



**Munyao v Gitau (Commercial Appeal E133 of 2024)  
[2025] KEHC 10392 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10392 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
COMMERCIAL APPEAL E133 OF 2024**

**BK NJOROGE, J**

**JULY 17, 2025**

**BETWEEN**

**PETER N MUNYAO ..... APPELLANT**

**AND**

**CRISPIN GITAU ..... RESPONDENT**

**JUDGMENT**

1. This is an Appeal arising from the Judgment of the Learned Adjudicator Hon. D.S. Aswani in Milimani SCCCOMM No. E9799 of 2023 Crispin Gitau Vs Peter N. Munyao delivered on 18/04/2024.

**Background facts**

2. The Appellant was the Respondent in the Small Claims Court, while the Respondent herein was the Claimant.
3. The Claimant now the Respondent sued the Respondent now the Appellant, for a sum of Kshs.242,000/-. This was made up as follows;
  - a. Costs of vandalised items Kshs.142,000/-
  - b. Refund of repair charges Kshs.100,000/-Total Kshs.242,000/-
4. The Respondent maintained that he took his motor vehicle KXR 155 for mechanical repairs at the Respondent's garage in Ngara, Nairobi. This was sometime in 2020. He expected the repairs to be concluded in reasonable time. He paid a sum of Kshs.100,000/- being the repair charges



5. It turned out that the motor vehicle was not repaired but was instead vandalised of its gearbox, seats, radiator, slim engine probox, distributor, carburettor and distribution lead wire all valued at Kshs.142,000/-.
6. The Respondent referred the matter to the police. This was followed by the parties entering into an agreement for the refund Kshs.100,000/- paid. The agreement was dated 9/6/2022. The parties refer to this as a debt acknowledgment Agreement.
7. Part payment of Kshs.35,000/- was made by the Appellant.
8. The Respondent sued for the entire amount of Kshs.242,000/-.
9. The Appellant denied the claim. He stated that indeed a motor vehicle was brought for repairs, but thereafter the Respondent disappeared.
10. He denied vandalising the motor vehicle. He averred that the Respondent finally collected the motor vehicle. Thereafter he the Resonant reported the matter to the police. This led to the arrest of the Appellant. To forestall his further remand at the police station, he agreed to refund a sum of Kshs.100,000/- to the Respondent.
11. He now argues that this agreement to refund the sum of Kshs.100,000/- was procured under duress at a police station. He acknowledges refunding a sum of Kshs.35,000/-. He faults the Trial Court for directing that he refunds the entire sum of Kshs.242,000/-. He avers that there is no proof or evidence that the motor vehicle was vandalised. He denied the claim for Kshs.242,000/-.
12. It is entry of Judgment by the Learned Adjudicator for the sum of Kshs.242,000/- plus cost that has triggered this Appeal.

### **Issues of determination**

13. The Court has perused the Memorandum of Appeal filed, the Record of Appeal as well as the Submissions filed by Counsel for both parties.
14. The Court frames two issues for determination
  - a. Whether the Trial Court erred in failing to find the acknowledgement debt agreement dated 9/6/2022 was procured under duress.
  - b. Whether the Trial Court ignored the Appellant's evidence before the Trial Court.

### **Analysis**

15. An Appeal from the Small Claims Court to the High Court is pursuant to Section 3f of the *Small Claims Court Act*. It states as follows;  
Appeals
  1. A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
  2. An appeal from any decision or order referred to in subsection (1) shall be final.
16. An Appeal to this Court is therefore not in the same manner as in the usual first appeal. The Court's mandate is restricted to reviewing the decision of the learned Adjudicator on points of law. See Mwaura



v Wambua (Commercial Appeal E003 of 2024) [2024] KEHC 13897 (KLR) (11 November 2024) (Judgment).

17. It therefore follows that an Appeal to this Court is normally circumscribed and will only be on issues of law and not on facts.

