



**Rachuonyo & another v Ojack t/a Benjoy Printing Agencies Limited (Civil Appeal E072 of 2023) [2025] KEHC 8447 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8447 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E072 OF 2023  
BM MUSYOKI, J  
JUNE 16, 2025**

**BETWEEN**

**BERYL ATIENO RACHUONYO ..... 1<sup>ST</sup> APPELLANT**

**MICAH RACHUONYO OKOTH ..... 2<sup>ND</sup> APPELLANT**

**AND**

**BENARD OTIENO OJACK T/A BENJOY PRINTING AGENCIES  
LIMITED ..... RESPONDENT**

*(Being an appeal from judgment and decree in the Small Claims Court at Kisumu (G.C. Serem) claim number E005 of 2023 dated 8th May 2023)*

**JUDGMENT**

1. The 1<sup>st</sup> appellant was an employee of the respondent as an agent at Kenya Commercial Bank when on 8-04-2022 some Kshs 268,545.00 was said to have been lost. The respondent made a complaint to the police about the loss and the 1<sup>st</sup> appellant was arrested and taken to Kisumu central police station. While there, the parties in this appeal including the 2<sup>nd</sup> appellant who happened to be the 1<sup>st</sup> appellant's father, negotiated and reached a settlement. The settlement was reduced into writing through an advocate on 14-04-2022 to the effect that the 1<sup>st</sup> appellant would settle the amount in installments of Kshs 33,569.00 every month. The 2<sup>nd</sup> appellant was part of the agreement as a guarantor and as his side of the bargain, he surrendered his title deed for his property known as Rachuonyo North/Kakdhimu/3132 as security for the debt.
2. The 1<sup>st</sup> appellant never paid the debt and as a result, the respondent filed a claim in the trial court. In the said claim, the respondent admitted having executed the agreement dated 14-04-2022 but pleaded that the same was made under duress and undue influence and therefore not enforceable. At the end of the trial, the court below delivered judgment on 8-05-2024 in favour of the respondent which ignited this appeal. I will start with reproducing the evidence produced by the parties.



3. The respondent told the court that he employed the 1<sup>st</sup> appellant on 13-04-2021 as his agent at KCB Kisumu West Branch. On 8-04-2022, while he was in his offices, he received a call from the said bank branch manager to the effect that the 1<sup>st</sup> appellant had informed her that someone had drugged her and she lost some Kshs 268,545.00. However, when the CCTV footages were checked, there was no evidence of her being drugged and her explanation of the lose of the money were not adding up.
4. After the accounts were checked, it was discovered that the 1<sup>st</sup> appellant had transferred the respondent's business funds to her personal account which she then distributed to unknown persons. The respondent was advised by the branch manager to report the loss to the police which he did resulting to the arrest of the 1<sup>st</sup> appellant. He was later called by the police who informed him that the 1<sup>st</sup> appellant had confessed that she was misled by some conmen to transfer the money to them.
5. The 2<sup>nd</sup> appellant was also called and came from Karachuonyo and when he arrived at the police station, he pleaded with the respondent that he should not take the 1<sup>st</sup> appellant to court as she was willing to refund the lost money within eight months at monthly installments of Kshs 33,569.00. The respondent agreed to the proposal and the parties approached Lugano and Lugano Advocates to draw an agreement for them. The respondent added that an agreement was drawn between the appellants and him by the said firm of advocates. The agreement had a condition that failure to pay would lead to forfeiture of Rachuonyo North/Kakdhimu/3132 for purposes of realising the amount.
6. In cross-examination, the respondent stated that the 1<sup>st</sup> appellant stole Kshs 208,000.00 and not Kshs 268,545.00 but they added previous losses of Kshs 60,566.00 and added that the 1<sup>st</sup> appellant was not charged in court. He stated further that the 1<sup>st</sup> appellant confessed before the investigations officer and that there was no Magistrate or Judge during the confession. He added that the appellant was arrested on 8-04-2022 following which her parent went and talked to the police on 11-04-2022 upon which the parties reached a consensus and an agreement drawn and signed on 14-04-2021.
7. In further cross-examination, the respondent added that the 1<sup>st</sup> appellant had lost money previously which was handled internally in the office. He denied that the appellants were held in police station to force them into signing the agreement. He confirmed that the appellants did not have an advocate.
8. The 1<sup>st</sup> appellant on her part told the court that she was subjected to duress in executing the agreement as the same was made in exchange of her freedom after she was led to the police station by the respondent and detained. She added that on 1-04-2022, the appellant instructed her to send money to a number in batches of Kshs 100,000/=, Kshs 75,000/- and Kshs 32,0000/= totaling to Kshs 208,000.00 but a week later, he told her that she had sent the money to a wrong number. She alleged that the appellant was harsh to her and instructed her to report to one Mr. Omukala a police officer who was his friend for assistance in tracing the money.
9. When she arrived at the police station, the said officer arrested her and kept her in police custody up to 12-04-2022 when they approached her in the police cells with a paper in form of an agreement and demanded that she signs it so that she could be released. According to her, they threatened to retain her further without food unless she signed. She alleged that she signed under desperation of being released after five days detention.
10. In cross-examination, she stated that there were other losses before the one in question. She claimed that she was arrested on 8-04-2021 and released on 12-04-2021. She claimed that she could not recall the date she signed the agreement. She admitted that her father was not arrested and that the agreement was brought to her in police cell for signature. She maintained that she was forced to sign the agreement and admitted that she had not paid the money.



