respondent herein had failed to establish their claim in a balance of probability.
 - e. The Learned trial magistrate erred in law and in fact in finding that the Appellant was vicariously liable for the acts of persons who were, at no point in time, its employees, servants and/or agents.
 - f. The Learned Trial Magistrate erred in law and in fact in firstly accepting unproven facts and then misapplying the law using these set of facts and this arriving at an erroneous judgment.
3. The Appellant in his appeal prays that:
- a. This Appeal is allowed.
 - b. The judgement delivered on the 27th June, 2024 in Eldama Ravine Chief Magistrate's Civil Case No. E072 of 2022; Collins Odundo & Another Versus Skyline Sacco Limited together with all consequential orders be set aside.
 - c. Costs of this Appeal be awarded to the Appellant.
 - d. Any other and further relief that this Honourable Court shall deem just and expedient to grant.
4. The Respondents responded as hereunder: -
- i. That the Learned Magistrate properly applied his mind to the facts of the case and law in arriving at a just decision in finding that the Respondents and their clients were illegally and unlawfully detained and harassed at the Applicant's premises, as the Respondents were restrained against their will, which amounts to false imprisonment, relying on corroborative evidence of witnesses as well as documents produced in court as evidence.
 - ii. That the Learned Magistrate competently applied his mind to the law in finding the Applicant vicariously liable since an employer is liable for the wrongful actions committed by their employees in the course of employment, as was the case herein. No evidence was tendered by the Appellant to controvert the assertion that the implicated persons were employees of the Appellant.
 - iii. That the Learned magistrate correctly found the Respondents' reputation harmed since the unlawful detention of the Respondents who are advocates of the High Court by the Applicant at its premises leaves a negative impression that the Advocates were involved in wrongdoing which brings their professional standing into question, hatred, ridicule, and contempt. The Applicant failed to raise the defence of justification or rebut this fact, ergo, the Court was right in awarding damages for reputational damage.
 - iv. The Learned Magistrate properly directed his mind in awarding damages to the Respondents. Award of damages is a judicial discretion of a judge as enunciated in various judicial decisions, therefore, the judge correctly exercised his judicial discretion to award quantum based on the legal principles established in the law.



Respondent's Submissions.

5. The Respondents urged this court to dismiss the appeal for want of merit and entirely adopt the trial Court's decision which was a veritably merit-based decision, supported with sound evidence anchored in law. That the High Court should uphold the judgment and consequently dismiss the appeal with costs.
6. The Respondents while giving the background of the matter submitted that they filed suit against the appellant following their detention by Appellant's employees in the appellant's offices in Elda ravine offices on 16th September 2022 when they went to inquire about seizure of their client's property despite them being Advocates of the High court of Kenya. They alleged that instead of being given information about seizure of client's property, goons armed with crude weapons were called into the offices and they were told they could not leave the offices until they disclosed the whereabouts of one Beatrice Inyangala Kibango, the Respondents' alleged daughter and they threatened to impound the 2nd Respondent's motor vehicle Registration No. KCU 3X4 K; that they were forcibly detained for close to two hours and were released through the intervention of both the Chairperson of the Law Society of Kenya (Nakuru Chapter) and the Officer Commanding Station, Eldama Ravine Police Station.
7. That the Respondents suffered reputational damage for false imprisoned hence they sought general and aggravated damages for the same.

Appellant's Submissions

8. The Appellant urged this court to reevaluate evidence adduced before the trial court as is the duty of the first appellate court. On standard and burden of proof in civil cases, the appellant submit that it is trite law that the standard of proof in civil cases is on a balance of probability and the burden of proof lies with the person alleging the existence of certain facts and the legal concept is that "He who alleges must prove" as provided in Section 107 through 112 of the *Evidence Act*, Cap 80 Laws of Kenya
9. The appellant cited the case of Alexander Mwendwa Mwova & others v Attorney General [2021] eKLR where the court stated as follows:-

"Where on the face of evidence offered, a case has not been made out against the Defendant, the Plaintiff does not succeed because the Defendant failed to call evidence."
10. On whether the Respondents established their claim on Balance of Probabilities at the trial court, the Appellant submit that the Respondents failed to prove their claim on a balance of probabilities and the facts as presented leads to the following logical conclusion:-
 - i. It was not established whether they were detained as they have alleged.
 - ii. It was not established if the photographs were taken at the Appellant's premises, when and by whom;
 - iii. It was also illogical that the Respondents were able to take photographs but not videos of the alleged event.
 - iv. There were marked contradictions as to the time when they allegedly left Nakuru for Eldama Ravine. Certainly, three different accounts of the same event signify dishonesty.



