



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wahome v Kinyanjui (Civil Appeal E282 of 2023)  
[2025] KEHC 15191 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15191 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E282 OF 2023  
TW OUYA, J  
OCTOBER 28, 2025  
FORMERLY KIAMBU 307 OF 2023**

**BETWEEN**

**BONIFACE WACHIRA WAHOME ..... APPELLANT**

**AND**

**PURITY WATURI KINYANJUI ..... RESPONDENT**

*(Being an appeal from the judgement of Hon. V. Ogotu (Adjudicator) in SCCOMM No. E481 of 2023 In The Small Claims Court, Thika delivered on 29th June, 2023)*

**JUDGMENT**

1. The Appellant lodged a Statement of Claim dated 29<sup>th</sup> April 2023 at the Thika Small Claims Court seeking that judgment be entered in the sum of Ksh. 608,000.00 against the Respondent.
2. It was alleged that the Appellant and the Respondent mutually agreed to undertake the business of selling clothes. The capital required for the business was Kshs. 1.2 million, therefore, each party was to contribute Kshs. 600,000.00 towards the business. The appellant allegedly deposited Kshs. 600,000.00 to the Respondent's account. However, the Respondent went to Dubai but neither purchased the clothes nor refunded his money.
3. The Respondent denied the claim through her response to claim dated 30<sup>th</sup> May 2023. She also denied the existence of any contract between her and the appellant.
4. The matter proceeded for hearing on 15<sup>th</sup> June 2023 where the Appellant testified as the sole witness for the Claimant. He testified that in 2022, he made acquaintance with the Respondent, as he used to buy clothes from her. On 17<sup>th</sup> July 2022, the Respondent borrowed some money from him to supply a customer, he sent her Ksh. 7,500.00 but the Respondent never refunded the amount. Later on, 6<sup>th</sup> October 2023, the Respondent approached him with a business proposal where upon he was



- required to contribute Ksh. 600,000.00. He took a loan facility of Ksh, 650,000.00 which he deposited in the Respondents account. The Respondent proceeded to Dubai but neither gave him the clothes nor refunded his deposit.
5. He therefore lodged a claim for Ksh. 608,000.00 as that was the amount of money that the Respondent was to repay him.
  6. At the end of the trial, the Appellant's claim was dismissed as the Appellant had failed to prove that the monies sent to the Standard Chartered account had been paid to the Respondent. The trial court observed that the owner of the account had not been ascertained. Nevertheless, the court entered judgement in favour of the Appellant against the Respondent for the sum of Ksh. 60,400.00 which was proven to have been sent to the Respondent.
  7. Aggrieved and dissatisfied with the decision of the trial court, the Appellant lodged the instant appeal vide a memorandum of appeal dated 27<sup>th</sup> July 2023 on grounds that;
    - a. The learned magistrate erred in law in awarding the decretal sum by relying on the respondent's Mpesa statement yet the claimant transferred the funds to the respondent's Mpesa business Paybill account
    - b. The learned magistrate erred in law and misdirected herself in law by applying wrong and or did not apply the correct law, test, doctrines and principles as provided under the Evidence Act
    - c. The learned magistrate erred in law by failing to consider the claimant's evidence as provided by the Evidence Act
  8. Therefore, the Appellant prayed that the instant appeal be allowed with costs in favour of the appellant and the judgement of the small claims court awarding the claimant KShs. 60,400.00 interests and costs of the suits be substituted with an award of KShs. 608,000 plus costs and interest.
  9. By order of the court the appeal was canvassed through written submissions.
  10. It was submitted that the appellant had sufficiently discharged his burden of proof in that he supplied the Mpesa statements as evidence of payment of the money in question to the Respondent. therefore, the court ought to exercise its discretion to set aside the judgment as was out in the case of *Pindoria Construction Ltd v Ironmongers Sanitaryware* Civil Appeal No. 16 of 1976. It was further submitted that the Respondent be condemned to pay costs of the suit.
  11. The Respondent did not file any submissions.
  12. This being the first appeal, I am obligated to re-evaluate the evidence of the trial court and come up with my own conclusion. I am however minded of the fact that unlike the trial court, I did not have the chance to hear witnesses and observe their demeanor and for this I give due allowance. This position was held in the case of *Selle & Another v Associated Motor Board Company Ltd* [1968] EA 123, where the court held as follows: -

“...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 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...”
  13. The issue that I have distilled for determination is whether there was a valid contract between the appellant and the Respondent.