**a. Whether the Trial Court erred in failing to find the acknowledgement debt agreement dated 9/6/2022 was procured under duress.**

18. The short answer is that an Appeal to this Court lies on issues of law and not facts.

19. The Appellant wishes that this Court delivers into the circumstances in which the agreement was signed. That is a matter of fact that could only be properly argued before the Trial Court. It does not lie for consideration before this Court on an Appeal.

20. Looking at the agreement, it does not state it was signed at a police station. The Appellant did not take any steps to rescind the agreement as one procured as a result of a duress. As a matter of fact, he even paid a sum of Kshs.35,000/- towards the agreement.

21. In Wachira v Mwai [2024] KEHC 3173 (KLR) where the Court said the following regarding its Appellate jurisdiction.

“I have not seen a single issue of law being raised by the Appellant. It is not enough to cite very complicated Latin terms. They must be a fair and correct issue of law. The court cannot be faulted that it reached a decision on no evidence. The Small Claims Court is the queen when it comes to evidence. I have evaluated the same and noted that the court exercised its discretion correctly. In Mbogo v Shah 1968 EA 93 the court held thus: -

“The duty of this court in an appeal against the exercise of that discretion is not to interfere unless the Judge has exercised his or her discretion wrongly in principle or perversely on the facts of the case.”

22. On duress the Court has stated that the standard of proof is higher than on a balance of probabilities. It is therefore not enough to plead duress. One must go out of their way to prove it. In Kamau v Kevian Kenya Limited [2023] KEELRC 627 (KLR) the Court has stated as follows;

“The court was cognizant of the legal requirement that where a party pleaded duress or undue influence as a ground for assailing the validity of a contract, such party was under duty not just to plead that fact but also to specifically prove it. The court was also cognizant of the fact that the burden of proof for those elements was higher than on a balance of probabilities even though it did not get to the standard of beyond reasonable doubt. In that case, the claimant neither pleaded nor established coercion or undue influence in the manner that the law contemplated as a basis for invalidating the discharge voucher that she signed.”

**b) Whether the Trial Court ignored the Appellant's evidence before the Trial Court.**

23. The Court notes that the Learned Adjudicator after review of the evidence entered a Judgment for a sum of Kshs.242,000/-. Yet the Appellant challenges this entry of Judgment on the basis that his evidence was not considered.

24. The Court has perused the Memorandum of appeal. The Grounds raised mainly challenges the factual findings arrived upon by the Learned Adjudicator.



25. The Court is unable to deduce any principle or point of law raised for adjudication by this Court.
26. The only issue of concern to this Court is that the Appellant admitted to making a part payment of Kshs.35,000/= towards reduction of this debt. This was after the Debt Acknowledgment Agreement was made. The Respondent addresses this issue in his submissions by admitting to the payment.
27. The upshot is that the appeal fails as it is devoid of merits, save to the issue of this part payment received. The Decree should have taken into consideration this part payment and reduced the amount accordingly. The Court therefore directs this reduction and the Decree ought to have been for a sum of Kshs,207,000/=.
28. On costs, the same are awarded at the discretion of this Court. The fair order is that the Appeal succeeds partially, but with no order as to costs.

#### **Determination**

29. The Appeal succeeds partially.
30. The Judgement delivered on 18<sup>th</sup> April, 2024 by Honourable D. Aswani (RM) in Milimani Small Claims Court No. E9799 of 2023 and the Decree thereof are hereby set aside and quashed and substituted with a Judgement and Decree in favour of the Claimant as against the Respondent for a Sum of Kshs.207,000/= (Kenya Shillings Two Hundred and Seven Thousand) together with costs and interests at Court rates from the date of filing the Claim until payment in full.
31. There be no orders as to costs in this Appeal.
32. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 17TH DAY OF JULY, 2025.**

**NJOROGE BENJAMIN. K.**

**JUDGE**

In the presence of: -

Mr. Muthee for the Appellant

Miss Kirui for the Respondent

Court Assistant Mr. Luyai.

