



**Kambuni t/a Bonah Junction Hardware v Shadrack Sons Limited (Civil Appeal E018 of 2025) [2025] KEHC 15282 (KLR) (Civ) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15282 (KLR)

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

**CIVIL**

**CIVIL APPEAL E018 OF 2025**

**AN ONGERI, J**

**OCTOBER 30, 2025**

**BETWEEN**

**EMMACULATE KERUBO KAMBUNI T/A BONAH JUNCTION  
HARDWARE ..... APPELLANT**

**AND**

**SHADRACK SONS LIMITED ..... RESPONDENT**

*(Being an Appeal from the Judgment of Hon. C.A. Okumu (ADJUDICATOR/  
RM) in Nairobi SCCCOM Case No. E16096 of 2024 delivered on 28/03/2025)*

**JUDGMENT**

1. The Appellant was the Respondent in Nairobi SCCCOMM Case No. E16096 of 2024 where the Respondent in this Appeal was the Claimant.
2. The Claim was in respect of goods supplied to the Appellant by the Respondent worth Kshs. 703,050/= delivered to the Appellant on or about 03/12/2023.
3. The Appellant issued the Respondent with two postdated cheques for Kshs. 340,000 dated 15/01/2024 and another for Kshs. 363,050/= dated 18/01/2024.
4. The cheques were dishonoured and the Respondent filed Nairobi SCCCOMM Case No. E16096 of 2024.
5. The Appellant filed a response to the statement of claim and stated that the goods delivered by the Respondent were worth Kshs. 703,050/=.
6. Further, the Appellant said she subsequently met with the Director of the Respondent and they agreed that the Appellant was to settle the debt by 31/01/2025.



7. The Appellant said that she paid the Respondent Ksh. 20,000/- and a further Kshs. 21,000/= on 6<sup>th</sup> October 2024 and the outstanding balance was Ksh. 494,550/=.
8. The Trial court found that the two dishonoured cheques amounting to Kshs. 703,050/= were prove that the Appellant owed the Respondent a total of Kshs. 703,050/=.
9. The trial court also found that the Appellant relied on Mpesa statements which showed payments to a paybill but there was no evidence to show or link the deposits to the Respondent.
10. The trial court entered judgment in favour of the Respondent against the Appellant in the sum of Kshs. 703,050/= plus costs of Kshs. 75,000/=.
11. The Appellant has appealed against the judgment on the following grounds:
  - i. The learned Adjudicator erred in law by arriving at a conclusion that the two dishonoured cheques of Ksh. 340,000.00 and Ksh. 363,050.00 were a conclusive proof of the total sum of Ksh. 703,050.00 owed by the Appellant.
  - ii. The learned Adjudicator erred in law by shifting the burden of proof to the Appellant despite the trite law that whoever alleges must prove.
  - iii. The learned Adjudicator erred in law by failing to find that the Respondent had not discharged its evidentiary burden in proving the sum of Ksh. 703,050.00 having failed to produce supporting evidence and/or documentation.
  - iv. The learned Adjudicator erred in law in failing to consider evidence laid before her by the Appellant.
  - v. The learned Magistrate erred in law in totally disregarding the Appellant's pleadings and submissions to support payments already made by the Appellant.
12. The parties filed written submissions as follows: the appellant submitted that a dishonoured cheque, while indicative of an intention to pay is not conclusive proof of debt. The respondent had the burden to prove the underlying transaction giving rise to the alleged debt of Kshs. 703,050. The appellant argued that the cheques for Kshs. 340,000 and Kshs. 363,050 were issued in error. The delivery note produced was faint, undated, unsigned and lacked an order reference.
13. The appellant argued that it is trite law that the burden of proof lies with who alleges. The respondent failed to adduce any documentary evidence to substantiate the alleged debt of Kshs. 703,050. The appellant argued that the trial court erred in shifting the evidentiary and legal burden of proof to the appellant who was under no obligation to disprove a debt that had not been proven.
14. The appellant submitted that she provided evidence that proved that she received goods valued at Kshs. 535,555. She further established that she had made part payment to the respondent amounting to Kshs. 113,000 thereby leaving an outstanding balance of Kshs. 422,555. The trial court completely disregarded the appellant's evidence without justification, contrary to the constitutional guarantee under article 50(1) of the *Constitution* of Kenya.
15. The respondent alternatively submitted that there was no error on the part of the learned adjudicator in arriving at the finding that the 2 postdated cheques for Kshs. 340,000 and Kshs. 363,050 were proof that a total sum of Kshs. 703,050 was owed by the appellant to the respondent.
16. The respondent argued that the appellant never raised the issue of legal burden of proof and the evidential burden of proof at the trial court. The appellant thus seeks to introduce an entirely new