11. The 2<sup>nd</sup> appellant testified that he got a call on 10-04-2022 from a strange number informing him that his daughter had been arrested and his title deed was required to process her release upon which he rushed to Kisumu and confirmed that his daughter was indeed in police cells. He went back to Homabay where he processed a search and returned to Kisumu on 12-04-2022 where he was given a form to sign which he thought was a bond form but later learned that it was an agreement to bind him with payment of some money. He also alleged that he was threatened that he would be held in the police cells and that his daughter would be frustrated if he did not sign the contract and that he was not allowed to consult anyone before he signed.
12. When he was placed on cross-examination, he could not remember the person or the number which called him to the police station. He denied ever signing the agreement as a guarantor. He admitted that he did not report any threats to the police.
13. From the submissions of the parties and the memorandum of appeal as reconciled with the trial court's judgment, it is my opinion that the only issue for determination is whether the agreement between the parties dated 14-04-2022 was vitiated by doctrine of duress or undue influence. Having admitted that they signed the agreement the burden of proving duress was on the appellants. In order to prove the same, the appellants must demonstrate that they did not sign the agreement voluntarily or by their free will.
14. Duress exists where the circumstances under which the contract was signed would not afford the person pleading it an opportunity to exercise their free will or judgment of the mind. Such circumstances must have left the person with no option of making a contrary decision. This can be through threat of harm or violence or something that would affect the person in a manner that is detrimental to their health, life or their livelihood. The threat must be real and not imagined or speculative. In *Euromec International Limited v Shandong Taikai Power Engineering Company Limited* (2021) KEHC 93 (KLR), it was held that;

‘The party relying on duress had to prove a threat of considerable evil to the person concerned; that the fear was reasonable; that the threat was of an imminent or inevitable evil and induced fear; that the threat or intimidation was unlawful or contra bonos mores; and that the contract was concluded as a result of the duress. On the other hand, a party wishing to rely on undue influence had to prove that the other party had influence over him or her; the influence weakened his or her resistance; the other party used his influence unscrupulously towards the innocent party; the transaction which was concluded was prejudicial; and exercising a normal and free will, the innocent party would not have entered into the jural act or transaction. The court should have regard to the person complaining of the duress and the circumstances in which he found himself at the time and then decide, in the light of all the relevant factors, whether it was reasonable for the person concerned to have suffered fear and to have succumbed.’
15. The appellants have alleged that they were forced into signing the agreement through arrest of the first 1<sup>st</sup> respondent. In deciding whether or not there was duress, it is important to examine the circumstances bearing in mind the rights of both sides and not those of the appellants only. The respondent was an aggrieved party and had a right to report the incident to the police. It is not shown that the respondent actively participated in any way in the arrest of the 1<sup>st</sup> appellant other than reporting the theft. The fact that the respondent made a report to the police does not alone mean that he exerted any pressure and intimidation or threats to the appellants. The evidence available shows that the appellant was called by the police and informed that the 1<sup>st</sup> appellant was willing to settle the matter. It was not the respondent who called the 2<sup>nd</sup> appellant but someone the appellant could not remember.



16. The respondent maintains that the 1<sup>st</sup> appellant was arrested on 8-04-2022 and released from the police cells on 11-04-2022 while the appellants alleged that she was released on 12-04-2022. The burden of proof having been on the appellants, they should have produced evidence on when she was released by calling for production of the police occurrence book entries. I will in absence of that evidence take it that the 1<sup>st</sup> appellant was released on 11-04-2022.
17. I note that the said date was on a Friday and the next day the 1<sup>st</sup> appellant should have been taken to court was 11-04-2022 which is the date she was released. However, in the intervening weekend, the 2<sup>nd</sup> appellant appeared in the picture and some promises to pay were initiated. There is in my view nothing wrong with parties negotiating to compromise a criminal complaint and a mere fact that there were talks on settlement does not amount to duress or undue influence. The appellants must go further and demonstrate how they were forced or unduly influenced to sign the agreement. The Court of Appeal in *John Mburu v Consolidated Bank of Kenya (2018) KECA 796 (KLR)* held that;
- ‘The definition of duress was given in the case of *Ghandhi & Another vs Ruda (1986) KLR 556*, as follows:
- “Duress at common law, or what is sometimes called legal duress, means actual violence or threats to violence to the person i.e, threats calculated to produce fear of loss of life or bodily harm. The threat must be illegal in the sense that it must be a threat to commit a crime or tort.’
18. The 2<sup>nd</sup> appellant appeared in the police station with a title deed ready to bail out his daughter. He claims that he gave out the title deed and signed the agreement which he did not understand thinking that he was signing bail forms. I am convinced that at the time the agreement was signed, the 1<sup>st</sup> appellant had already been released from the police station. She had been set free three days before and the agreement was done in an advocate’s office and in the presence of another witness named Listone Okoth.
19. The 2<sup>nd</sup> appellant’s claim that he did not understand what he signed is escapist. His daughter was with him and she must have understood the contents of the agreement going by the fact that she was working as an agent in a financial institution and I take judicial notice that for someone to work in such a position, they must have a considerable ability to read and write. Nothing stopped the appellants from seeking independent legal advice or opinion from someone of their choice. In any event, the 1<sup>st</sup> appellant has not suggested that she did not know how to read and write. In these circumstances, I do not see any evidence of duress or undue influence. The appellants were free to decline to sign the agreement and choose to let the 1<sup>st</sup> appellant face the complaint.
20. In the final analysis, I find that the agreement was through free will and this court has no business interfering agreements between the parties. The lower court was right and I see no reasons to disturb its decision. Consequently, this appeal lacks merits and it is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JUNE 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Miss Obuya holding brief for Mr. Obiero for the appellant and in absence of the respondent.

