



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Wafula v Kitundu (Civil Appeal E013 of 2024)  
[2025] KEHC 6102 (KLR) (Civ) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6102 (KLR)

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

**CIVIL**

**CIVIL APPEAL E013 OF 2024**

**AM MUTETI, J**

**MAY 8, 2025**

**BETWEEN**

**PATRICK KHAEMBA WAFULA ..... APPELLANT**

**AND**

**VICTORIA NDUKU KITUNDU ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The appellant in this matter was condemned to pay the respondent the sum of Kshs 177,772.00 which figure arose out of a dispute over the sale of a motor vehicle.
2. The claim arose from a motor vehicle sale agreement in respect of motor vehicle registration number KCP 170X Mazda Axela which the appellant was said to have sold to the respondent.
3. The agreement was frustrated and the said motor vehicle was repossessed by Key microfinance. The respondent during the hearing stated that she paid the sums claimed and the vehicle was released to her and went ahead to mark the List of documents as respondents' Exhibit 1-6. She referred to Exhibit 3 which was an email conversation that the appellant acknowledging the amount and in which he gave a proposal on the mode of payment.
4. The appellant never made good his promise leading to the filing of the suit and the judgment he now seeks to challenge.
5. The Appellant's Memorandum of Appeal raises the following grounds:-
  - a. That the learned Magistrate erred in law and fact by all her findings in her judgment dated and delivered on 17th November 2023.



- b. That the learned Magistrate relied issues she ought not have relied upon in reaching her judgment.
  - c. That the learned Magistrate erred in law and fact by relying on a document not signed by any party and totally ignoring any evidence tendered by the Appellant.
  - d. That the learned Magistrate erred in law and in fact in not finding that the evidence and exhibits provided by the Respondent were inconsistent, contradictory and did not support the Respondent's case.
  - e. That the learned Magistrate erred in law in awarding costs to the Respondent.
6. In support of the grounds are the submissions by the appellant which for reasons that will become apparent, I have elected to reproduce verbatim;

Appellants Submissions

Your honor,

This instant appeal was preferred and filed following the judgement rendered at the small claims court by Hon. Cristabel Maiyo on 17th November 2023.

While we wholly rely on the memorandum of appeal and all pleadings as filed herein, we wish to specifically invite the court towards the main reason advanced by the trial magistrate in reaching her final decision.

We submit that the learned magistrate did not consider the legal threshold required to arrive at her decision and relied on cumulative evidence that was irregular and inconsistent.

We pray that this court do grant the prayers of the appellant and quash the decision from the lower court with costs.

Dated at Nairobi this 12th day of August 2024

7. The appellant did not say anything beyond that and it bis his hope that the submissions should persuade the court to set aside the decision of the lower court.

**Respondent's Submissions**

8. The respondent apparently filed their submissions before the appellant and contended that the Appellant's Memorandum of Appeal is ambiguous as it fails to point out the specific errors of fact and law by the learned Magistrate neither does it point out the specific exhibits by the Respondent that are contradictory.
9. The respondent invited the court to look at the cross examination of the Appellant at pages 37- 40 of the Record of Appeal and note that the Appellant acknowledged the decretal amount and wrote an email acknowledging the same. The email address was confirmed to have been that of the appellant.
10. The respondent thus argued that the appellant cannot walk away from his own admission and that the learned honorable magistrate was correct in arriving at the decision he reached.
11. The documents tendered by the Respondent were sufficient to establish the case against the appellant.
12. In the respondents' submission the Appeal should be dismissed with costs to the respondent.



## Analysis And Determination

13. The appellant in the prosecution of the appeal has not demonstrated any degree of seriousness. The appellant filed his submissions out of time and even then, made them so sketchy that he did not assist this court to appreciate the crux of his appeal. See *Balozi Housing Cooperative Society v Kamandu* (civil Appeal 17 of 2019){2024} KEHC 6144 (KLR) where Lady Justice A. Ongeru held that an appellant must demonstrate seriousness in the presentation of an appeal.
14. The appellant basically invited the court to comb through the evidence and determine whether the findings by the learned Honorable magistrate were supported by the evidence.
15. The duty of this court as a first appellate court is precisely that and the invitation by the appellant has been accepted. The appellant must however be reminded that it is the duty of an appellant to demonstrate that the appeal is not frivolous. He must at least be able to show that his appeal merits consideration by the court. See *Kenafri Matches Ltd v Match Masters Limited & another* Civil Application No E902 of 2021 (UR)
16. The submissions by the appellant were not specific to any of the issues raised in the memorandum of appeal but this court having perused the entire record, has come to the conclusion that the documents produced and relied on by the respondent established on a balance of probabilities that the appellant owed the respondent the sum claimed and that he had not denied the same.
17. The learned honorable magistrates' decision is therefore unassailable on the ground of insufficiency of evidence.
18. The appeal by the appellant appears to have been presented without any tangible reason and in all probability, it must have been ingeniously calculated to delay settlement of the decretal sum.
19. It is the finding of the court that the appeal has no merit and it is hereby dismissed with costs.
20. The appeal to say the least amounted to a waste of precious judicial time and from a reading of the appellants submission, it would appear counsel was basically out to pacify his client otherwise no iota of industry went into it.
21. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of

Court Assistant: Kiptoo

Onsumu for the Appellant

Okonji for the Respondent