point which she is precluded to do so at this point. This would further prejudice the respondent as he is denied the opportunity to adduce evidence that may be necessary to counter or dispel the new point. The appellant's intended new ground of appeal was not pleaded before the trial court, no evidence was lead on them, the parties did not address the court on them and the learned adjudicator did not pronounce herself on the issues in ground 2 and 3 of the memorandum of appeal.

17. This being an appeal from the Small Claims Court, the same can only be entertained if it is on points of law.
18. The issues for determination are as follows:-
  - i. Whether the Respondent proved his case to the required standard.
  - ii. Whether the trial Court disregarded the Appellant's evidence.
19. The central issue is whether the learned Adjudicator erred in law in concluding that the two dishonoured cheques for a total of Kshs. 703,050 were conclusive proof of the debt owed to the Respondent.
20. The law in Kenya on this point is well-settled. A cheque, including a dishonoured one, is a valuable piece of evidence, but it is not, by itself, irrefutable proof of the existence or the exact quantum of a debt.
21. The court must still be satisfied on a balance of probabilities that the underlying debt exists for the amount claimed.
22. In this case, the Respondent as the claimant bore the legal burden of proving its case on a balance of probabilities.
23. The production of the dishonoured cheques was a significant step in discharging this burden, shifting an evidential burden onto the Appellant to raise a credible challenge.
24. However, the final legal burden to prove the claim remained with the Respondent throughout.
25. The Appellant's defence was not a mere denial but she asserted that the value of the goods received was Kshs. 535,555 and that part payments had been made, leaving a balance of Kshs. 422,555.
26. Crucially, the Appellant provided M-Pesa statements showing a series of payments totalling Kshs. 113,000 made to a paybill number.
27. I have perused the record of appeal from page 44 to page 50 and I find that there is documentary evidence that the Appellant paid the Respondent Ksh. 29,000 on 5th February 2024, Ksh. 30,000 on 8<sup>th</sup> April 2024, Ksh. 13,000 on 18th June 2024, Ksh. 20,000 on 30 August 2024 and Ksh. 21,000 On 6th October 2024 via KCB paybill and the payee is the Respondent
28. The total amount paid of Ksh. 113,000 ought to have been factored by the Trial Court.
29. The learned Adjudicator's finding that there was "no evidence to show or link the deposits to the Respondent" was a finding not supported by the record, as the statements identified the payee as the Respondent.
30. While the probative value of a faint, undated delivery note may be questionable, the evidence of subsequent payments directly to the Respondent's paybill strongly corroborates the Appellant's assertion that a commercial relationship and a debt, albeit for a different amount, existed.



- 31. The trial court’s failure to engage with and make a finding on this credible evidence of payment constitutes an error of law since the court has a duty to consider all the evidence presented before arriving at a decision.
- 32. The total disregard of the payment evidence without justification was a breach of this duty and of the Appellant’s right to a fair hearing under Article 50 of the Constitution.
- 33. Consequently, the finding that the Respondent proved a debt of Kshs. 703,050 is unsustainable.
- 34. The dishonoured cheques are evidence of an acknowledged indebtedness, but the Appellant’s evidence of part-payment was credible and unrebutted.
- 35. In line with the principle that a court of appeal can, and should, evaluate the evidence to arrive at a just conclusion on a point of law, the evidence on record establishes that the Appellant made payments of Kshs. 113,000 towards the debt.
- 36. Therefore, the judgment of the trial court is set aside and substituted with an order that judgment be and is hereby entered for the Respondent against the Appellant in the sum of Kshs. 590,050 (being Kshs. 703,050 less Kshs. 113,000).
- 37. The award of costs of Kshs. 75,000 in the subordinate court is upheld.
- 38. Each party shall bear its own costs of this appeal.

It is so ordered

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**A. ONGERI**  
**JUDGE**

Judgment virtually delivered in the presence of:

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