



REPUBLIC OF KENYA



KENYA LAW
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**Omondi v Mwaniki (Civil Appeal E076 of 2024)
[2025] KEHC 13648 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E076 OF 2024
RM MWONGO, J
OCTOBER 1, 2025**

BETWEEN

KELVIN OTIU OMONDI APPELLANT

AND

SYLVIA THARAKA MWANIKI RESPONDENT

*(Appeal arising from the decision of Hon. Mercy Nkirote Kinyua in
Embu SCCCOMM No. E074 of 2024 delivered on 01st August 2024)*

JUDGMENT

The Appeal

1. By a memorandum of appeal dated 21st August 2024, the appellant seeks that the appeal be allowed and the judgment of the Small Claims Court be set aside and dismissed with costs to the appellant.
2. The appeal is premised on the grounds that the Learned Magistrate erred in Law and fact:
 1. In finding that the business relationship between the appellant and the respondent established a valid and enforceable contract between the appellant and the respondent;
 2. In finding that the in the absence of a written agreement, there was no valid contract between the appellant and the respondent for purchase of the engine by the respondent from the appellant;
 3. In awarding the respondents Kshs.93,300/= on the basis of a non-existent sale of goods contract with clear terms and conditions of sale; and
 4. In failing to make a finding that the purported receipt dated 23rd February 2023 for Kshs.41,300/= contained incomplete and insufficient evidence to render it admissible and



corroborative enough to prove the cumulative amount of Kshs.93,300/= awarded to the respondent.

The Claim

3. The respondent herein had filed a statement of claim in the Small Claims Court through which she sought judgment against the appellant for Kshs.93,300/= with costs and interest. She claimed that she had asked the appellant to sell to her a replacement engine for her motor vehicle registration number KCW 744A. For the engine and all the necessary accessories, the respondent paid the appellant a total of Kshs.93,300/= through bank transfer and Mpesa. She stated that the engine failed to work and she had to source for another engine at an extra cost.

Response to the Claim

4. The appellant stated in response that the respondent brought her vehicle registration number KCW 744A to his garage for routine service on 23rd February 2024. On that day, he charged Kshs.41,300/= for vehicle parts and labour. After this service, the respondent picked the vehicle from this garage when it was in good condition. On 28th March 2024, she returned the vehicle to the garage over a different kind of service. On this occasion, she purchased an engine from Kevinik Motor Spares, Nairobi and asked him to facilitate delivery and replacement of the engine. He stated that he did as instructed and charged Kshs.10,000/=. He denied selling the engine to the respondent or charging any money for such a transaction since his services were limited to installing the engine and other mechanical repairs. He urged the court to dismiss the claim.

Reply to Response to Claim

5. In her reply, the respondent denied having purchased an engine from any shop in Nairobi. She stated that she bought the engine from the appellant at Kshs.52,000/= and she paid him the money together with other costs. She stated that the appellant installed a faulty engine from the onset and he transacted with Kevinik Motor Spares shop in Nairobi. She reiterated the contents of the claim.

The Hearing

6. The hearing proceeded by way of documents only upon agreement by the parties. The respondent produced documents in support of her case. She submitted to the court that she gave the appellant money to procure the engine which ended up being faulty. She stated that she paid money to the appellant and he procured an engine from his shop called Uprising Motor Garage but he alleged that the engine was sourced from Kevinik Motor Spares shop in Nairobi.
7. She relied on section 16 of the *Sale of Goods Act* and the case of Prudential Printers Limited v Carton Manufacturers Limited [2012] KEHC 3626 (KLR) and argued that the goods delivered by the appellant were unmerchantable. Relying on section 5 of the *Consumer Protection Act* and the case of Ken Aluminium Products Limited v High-Tech Air Conditioning & Refrigeration Limited [2018] KEHC 10008 (KLR) she argued that the appellant ought to be held accountable for delivering unmerchantable goods to the respondent.
8. The appellant produced documents in support of his case. He denied the claim and submitted that he is a mechanic and his work is limited only to motor vehicle repairs. He stated that his business is a garage only and not a shop that sells vehicle spare parts.



Findings of the Small Claims Court

9. The Adjudicator found that the respondent had proved her case against the appellant on a balance of probabilities. As such, the court held that there was a valid and enforceable contract between the parties by virtue of payment of money. Judgment was entered in favour of the respondent in the sum of Kshs.93,300/= with costs and interest.

Submissions on the appeal

10. The appeal was canvassed by way of written submissions.
11. The appellant denied the existence of a contract between him and the respondent. That the elements of a contract are missing and that if the respondent paid money, the purpose of the payment was not stated. He stated that he is not a motor vehicle spare parts vendor and he denied selling the engine to the respondent. It was his argument that in the premises, the issue of breach of contract does not arise because there was no contract in the first place.
12. The respondent denied having purchased the engine from a motor spares shop. She relied on the cases of *Storer v Manchester City Council* [1974] 1 WLR 1403, *Jackline Njeri Kariuki v Moses Njung'e Njau* [2021] KEHC 4818 (KLR) and *Kirugi v Kabiya* (1987) KLR 347. She stated that the Adjudicator's findings were accurate and should be upheld since there was an enforceable contract between the parties.

