



Mutisya t/a Brimax Canvas & Leather v Rixin Trading Limited (Commercial Case E038 of 2023) [2025] KEHC 15171 (KLR) (Commercial and Tax) (24 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E038 OF 2023**

MN MWANGI, J

OCTOBER 24, 2025

BETWEEN

**EMMANUEL NZOLE MUTISYA T/A BRIMAX CANVAS &
LEATHER APPELLANT**

AND

REXIN TRADING LIMITED RESPONDENT

(Being an Appeal from the judgment of the Small Claims Court at Milimani Nairobi delivered by Honourable S. G. Gitonga on 30th January 2023 in SCCCOMM No. E4880 of 2022)

JUDGMENT

1. The respondent filed a claim in the Small Claims Court vide a statement of claim dated 8th August 2022, seeking judgment against the appellant for Kshs.962,500/= plus interest at 3% per month from 20th August 2020 until payment in full. The respondent also prayed for costs of the suit with interest at Court rates from the date of judgment until payment in full.
2. The respondent's case was that the appellant was its customer under a Sale and Supply of Goods Contract for Reline products, supplied between 27th March 2020 & 1st April 2020 and that the contract provided inter alia, that no complaints after delivery of goods would be entertained. Other terms were for payment of a 3% monthly interest on overdue accounts, and that there would be no return of goods once sold. That the said terms were expressly stated in the invoices and delivery notes issued to the appellant. The respondent claimed that the appellant received goods worth Kshs.2,062,500/=, paid part of it and left an outstanding balance of Kshs.962,500/=, which sum remained unpaid despite repeated demands and even after issuance of a formal demand letter dated 20th October 2021. The respondent asserted that the aforesaid outstanding amount continues to accrue 3% monthly interest from 20th August 2020 until full payment.



3. In response to the respondent's claim, the appellant filed a response to the claim dated 18th October 2022 where he denied all the allegations contained in the respondent's statement of claim. He contended that the alleged invoices are contradictory since no valid delivery or acknowledgment occurred, therefore the respondent's claims are unsubstantiated. He asserted that the claimed sum amounts to unjust enrichment, is unconscionable, and if any agreement existed, he is a stranger to it, hence it is void.
4. In a Judgment delivered on 30th January 2023, the Small Claims Court found that the respondent had proved its case against the appellant on a balance of probabilities and accordingly entered Judgment in favour of the respondent for Kshs.962,500/= together with interest at Court rates from the date of filing suit until payment in full, plus costs of the claim.
5. Aggrieved by the aforesaid Judgment, the appellant filed a Memorandum of Appeal dated 28th February 2023 raising the following grounds of appeal-
 - i. That the learned Trial Magistrate erred in fact and law in decreeing that the respondent had proved its case on the requisite threshold while it had not provided cogent evidence to support its claim of a supply agreement with the appellant;
 - ii. That the learned Trial Magistrate erred in fact and law in placing the burden of proving the appellant's signature on the delivery notes through expert witness, while the appellant had provided his specimen signature and the respondent did not rebut the same; and
 - iii. That the learned Trial Magistrate erred in fact and law by decreeing that the respondent's claim was for allowing while it had pleaded that it had issued invoices but only provided one unauthentic invoice.
6. The appellant's prayer is for the Appeal to be allowed and for the Judgment delivered on 30th January 2022 to be set aside, and to be substituted with an order that the respondent did not prove its claim on a balance of probability.
7. The instant Appeal was canvassed by way of written submissions. The appellant's submissions were filed on 30th January 2025 by the law firm of Chege & Sang Company Advocates, whereas the respondent's submissions were filed by the law firm of Maranga Nyang'ute & Company Advocates on 20th February 2025.
8. Mr. Kamau, learned Counsel for the appellant relied on the Court of Appeal case of Independent Electoral and Boundaries Commission & another v Mule & 3 others [2014] KECA 890 (KLR), and submitted that the respondent failed to produce any contract or agreement to support its claim. Further, that the documents alleged to constitute the contract and bearing the appellant's signature were neither produced nor proved in Court. Counsel asserted that in the absence of such evidence, the respondent's claim was unsubstantiated and speculative.
9. Counsel contended that the respondent only produced invoices and delivery notes bearing a disputed signature, without the appellant's company's rubber stamp. He stated that the appellant denied that the signatures were his, and provided his specimen signature from his identification card, but the respondent failed to call a handwriting expert to rebut the same. Mr. Kamau cited the case of Ahmed Mohammed Noor v Abdi Aziz Osman [2019] eKLR, and Section 107 of the *Evidence Act* and contended that the Trial Magistrate erred in shifting the burden of proof to the appellant in respect to the disputed signatures.