- v. On the allegation of reputational damage, it is impossible to state that merely because your client, in private, develops apprehension that you may not deliver on assigned tasks does not amount to reputational damage.
 - vi. In any event, PW3 did subsequently instruct P.W1 to represent her in a subsequent matter, which counter's PW1's allegation of reputational damage.
 - vii. The Trial Magistrate in his judgment did not analyze the evidence on record and the law applicable and it was therefore impossible to arrive at a finding without analyzing the evidence.
11. That it is trite law that the onus clearly lay on the Respondents to prove their claim and they had an inescapable duty of proving each and every allegation of fact as was aptly stated in *Klema Mutuku vs Kenya Cargo Holding Services Limited* (1991) eKLR.
 12. On whether the Respondents have established that the Appellant is vicariously liable for the events of 20th September, 2022, the appellant submit that the Halsbury's Laws of England, 4th edition, volume 16, paragraph 562, sets the extent of the employer's duty for the actions of an employee in the following terms:-

“The employer is not liable to the employee for damage suffered outside the course of employment.”
 13. On the burden of establishing the tort of negligence in general, the appellant relied on the case of *Martin A Waindi v Pharmaceutical Manufacturing Co Ltd & another* [1994] eKLR which sets the burden of proof on the one alleging and submit that if the events that are alleged to have taken place on the 16th September, 2022 did indeed occur, then (and without prejudice to the foregoing denials of actual occurrence), then the appellant submit the alleged actions of the said goons, if it indeed happened, happened without its express instructions, authorization, direction and/or behest.
 14. That on the contrary, such actions occurred after the said goons engaged in a frolic of their own and no evidence was led to prove that they were employees of the Appellant and in the circumstances, it would be unreasonable for the Appellant to be liable for illegal and unlawful acts committed by misguided and overzealous persons who were not acting on the instructions of the Appellant and relied on the case of *Yewens v Noakes* {1880} 6 QBD 530 and the case of *Joel v Morison* [1834] EWHC KB J39.
 15. Further that it is debatable whether the Respondents ever established the existence of a master-servant relationship between the Appellant and whoever those goons and/or watchmen and secondly, it was not established that they acted on the Appellant's directions, instructions and/or authority, and in the normal course of duties and/or employment.
 16. The appellant further submitted that in the case of *Selle versus Associated Motor Boat Company Limited* (1968) EA 123, the court held that the existence of the right of control is usually a decisive factor in deciding whether the relationship of master and servants exist.
 17. The appellant further that if the allegations of goons were true, then the employer is not liable for torts of an independent contractor Mr. Barasa and relied on the case of *Attorney General vs Law Society of Kenya & another* [2017] eKLR and in *Rashid All Faki v A.O. Said Transporters* [2016] eKLR.
 18. The appellant urged this court to take judicial notice of the fact that the Trial Magistrate found that the actions of these persons went overboard on their own account as captured at page 6, paragraph 3 of his judgment page 149, line 23 of the Record of Appeal.



19. The appellant submit that the Trial Magistrate did not sufficiently show on what criteria he assigned vicarious liability to the Appellant; he did not demonstrate the nexus between the said goons' illegal actions and them having authorization and/or direction from the Appellant; that the crucial component of control was never established.
20. On whether the Respondents established "reputational damage", the appellant submit that the Respondents alleged that their client developed doubts in their ability to perform their tasks and they therefore suffered reputational damage but a client developing misapprehensions about one's ability does not amount to Reputational damage and relied on the case of *Ali Onamu Apidi v Onesmus Mutinda* [2019] eKLR.
21. The Appellant further submit that there was no defamatory statement made by the Appellant or any of its staff, employees and/or agents to the wider public and there was therefore no reputational injury suffered by the Respondents and at page 133 line 12 of the Record of Appeal, the 1st Respondent testified that he was subsequently instructed by Phinece Kibango, his client to act for her, which is sufficient proof that he did not suffer reputational damage.
22. The appellant submits that the Respondents being officers of the court and being constantly exposed to disputes, ought to expect to be subject of heated exchanges from time to time, and should not run to the court every time there is a dispute and relied on the case of *Ali Onamu Apidi v Onesmus Mutinda* [supra].
23. From the foregoing, the Appellant prays that the judgment delivered on 27th January, 2024 be set aside and the instant Appeal be allowed with orders as to costs.