Issue for Determination

13. The issue for determination is whether the appeal has merit.

Analysis and Determination

14. The appellate court makes its decision based on the record of the trial court as was held in the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”
15. The respondent produced her Mpesa statement indicating that she sent Kshs.51,000/= to the appellant on 22nd February 2024. This is one day before the respondent took her motor vehicle to the appellant's garage. According to the appellant, on 23rd February 2024, the respondent brought her motor vehicle for routine service which costed Kshs.41,000/= for parts and Kshs.10,000/= for labour. The same statement shows that she sent Kshs.10,000/= to the appellant on 29th February 2024. On 4th March 2024, the respondent again sent Kshs.1,000/= to the appellant. There is a bank statement for the respondent but it does not highlight any payments to the appellant on the days when he worked on the respondent's vehicle.
16. The appellant produced a receipt together with an ETR acknowledgment both dated 14/05/2024 for purchase of a slim engine from Kevinik Motor Spares for Kshs.45,000/=. It indicates that the money was paid in cash on that date for the engine. He also produced importation and clearance documents for the engine among other imports. The documents with a KRA stamp dated 02/04/2024 and a



- stamp of Kevinik Motor Spares dated 14/5/2024 do not draw particular attention to the engine that was purchased and under what circumstances. The appellant also did not highlight parts of the lengthy documents that relate to the particular engine that was sold to the respondent.
17. The only evidence that an engine was sold/ bought is the receipt and corresponding ETR acknowledgment. However, the question is, who paid for the engine at Kevinik Motor Spares shop? The receipts having been issued on 14/05/2024, what is the connection of that date with the dates in the claim? The answer to these questions would enable the court to identify the nature of contracts in issue and apportion liability as appropriate. The respondent claimed that she paid the appellant Kshs.52,000/= for the engine and another Kshs.41,300/= for the accompanying accessories.
 18. The Waybill exhibited at pg 49 indicates that the imported engines/parts were shipped from Jebel Ali Port on 20/03/2024 for discharge at Mombasa. The claimant's claim indicates that the contract transactions with the defendant garage took place on or about 23/02/2024 and 28/03/2024. However, the receipts from the alleged engine seller are dated 14/5/2024. No evidence is given to show the connection between the dates of the receipts by Kevinik and those on the import documents.
 19. From the pleadings, it appears that the appellant was the respondent's regular mechanic. According to the respondent, the sum of Kshs.51,000/= that the respondent paid him via Mpesa was for routine service on 23rd February 2024, which he did. He stated that the respondent picked her vehicle and was satisfied before she returned about 1 month later with the car which had a different issue. There could be an implied contract between the parties every time the respondent brought her vehicle to the appellant's garage and such a contract terminated after completion of service and payment of the cost of the service.
 20. At the point of purchase of the engine by whomever, there was, indeed, an implied contract between the parties in their usual manner, and it was required that a new engine be fitted into the motor vehicle. In my view, the amount paid to the appellant on 22nd February 2024 had nothing to do with the new or faulty engine which was not available until 14/05/2024. The service which was paid for on 23/03/2024 was done and completed. The routine service is isolated completely from the engine purchase and installation narrative. The engine replacement done and paid for on 28/03/2024 appears unconnected to the Kevinik Purchase dated 14/05/2024.
 21. The appellant said that the respondent purchased the engine by herself and asked the appellant to facilitate its delivery and installation. With all this, it is clear that cash was paid for the engine but it is not known by whom. The respondent said that she did not even know Kevinik Motor Spare shop in Nairobi while the appellant denied buying the engine on behalf of the respondent. The respondent did not prove that she paid money for purchase of the engine to the appellant. The bank statement provided by her does not pinpoint which particular transaction went towards paying the appellant for the engine purchase on her behalf.
 22. According to the appellant, the engine problem was discovered on 28th March 2024 and that is when a new engine was purchased. It means that the Kshs.10,000/= paid to the appellant on 29th February 2024 via Mpesa is for an unclear purpose so far. However, the respondent produced a receipt for Kshs.52,000/- dated 28th March 2024, made out to her by the appellant's business, Uprising Motors Garage. It shows that the amount was received for engine replacement, service parts and labour. The receipt is stamped with the company's official stamp and it is signed.
 23. In my view, it was not possible for the trial Court to reach the finding it did without obtaining further evidence connecting the receipts with the services rendered. Whilst section 32 of the [Small Claims Court Act](#) provides that the evidence adduced before a Small Claims Court is exempted from strict rules



of procedure, the same provision allows the court on its own motion to make further enquiry. Subsections 4-5 provide:

“(4) The Court may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it may require.

(5) All evidence and information received and ascertained by the Court under subsection (3) shall be disclosed to every party.”

24. The documents adduced should have been subjected to further investigation by the trial Court. It failed to do so. This Court cannot do that investigation. Without this, it is virtually impossible to reach a finding on a balance of probabilities. Ultimately, though the parties proceeded by way of documents under section 30 of the *Small Claims Court Act*, that was not the prudent way to go. Clearly, it was necessary for the documents to be subjected to further examination and possibly, cross-examination in order for the trial court to draw a fair finding. That opportunity was lost.

25. In the end, even though the Small Claims Court is not bound by strict rules of procedure under the *Civil Procedure Act*, it is still the requirement that every case be proved on a balance of probabilities through examination of the evidence adduced.

Conclusion and Disposition

26. Given the lapse of statutory timelines, this matter cannot be referred back to the adjudicator for further examination of the documents adduced. That would have been an option in a normal case.

27. In the result, the adjudicator’s finding is hereby set aside and the suit is dismissed for want of proof.

28. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 1ST DAY OF OCTOBER, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Ireru for Respondents

E. Njiru for Appellant

Francis Munyao - Court Assistant

