



**Karuku v Maisha Floor Mills (Civil Appeal 26 of 2011)  
[2024] KEHC 17073 (KLR) (19 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 17073 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL 26 OF 2011  
AB MWAMUYE, J  
NOVEMBER 19, 2024**

**BETWEEN**

**ALICE GATHIGIA KARUKU ..... APPELLANT**

**AND**

**MAISHA FLOOR MILLS ..... RESPONDENT**

*(Being an appeal from the judgment and decree of the Honorable Stella Muketi delivered on the 16th of February 2011 in Nyeri CMCC NO.937 OF 2003)*

**JUDGMENT**

1. This is an appeal arising from the judgment of the Honourable Chief Magistrate delivered on 16th February 2011 at Nyeri, in which the learned magistrate entered judgment in favour of the plaintiff (now respondent) for the sum of Kshs.707,650, plus costs and interest, arising from a commercial transaction involving the supply of wheat flour and pollard. The appellant, who was the defendant in the trial court, denied owing the amount and counterclaimed for an alleged overpayment of Kshs.252,925.
2. The respondent's case before the trial court was that she sold and delivered goods to the appellant amounting to Kshs.1,547,150, out of which payments were made, leaving a balance of Kshs.851,900. After considering records and oral evidence, the trial court found that certain payments had indeed not been credited. Accordingly, it adjusted the claim and awarded Kshs.707,650.
3. The appellant denied owing any balance and instead counterclaimed, asserting that she had overpaid due to failure by the respondent to credit several cash payments and bank deposits. The trial magistrate considered the counterclaim but dismissed it, even while observing that an overpayment of Kshs.144,250 might have occurred.
4. Dissatisfied with the trial court's findings, the appellant lodged this appeal to this Honourable court against the whole of the said judgment on the following grounds:



- i. That the learned trial Magistrate erred in law and fact in totally disregarding the defendants case and counterclaim.
- ii. That the learned trial Magistrate erred in law and fact in failing to consider the very clear and concise evidence and submissions made by the defendant.
- iii. That the learned trial Magistrate failed to critically evaluate the evidence on record and testimonies made by the plaintiff to the effect that the plaintiff was plainly unable to prove that the defendant owed him the money.
- iv. That the learned trial magistrate erred in law and in fact by dismissing the defendants counterclaim despite making a finding that there was an overpayment of Ksh 144,250.
- v. That the learned trial magistrate erred in awarding the plaintiff Ksh 707,650 plus costs and interests of the suit which amount was excessive and unsupported by any material evidence.

### Analysis

5. It is trite law that an appellate court must reconsider and re-evaluate the evidence afresh, while giving due allowance to the fact that it did not hear the witnesses.
6. In the instant case, the trial court acknowledged that the respondent's record-keeping was not perfect. However, the court also noted that deliveries were made and that some payments remained unaccounted for. On the whole, the trial magistrate was satisfied that the plaintiff had established, on a balance of probabilities, that a debt was owed after taking into account certain payments made.
7. The appellant criticises the trial court for relying on manual ledger summaries instead of more formal bank records. However, the trial court was entitled to weigh all the evidence and determine which was more credible. That it did not adopt the appellant's analysis does not in itself amount to an error in law.
8. The Court of Appeal in *Mwangi v Wambugu* [1984] KLR 453 held that a trial court's findings on credibility of witnesses and interpretation of evidence will not lightly be overturned unless they are based on no evidence or are plainly wrong. That threshold has not been met here.
9. The appellant faults the magistrate for dismissing her counterclaim even while acknowledging a possible overpayment of Kshs.144,250. However, the court's finding was not conclusive but rather inferential. The trial court found that even if some amounts were overpaid, there was no clear demonstration that the total payment exceeded the goods delivered.
10. In *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR, the Court of Appeal emphasized that a party must strictly prove a counterclaim like any other claim. In this case, the appellant failed to establish on credible evidence that there was an enforceable overpayment that could be recovered.
11. It is also worth noting that much of the appellant's counter-evidence relied on incomplete references to ledgers and unverified transaction trails. Without corresponding confirmations from the respondent's side, the appellant's evidence remained speculative. As the trial court observed, where monies were allegedly paid to third-party agents, the burden lay with the appellant to prove those payments were made on behalf of or received by the respondent, something not satisfactorily done.
12. Did the Respondent prove its case? Yes. The trial court accepted that goods were delivered, and partial payments were made. The judgment was adjusted to account for credits not initially acknowledged, reducing the claimed amount from Kshs.851,900 to Kshs.707,650. The evidence on record including delivery notes, invoices, and summaries—was adequate to support that finding. As held in *Kenya Power & Lighting Co. Ltd v Nathan Karanja Gachoka & Another* [2016] eKLR, proof on a balance



of probabilities does not require mathematical precision, only credible, plausible evidence supporting the claim.

13. Having re-evaluated the record, the judgment, and the submissions, this Court finds that the appeal lacks merit. The trial magistrate correctly applied the law and evidence in awarding Kshs.707,650 to the respondent and dismissing the counterclaim

14. Accordingly, I make the following orders:

- a. The appeal is hereby dismissed in its entirety.
- b. The judgment of the Chief Magistrate's Court at Nyeri delivered on 16th February 2011 is upheld.
- c. The respondent shall have costs of this appeal.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> OF NOVEMBER 2024.**

.....

**BAHATI MWAMUYE**

**JUDGE.**