Respondent's Submissions.

24. The Respondents submit that from the grounds of appeal; the following are issues for determination:-
 - i. Whether the Lower Court's Judgment was supported by the evidence adduced;
 - ii. Whether the Lower Court correctly found that the Respondents were unlawfully detained and falsely imprisoned;
 - iii. Whether the Lower Court correctly found the Appellant vicariously liable; and
 - iv. Whether the Lower Court correctly found the Appellant liable for reputational harm.
25. On whether the lower court's judgment was supported by the evidence adduced, the Respondents submit that Section 107 of *Evidence Act* Cap 80 Laws of Kenya requires that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist and in compliance with the aforementioned Section 107 of the *Evidence Act*, the Respondents presented credible and sufficient evidence to the Lower Court vide plaint, witness statements and evidence, and list of documents, which the Lower Court properly applied its mind to in arriving at a just and correct decision.
26. That the Appellant conversely did not file any documents and had one witness only and the evidence was not therefore corroborate by any other witness or documents and in course of the trial, the Respondents produced photographs illustrating the locked gate, the 2nd Respondent's vehicle within the Appellant's premises with a locked gate, and the Eldama Ravine Police Station Occurrence Book report, all which proved that the Respondents were detained and falsely imprisoned against their will; and the Appellant's claim of lack of evidence is a fallacy intended to subvert justice in disfavor of the Respondents.



27. Further that a photograph of the 2nd Respondent's motor vehicle registration number KCU 3X4K captured in a locked parking with a background showing the name of the Appellant showed the premises belonged to the Appellant and the burden of disproving this assertion rests with the Appellant who has special knowledge of its premises but failed to discharge and instead during his testimony, DW 1 admitted that the premises are indeed the Appellants (see page 140 of the Record of Appeal).
28. That it was the Respondents' evidence that they were ushered into the office of one Geoffrey Chirchir, who coincidentally testified as DW1. That he was positively identified by PW2, the 2nd Respondent herein and further that DW1 introduced himself before court as the credit controller and debt recovery officer, and interestingly, the Respondents were ushered into the office of the debt recovery officer! (See page 140 of the Record of Appeal).
29. That the above buttressed the Respondent's position that DW1 introduced and presented himself as an officer of the Appellant and was also introduced to the Respondents as such by the Human Resource personnel of the Appellant, one Kelvin and he therefore lied by saying he did not know and has never seen the Respondents.
30. The Respondents restated response to the appeal and submitted that the Appellant failed to produce any documents in evidence, and only called one witness, DW1 whose evidence was mere denials. That had there been evidence to substantiate the averments made by DW1, the same would have been provided by the Appellant, and its failure constitutes a lack of discharge of its evidentiary burden and the Appeal should be dismissed in its entirety, and trial court decision be upheld as it is well-grounded in law and fact.
31. The Respondents submit that they have sufficiently demonstrated how the Respondents were detained and falsely imprisoned against their will, and arbitrarily deprived of their freedom without just cause, which constitutes the tort of false imprisonment; that the Appellant lacks any lawful authority to justify the unlawful confinement of the Respondents at Appellant's premises. For instance, the Appellant failed to produce a warrant of arrest upon demand by the Respondents and lastly the Respondents were unlawfully detained for close to two hours, and were only released upon intervention by non-parties.
32. That the Respondents were by being falsely imprisoned, were subjected the Respondents to physical torture, mental anguish, and emotional and psychological suffering and the finding that the Respondents were forcefully detained against their will and falsely imprisoned is based on clear and credible evidence.
33. On whether the honorable court correctly found the appellant vicariously liable, the Respondents submit that they visited the Appellant's office at Skyrise Plaza in Eldama Ravine and they were directed by Kevin, the Appellant's Human Resource officer, to the debt recovery officer who refused to furnish the Advocates with the clarification on the seizure of the client's livestock and upon being called by Mr. Geoffrey Chirchir (DW1), in the presence of the Respondents, one Mr. Barasa who was alleged to have the information required by the Advocates, arrived with about six goons well-armed with concealed crude weapons and threatened to cause grievous bodily harm if the Respondents failed to produce their client's daughter, who was an alleged loan defaulter.
34. That no evidence, save for mere denials, has been furnished to support such denials by the Appellant and no evidence was adduced to rebut the evidence by the Appellant. That even further, there is corroborating evidence by PW 1, PW2, PW3 and PW4, all arriving at the same conclusion by the standards of a reasonable man.



