



**Lilian Wanjiku Manegene t/a Manegene & Partners v Kimunge Limited (Civil Appeal E153 of 2023) [2024] KEHC 8861 (KLR) (Civ) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8861 (KLR)

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

**CIVIL  
CIVIL APPEAL E153 OF 2023**

**AB MWAMUYE, J**

**JULY 11, 2024**

**BETWEEN**

**LILIAN WANJIKU MANEGENE T/A MANEGENE & PARTNERS APPELLANT**

**AND**

**KIMUNGE LIMITED ..... RESPONDENT**

*(Being an Appeal from the Judgment of the Hon. M.W. Mugure (SRM) delivered on 22nd July, 2022 in Milimani CMCC No. 9290 of 2017)*

**JUDGMENT**

1. The Memorandum of Appeal dated 7<sup>th</sup> March, 2023 and the Appellant's Written Submissions dated 15<sup>th</sup> May, 2024 are clear on the salient points at issue in this Appeal and also previously before the lower court. In those written submissions, the Appellant reflects on the testimony presented to the lower court by her and observes that it was the defence's testimony that:
  - a. There was no Advocate-Client relationship between the parties and the Appellant had never had any professional dealings with the Respondent;
  - b. The Respondent failed to produce a letter of instructions or any other proof of the existence of the alleged Advocate-Client relationship;
  - c. The Respondent was unable to prove that the Cheques were banked, or that they were subsequently unpaid, or that the Respondent incurred any charges resulting from the same; and
  - d. The Appellant denied issuing the cheques, albeit also conceding that she never reported the matter of the Respondent having possession of the two cheques to the police; and that it was



incumbent on the Respondent to satisfactorily explain the circumstances and show that the Appellant had issued those cheques to it.

2. The Appellant's case, in summary, is that the Respondent was under an obligation to prove certain material facts before the Trial Court to the required standard; a burden of proof it did not discharge. Thus, the Appellant faults the Trial Court for making a finding to the contrary.
3. Unsurprisingly, the Respondent wholeheartedly defends the impugned judgment in the Respondent's Written Submissions dated 22<sup>nd</sup> May, 2024. The Respondent characterises this Appeal as being an attempt by the Appellant to evade answering in a straightforward manner the question of how and why the Respondent came to be in possession of the two cheques, and for what purpose were those two cheques drawn.
4. Both parties have correctly identified that it is the duty of this Court sitting on first appeal to reconsider and re-evaluate the evidence laid before the trial court, and to thereafter arrive at its own independent conclusions. Having examined the same, I note that the key findings of the Trial Court in its judgment dated 21<sup>st</sup> July, 2022 were contained in the last four paragraphs of the judgment. The Trial Court said the following:

“I have seen the cheques issued by Manegene and Partners to Kamunge Limited. Although DW1 denies having issued the cheques, she swore a Replying Affidavit on 30/04/2018 which is on record that states that the cheques issued were totally not related to the Plaintiff's claim. She admits in the Replying Affidavit but denies in evidence to having issued the cheques.

The Defendant does not deny practicing as Manegene and Partners.

DW1 is economical with the truth. I am not persuaded to find that she was not aware of the cheques that bounced. It is clear that the cheques were issued by the Defendant. She claimed not to offer any explanation as to why she was issuing the cheques to the Plaintiff. She never complained to any relevant authority that take cheques hereby issued in her name [read: She never complained to any relevant authority that cheques hereby issued in her name had been taken]. I have no reason to doubt the Plaintiff.

I find that the Plaintiff has proved the case on a balance of probability. I allow the same as prayed in the Plaint. Interest shall be at court rates from the date of filing suit till payment in full. Orders accordingly.”

5. The Learned Magistrate's conclusions were the only logical and lawful consequence of a reasoned analysis of the facts and evidence presented before the lower court. The Respondent established a case that called for the Appellant to offer a satisfactory rebuttal, but she did not. My re-examination and re-evaluation of the same has come to the same conclusion as the Trial Court.
6. The adjudicative function is performed by human beings whose appraisal of the facts within a dispute is informed by their understanding of reasonableness and credibility. Where one party presents a reasonable and credible narrative and the other does not, it must follow that the former will succeed and the latter will not. Had the Appellant put forward a straight forward defence that made the Respondent's contentions more unlikely than likely on the balance of probabilities then she would have succeeded. In the end, she did not; and consequently, I find that there is no basis for this Court to interfere with the judgment of the lower court.
7. The Appeal herein is therefore dismissed, with costs to the Respondent.



**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI  
THIS 18TH DAY OF JULY,2024.**

**BAHATI MWAMUYE**

**JUDGE**

**In the presence of:**

**Ms. Muthie Counsel for the Appellant**

**Mr. Manyara Counsel for the Respondent**

**Mr Guyo, Court Assistant**