14. On this issue, *Black's Law Dictionary* defines a contract as follows:

An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.
15. In the case of *William Muthoo Muthami v Bank of Baroda* [2014] eKLR, the Court of Appeal observed:

“In the law of contract, the aggrieved party to an agreement must, in addition, prove that there was offer, acceptance and consideration. It is only when those three elements are available that an innocent party can bring a claim against the party in breach.”
16. In *Charles Mwirigi Miriti v Thananga Tea Growers Sacco Ltd & Another* [2014] eKLR, the Court of Appeal also observed:

“It is trite that there are three essential elements for a valid contract that is an offer, acceptance and consideration”.
17. In *Abdulkadir Shariff Abdirahim & another v Awo Shariff Mohammed T/A A. S. Mohammed Investments* [2014] eKLR, this Court stated:

“There is no general rule of law that all agreements must be in writing. The numerous advantages of a written agreement notwithstanding, all that the law requires is that certain specific agreements must be in writing or witnessed by some written note or memorandum. Section 3(1) of the Law of Contract Act is one such provision”.
18. On implied contracts, the Court of Appeal in *Ali Abid Mohammed v Kenya Shell & Company Limited* (2017) eKLR, stated that a contract between parties can exist where no words have been used but where it can be inferred from the conduct of the parties that a contract has been concluded. The court said;

“It therefore follows that a contract can exist where no words have been used but where it can be inferred from the conduct of the parties that a contract has been concluded. See *Timoney and King v King* 1920 AD 133 at 141. In the circumstances of the instant case, there existed an enforceable contract between the parties by reason of Conduct. Indeed, it was not disputed by the respondent that it supplied petroleum products to the appellant at a specific amount per liter and for a certain period of time.”
19. It therefore follows that a contract need not be in writing but can be inferred from the conduct of the parties. It must be noted that the elements of offer, acceptance and consideration must be proved, in implying a contract the conduct of the parties remain paramount.
20. This Court is therefore enjoined to ascertain whether the pleadings, the evidence and the general conduct of the parties reveal any contract.
21. The main contention of the appellant is that he allegedly contributed Kshs. 608,000.00 towards a joint business venture between him and the Respondent. A claim that the Respondent vehemently denied by stating that there was no contract between him and the appellant in any form. PW1 testified that he had previously known the Respondent as a dealer in clothes and in some occasions lent her some money that she never refunded.



22. From the record, I note that there is no evidence that there was a written contract between the appellant and the respondent. The appellant only provided statements of accounts regarding money paid into the Respondent's bank account. Although the Appellant alleges that he paid the said monies through pay bill, there is no evidence that the account to which the money was paid actually belonged to the Respondent.
23. Section 107 (1) of the *Evidence Act* provides that:
- Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.
24. In *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court held as follows:
- “As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.
25. Flowing from the above, the appellant bore the legal burden of proving the existence of the contract between him and the Respondent. a perusal of the record shows that he failed to discharge the burden to the required standard.
26. Whereas the Respondent denied entering into any contract with the Appellant, she did not offer any reason for the Kshs. 60,400.00 that the appellant had advanced to his account. In the absence of any other explanation, it is possible to deduce that the amount in question could be money owed to the Appellant. I therefore concur with the finding of the trial court that on Ksh. 60,400.00 had been proved to the required standard.
27. The upshot of the matter is that the appeal herein is dismissed. Each party to bear its costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Appellant.....Kereu Benjamin Hb For Mr. Muturi Njoroge.

For Respondent.....no Appearance

Court Assistant...brian