35. The Respondents rely on Section 112 of the *Evidence Act* and Section 115 of the *Evidence Act* and argue that read together, these two provisions lead to the conclusion that the burden of disproving an agency relationship between the Appellant and Mr. Chirchir or Mr. Barasa, falls squarely on the Appellant, which burden was not discharged whatsoever. That in fact, DW 1, Mr. Chirchir, gave evidence that he is the Appellant's debt recovery officer, and therefore he was acting on the instructions of the Appellant.
36. That this is further supported by the holding of the Court in *Royal British Bank Vs Turquand (1856) 6 E&B 327*, that persons transacting with a Company are entitled to assume that internal Company's rules are complied with, even if they are not. That the essence of the Rule in *Turquand's* case is that the Company's indoor affairs are the Company's business which therefore precludes the Respondent from placing the evidentiary burden of proving or disproving employee or agency status of any person introduced by the Appellant's Human Resource manager on the Respondent.
37. That in defining what amounts to vicarious liability of the employer, the Respondents put reliance on the English case of *Rose vs Plenty & Another* as illustrated in the High Court decision in *P. J. Dave Flowers Ltd vs David Simiyu Wamalwa [2018] eKLR* and submit that the Appellant herein has never denied that its debt recovery officer, DW1 called Mr. Barasa who arrived with goons to threaten the Respondents at the Appellant's premises, neither has it ever denied the evidence of PW3 that Mr. Barasa acted on behalf of the Appellant when he took her cattle. That there is also no denial of the existence of a case between the Appellant and PW3, all which led to the conclusion that all these persons were acting on behalf of the Appellant, and urged this court to uphold the decision of the trial court. The Respondents further relied on the Ugandan Court in *Muwonge vs Attorney General of Uganda 1967 EA1 7* as outlined in the High Court decision in *P. J. Dave Flowers Ltd vs David Simiyu Wamalwa (supra)* which set out the criteria to find an employer liable for the action of an employee.
38. The Respondents submit that the act must be committed within the course of the business for the employer to be vicariously liable, which happened in the present case where the employees of the Appellant committed these acts at the Appellant's premises and during the business hours of the Appellant and the Appellant is therefore vicariously liable for the actions of its employers, agents or servants, a view supported by the trial court's judgment.
39. On whether the lower court correctly found the appellant liable for reputational harm, they submit that in addition to the deprivation of the Respondents freedom, the Appellant herein did damage the Respondents' reputation as Advocates of the High Court in that:-
 - a. The Appellant made a false statement that the Respondents know Beatrice Inyangala Kibango and that the Respondents were willingly harboring a fugitive in the presence of their clients;
 - b. The Appellant in presence of the Respondents' clients tainted the Respondents as unprofessional;
 - c. The Appellant's actions endangered the Respondent's economic, security and ability to retain the client; and
 - d. The Appellant's use of threats to cause grievous bodily harm, harassment, detention, and false imprisonment of the Respondents in the presence of their clients damages the reputation of Advocates.
40. The Respondents submit that the imprisonment was oppressive, insulting, malicious and recklessly indifferent to the rights of the Respondents as Advocates and in defining what amounts to reputational



damage, relied on the definition in the case of Joseph Njogu Kamunge v Charles Muriuki Gachari [2016] eKLR.

41. That the Appellant tainted the Respondents' reputation as unprofessional by claiming that the Respondents harbored a "fugitive" hence exposing the Respondent to hatred, ridicule and contempt and also brings the professional integrity of the Respondents into question and lowers their professional image in the eyes of the right-thinking members of the society.
42. The Respondents in concurrence with the Judgment, submit that any right-thinking client would question the professional competence of an Advocate who is harassed and detained while pursuing their clients' case. That the Appellant's treatment of the Respondents would make clients think of an advocate as a wrongdoer or having done unlawful things to warrant which is demeaning treatment.
43. The Respondents submit that the trial magistrate rightfully exercised discretion in awarding damages based on the legal principles established in the law and urged this court to dismiss this appeal for want of merit with costs to the Respondents.

Analysis And Determination.