10. Mr. Kamau submitted that a liquidated claim must be both specifically pleaded and proved. He argued that while the respondent's case was premised on signed and stamped invoices, only one unsigned and unstamped invoice of an indeterminate amount was produced, but despite that deficiency, the Trial Court allowed the claim, which Counsel asserted amounted to an error both in fact and law, resulting in an erroneous Judgment.
11. Mr. Maranga, learned Counsel for the respondent relied on the Court of Appeal case of Abdulkadir Shariff Abdirahim & another v Awo Sharriff Mohammed t/a A. S. Mohammed Investments [2014] eKLR, and the case of Toyota Kenya Limited v Vehicle & Equipment Leasing Limited [2021] KEHC 12871 (KLR), and submitted that the contract between the parties herein was oral and their contractual relationship was evidenced by the invoices raised and delivery notes signed by the appellant in acknowledgment of receipt of goods supplied by the respondent.
12. Mr. Maranga referred to the case of Robert Ouma Njoga v Benjamin Osano Ondoro [2016] KEHC 4494 (KLR) and the Court of Appeal case of Demutilla Nanyama Pururmu v Salim Mohamed Salim [2021] KECA 595 (KLR) and contended that the appellant bore the burden of proving forgery or fraud under Sections 107 to 109 of the *Evidence Act*, which burden he failed to discharge. Counsel argued that the appellant's reliance on a signature appearing on his identification card issued in the year 2022 was unreliable since it was issued two years after the disputed 2020 delivery note, thereby raising the likelihood that the appellant may have altered his signature.

ANALYSIS AND DETERMINATION.

13. Being the 1st appellate Court, I have a duty to analyze and re-evaluate the evidence adduced before the Small Claims Court and reach my own independent conclusion, while bearing in mind that I neither saw nor heard the witnesses testify and make due allowance for the said fact. This was the holding by the Court in the case of *Selle v Associated Motor Boat Co.* [1968] EA 123, where it was stated that-

The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the 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. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.

14. An appellate Court will only interfere with the Trial Court's finding if the same is found on wrong principles of law or if the Court misdirected itself on the facts. To this end, I am bound by the Court of Appeal finding in the case of *Mwanasokoni v Kenya Bus Services Ltd* [1985] KECA 82 (KLR), where it was held that -

Accordingly, on when a finding of fact that is challenged on appeal is based on no evidence, or on a misapprehension of evidence or the judge is shown demonstratively to have acted on wrong principles in reaching a finding he did, will this court interfere.

15. I have re-examined the Record of Appeal and given due consideration to the written submissions by the parties' respective Counsel. The issue that arises for determination is whether the instant Appeal is merited.



16. The respondent's case against the appellant is that it supplied goods to the appellant valued at Kshs.2,062,500/=, of which the appellant made part payment, leaving an outstanding balance of Kshs.962,500/= which is due and owing to the respondent. From the foregoing, it is evident that the respondent's case against the appellant is one for special damages. It is trite law that special damages must be specifically pleaded and strictly proved. To this end, this Court is bound by the Court of Appeal holding in the case of Hahn v Singh [1985] KECA 129 (KLR) where it was held that –

...special damages which must be not only claimed specially but proved strictly for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the acts themselves.

17. It is not in contest that the respondent did not produce any agreement and/or contract in support of the claim. The respondent however relied on an invoice dated 25th March 2020 for Kshs.2,062,500/=, a delivery note dated 1st April 2020 and its account ledger dated 15th February 2022 in support of its claim. The respondent asserted that at the time of delivery of the goods in question, it issued the appellant with delivery notes and invoices, which the appellant acknowledged receipt of, by signing and stamping on the said delivery notes.

18. In opposition to the respondent's claim, the appellant denied acknowledging the invoice and/or signing the delivery notes in issue. He further produced a specimen signature, together with the signature on his identification card, to demonstrate that the signature appearing on the delivery note was not his.

19. It is evident that the respondent neither alleged nor proved that the appellant signed or was required to sign and stamp the invoices. Instead, the respondent contended that the appellant acknowledged receipt of the goods by signing and stamping the delivery notes. The delivery note relied upon by the respondent in the Trial Court however bears only a signature purportedly belonging to the appellant, but lacks the appellant's company's stamp as required. In the premise, the absence of the appellant's company's stamp on the face of the delivery note gives credence to the appellant's rebuttal of the signature that appears on the said delivery note.

20. It is trite law that he who alleges must prove. This maxim is founded on the provisions of Sections 107, 108 & 109 of the Evidence Act, which state that -

107. Burden of proof.

1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.



21. The standard of proof in civil cases is that of a balance of probabilities. Since the respondent relied on the authenticity of the delivery note as proof of its case against the appellant and the appellant disputed that the signature appearing thereon belongs to him, the respondent had a duty to adduce cogent and credible evidence demonstrate that the said delivery note was genuine and that the said signature belonged to the appellant. It was only upon the respondent discharging the said burden of proof would the said burden shift to the appellant to produce evidence to the contrary.
22. Upon perusal of the pleadings filed, this Court notes that at no point did the appellant raise an issue and/or claim of forgery. Instead, the appellant simply denied that the signature on the delivery note belonged to him. The said fact, coupled with the fact that the delivery note did not bear the appellant's company's stamp, the respondent had a burden of proving that the said signature indeed belonged to the appellant.
23. In the circumstances, I am inclined to agree with the appellant that the Trial Court erred in shifting the burden of proof to him by requiring him to prove that the signature on the delivery note in issue did not belong to him.
24. I am therefore persuaded that the instant Appeal is merited. It is hereby allowed. I hereby make the following orders –
 - i. The Trial Court's Judgment delivered on 30th January 2023 is hereby set aside and it is hereby substituted with an order dismissing the respondent's suit filed in the Small Claims Court; and
 - ii. Costs of the Appeal and the suit before the Trial Court are hereby awarded to the appellant.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 24TH DAY OF OCTOBER 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Chege Kamau for the appellant

Mr. Mungai holding brief for Mr. Maranga for the respondent

Ms B. Wokabi – Court Assistant.

