



**Abdalla v Kaingu (Commercial Case E017 of 2024)
[2024] SCC 1 (KLR) (6 December 2024) (Judgment)**

Neutral citation: [2024] SCC 1 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT LAMU
COMMERCIAL CASE E017 OF 2024
FM MULAMA, RM
DECEMBER 6, 2024**

BETWEEN

ZAHIRA ZIWA ABDALLA CLAIMANT

AND

ABUBAKAR JOHN KAINGU RESPONDENT

JUDGMENT

1. The claimant Zahira seeks from the court compensation of Kshs.33,800/= being cost of construction of a balcony that collapsed sometime after it was allegedly constructed by the respondent.
2. It is the claimant's case that the respondent did some shoddy work that led to its collapse and as such she suffered loss and damage and now blames the respondent for the loss.
3. The respondent on the other hand denies the claim in toto and states that the works in question were done way back in 2019 and the balcony collapsed in the year 2023.
4. It was further his contention that he was not aware of what he signed for in the agreement and the contents of the said agreement were not read and explained to him and it was his view that him together with CW3 Ali Weledi had bound themselves to repaying the claimant since he assisted CW3 who was the main contractor and he was only assisting him famously known as "mtu wa mkono" in construction world.

Issue For Determination.

- a. Whether there is a valid agreement between the claimant and the respondent.
- b. Whether the claimant proved the claim for Kshs.33,800/=.



Analysis And Determination.

a. Whether there is a valid agreement between the claimant and the respondent.

5. The claim generally is based on the impugned agreement between the claimant and the respondent titled, “Mkataba wa kununua material na pesa za fundi”. The said agreement is witnessed by the chief who was also called as the claimant’s witness as well as Ahmed Ali Weledi.
6. The validity of the said agreement has been brought into question by the respondent who denies knowing the contents therein. And in order to determine this question with finality there is need for the court to satisfy itself that none of the factors that vitiate a contract are present.
7. Factors that vitiate a contract (agreement) have been said to be misrepresentation, mistake, duress, undue influence, incapacity, illegality and frustration of purpose.
8. A look at those factors, 2 are close to what the respondent seeks to rely on. Duress and undue influence. It was the evidence of the claimant and the area chief who drafted the agreement that after she reported the matter to the police, the respondent was summoned to the police and the police directed them to the chief where the impugned agreement was drafted and signed.
9. Duress is a situation where one party is forced into a contract through threats, coercion or psychological pressure whereas undue influence on the other hand is a situation where one party takes advantage of a position of power or trust to persuade the other party.
10. Given the testimony on record, it is clear from the definition foregoing that chances are the respondent was under duress when he signed the agreement considering the fact that he was staring at a being placed behind bars should he decline. It was the evidence of CW2 the area chief that they went to his office straight from the police station and he drafted the agreement. This is a clear demonstration of duress and this explains why the respondent did not understand what he was signing for at least for the fear of not being placed behind bars.
11. On that ground alone, this court finds that based on the evidence on record and the circumstances under which the agreement was signed the respondent was under duress and he had in the circumstances no option but to sign the agreement and as such the agreement cannot be said was entered into voluntarily by the respondent and as such it is an invalid agreement.

b. Whether the claimant proved the claim for Kshs.33,800/=.

12. On the second issue, the claimant wants to be awarded Kshs.33,800/= as compensation. The claim as presented comes in the form of special damages.
13. From the evidence on record it is not clear how the claimant arrived at this figure. CW 3 who happens to have been aware of the goings-on and who helped or was present when the building materials were being bought clearly indicated that the claimant used to buy those materials and she has the receipts.
14. No such receipts have been produced in court to show the actual costs incurred by the claimant to warrant this court ascertain whether the said costs were incurred or not.
15. Secondly, it is not in doubt that the balcony was built way back in 2019 and came to collapse in 2023 almost 4 years later. There is no acknowledgement that it is prone to wear and tear that is natural to any building.



16. If the building works were as shoddy as the claimant puts it am sure the said balcony would not have survived even a day. It would have collapsed the same day it was constructed.
17. Furthermore, there is no assessment report that has been availed to court to state with expertise as to what exactly caused the collapse whether it was by human activity, poor workmanship or simply force majeure.
18. In the absence of such an expert report to speak to what exactly caused the collapse, it would be absurd to find the respondent liable for the collapse and this would mean all building owners would be suing their contractors left right and centre even on collapses caused by force majeure or by their own recklessness or human activities.
19. Assuming that I was to even find that there was a valid agreement between the claimant and the respondent, I would still be reluctant to award the claimant the amount claimed for the reasons discussed above.
20. The claimant has mainly not demonstrated by way of an expert report speaking to what caused the collapse and secondly and most importantly how she arrived at Kshs.33,800/=.
21. What caused the collapse was an important component upon which the court would have used to attach liability without it this court cannot tell what caused the collapse.

Conclusion and Disposition.

22. The upshot of the foregoing I make the following final orders;
 - a. The claim for Kshs.33,800/= and the attendant prayers contained at prayers (b) to (e) are disallowed with costs to the respondent.
 - b. The said costs are assessed at Kshs.1,000/=
 - c. Let the file be closed forthwith.
23. Orders accordingly.

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:

Court Assistant:- Fatuma Yunis & Shariffa Abdalla.

Mr.Soita for Claimant

Abubakar John Kaingu.

DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS....6THDAY OF ...DECEMBER...2024.

HON. FLAVIAN.M. MULAMA

ADJUDICATOR SCC LAMU