44. This being the first appeal, I am obligated to re-evaluate the evidence of the trial court and come up with my own conclusion. I am however minded of the fact that unlike the trial court, I did not have the opportunity to hear witnesses and observe their demeanor, for this I give due allowance. This position was held in the case of *Selle & Another Vs. Associated Motor Board Company Ltd.* [1968] EA 123, where the court held as follows: -

"...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

45. In view of the above, I have perused and considered evidence adduced before the trial court together with submissions filed herein and consider the following as issues for determination: -
 - i. Whether the Respondents proved their case on a balance of probability.
 - ii. Whether the trial court erred in awarding damages to the Respondents.

(a) Whether the Respondents proved their case on a balance of probability

46. On whether the Respondents proved their case on a balance of probability, it is trite law that he who alleges must prove. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya, which provide as follows: -

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist"

47. In the case of *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal stated as follows: -

"As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the



affirmative of the issue. There is however the evidential burden which places upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.

48. Record show that the Respondents who are advocates of the High court testified that on 16th September,2022, they both had traveled from Nakuru to the Appellant's head office located in Skyrise Plaza in Eldama Ravine Town with the goal of obtaining information about the seizure of their client's property, being livestock following allegation by their clients that the property was seized by the Appellant's employees and/or agents.
49. The Respondents found one Geoffrey Chirchir who called the auctioneer a Mr. Barasa who was supposed to furnish them with information concerning the seizure of Respondents property but instead went to the offices with about 6 to 7 goons armed with crude weapons who barred the Respondents from leaving the office of until they disclose the whereabouts Beatrice Inyangala Kibango, the Respondents' client's daughter. That the said Chirchir Dw1 identified and was introduced to the Respondents' as the Appellant's debt recovery officer and it is the said officer who called the auctioneer who arrived with armed goons who detained the respondents for 2 hours in the offices and were released upon intervention by the DCI and Lsk chair.
50. The appellant's argument is that the act of detaining and threatening the Respondents was not by their agent and on that ground, they deny being vicariously liable. They have not denied that the Respondents were in their offices neither has the appellant denied the presence of the said auctioneer and his people at their offices. The appellant did not adduced evidence to controvert the allegation of illegal detention of respondents who are Advocates of the High court and were acting on their clients' instructions.
51. On whether an employer will be vicariously liable for acts of employees, the Court of Appeal enunciated this principle in the case of *Selle vs Associated Motor Boat Co.* [1968] EA 123 as follows: -

The central issue that we think we must determine in this appeal is whether the facts before the judge allowed her to reach the conclusion that the appellant was vicariously liable for the acts of the owner or driver of the hired motor vehicle. It was not disputed by either party before the judge that the bus that was hired to transport students and staff to Mombasa did not belong to the appellant but belonged to a person who was not named in the suit...by the respondent. Although the driver of the bus was named in the witness statement filed by the respondent the driver was not sued and his name does not appear anywhere in the plaint.

Vicarious liability is defined in *Black's Law Dictionary 10th Edition* by Bryan A. Garner as "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties – also termed as imputed liability.
52. The Appellant has not also denied ownership of the premises. The people who acted in the premises in my view must have acted with the authority of the Appellant and if the appellant had no role in the Respondents being detained in their premises, they would not have allowed their employees or agents to detain them in their premises or they would have reported to the relevant authorities that there were unauthorized persons in their premises. By failure to prevent detention of the Respondents, is a conclusion that it is their employees or agents or persons authorized by them who detained the Respondents in their premises. From the foregoing, the appellants are vicariously liable for illegal detention of the Respondents in their premises and the trial magistrate did not err in arriving at that finding.



53. From the foregoing, the auctioneer was the appellant's agent and trial court correctly found so.

(b) Whether the trial court erred in awarding damages to the Respondents

54. There is no doubt that the Respondents who are Advocates upon being detained had their reputation dented in the eyes of a reasonable person. From acts of the appellant's agents, the Respondents could be labelled as having played a role in concealing the presence of the alleged debtor whereas they were playing the role of representation of client and their interest was to get information on the seizure of their clients property.

55. Further, by detaining the Respondents, the appellant put the professional integrity of the Respondents into question and lowered their professional image in the eyes of the right-thinking members of the society. From the foregoing, I find that the Respondents proved that their reputation was damaged hence the trial court was correct in holding so. I therefore find that the Appeal lacks merit and hereby dismiss with costs to the Respondents.

Final Orders: -

56. This appeal is dismissed in its entirety.

57. Costs of appeal to the Respondents.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 15TH DAY OF MAY 2025.

RACHEL NGETICH

JUDGE

