



**Barasa v Liduvwi (Civil Appeal 93 of 2024)
[2025] KEHC 16184 (KLR) (10 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16184 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 93 OF 2024
S MBUNGI, J
NOVEMBER 10, 2025**

BETWEEN

VICTOR CHRISWA BARASA APPELLANT

AND

ERICK LIDUVWI RESPONDENT

*(Being an appeal arising from the decision of Hon. Carolyn Cheruiyot in
Kakamega Small Claims case no. 443 of 2023 delivered on 9th April 2024)*

JUDGMENT

1. The respondent herein had filed a statement of claim at the small claims court, where he sought judgment for Kshs. 630,000/= on breach of contract by the appellant herein.
2. The appellant in his defence denied owing the respondent any money and stated that he was his employee and used to give loans to members of the respondent microfinance and when the members defaulted the respondent had him arrested and taken to Busia police station and forced to sign an agreement under duress for payment of what was defaulted and was arrested but currently released on a cash bail of Kshs. 10,000/-
3. In its judgment dated 9th April 2024, the learned adjudicator stated that there was a contractual agreement between the two dated 30/04/2023, which the respondent produced and the appellant refused its validity, claiming he signed it through coercion after he was arrested.
4. The trial court found that the contract was valid and that the amount of Kshs. 630,000/= was specifically pleaded and proved, and ruled in favour of the respondent.
5. The appellant, being aggrieved and or dissatisfied with the decision of the Honourable Court, preferred an appeal based on the following grounds;



- a. The Honourable Adjudicator had no jurisdiction to entertain the claim based on transactions that exceeded the value of Kenya Shillings one million. 1,000,000/=
 - b. The respondent did not specifically prove his claim to the required standard at all
 - c. The decision of the Honourable adjudicator was based on conjecture and not evidence tendered.
 - d. The learned adjudicator erred in law when she went looking for evidence by calling a non-party to testify in the matter.
 - e. The Honourable adjudicator erred in law and fact when she upheld a contract signed by the appellant under duress and in police custody, 3 days after arrest.
6. They pray that the appeal be allowed and the judgment of the adjudicator be set aside with costs to the appellant.

Brief of the evidence.

7. CW1, Erick Liduvwi, who was the claimant, relied on his statement dated 5/9/2023, which he adopted as his evidence in chief. He produced a contract dated 30/4/2023 and stated that he had agreed with the respondent, who was his employee, for disbursing a loan for him; however, the respondent channeled the money to his relatives, including his father, sister, and daughters. He claimed that during his investigation, he called the clients to see if they had received the funds for which he had declined, and yet he had disbursed the funds.
8. He claimed that he called the respondent to the office, went through the list, and later reported the incident to the police, and he was arrested. He claimed that the respondent agreed to start making the payments to him in April 2023, for which he defaulted and prays to be refunded the money owed to him.
9. During cross-examination, he stated that he owned a licensed micro-finance business, for which he employed the respondent to work for him in educating and lending small business funds, and he was to approve payment. He claimed that he investigated and found that the respondent had disbursed the fund to his father, sister and daughter s who are not their clients and that when he took action to have the respondent arrested for stealing by servant and that he signed the agreement for returning the money he had stolen from him after he was released since he was arrested on Friday and released on Monday. He denied the allegations that the respondent had signed the repayment plan under duress, as he was in the presence of his wife, who witnessed the signing of the agreement.
10. RW1, Victor Chiriswa, confirmed that he worked for the microfinance, which was owned by the claimant and stated that his duty involved looking for members and training them and later disbursing loans. He claimed that the members, who also included his family members, signed the loan form, which would be confirmed by the claimant before he disbursed the funds to the members. He claimed that there was an audit that was conducted for which he was not privy to and when he came back from his business in Busia, he was informed that there was some missing money that was not accounted for and according to the audit report he owed the claimant 993,000/= he claimed that he was forced to make an agreement that he would pay half the amount and then he was arrested and taken to the police cell on Friday and his wife called the claimant on Saturday to sought out the issue and he was forced to sign the agreement in the presence of the CID officer and his wife that is when he was given a cash bail of Kshs. 10,000.



11. During cross-examination, he confirmed signing the agreement on 30/4/2023 in the presence of his wife as a witness. He confirmed that many of the customers were his family members, and there was no law barring him from granting a loan to his family members claimed that it was the claimant who disbursed the loan directly.
12. CW2 was Susan Odhiambo, the respondent's wife, who claimed that she looked for her husband and was later informed that he had been arrested. And when he was at the station, she signed an agreement, although she was not aware of what she was signing. She confirmed that she received Kshs 10,000 and Kshs 20,000 from her husband without signing any loan application form
13. During cross-examination, she confirmed receiving Kshs. 30,000/= from the respondent, and agreed that she signed the agreement at the police station without having read the document, since she wanted her husband to be released and was not aware of what conditions were issued at the station.
14. In its judgment dated 9th April 2024, the Honourable adjudicator, upon analysing the witness testimony and the evidence in court, found in favour of the claimant and issued a judgment in the sum of Kshs. 630,000 and issued a decree of Kshs. 686,544 being the principal amount of Kshs. 630,000 and interest amount 5/9/2023 to 3/6/2024 at Kshs. 56,544, bringing the total amount to Kshs. 686,544/=
15. The appeal was canvassed by way written submission. The appellant's submission was filed on 24th October 2025, where they gave a brief background on the evidence and raised issues for determination.
16. On the first issue of whether the learned trial magistrate erred in finding that the agreement was enforceable, they quoted the principle of freedom of contract, which cannot be entered into by force or coercion and quoted several cases in support of their argument, including National Bank of Kenya Ltd vs. Pipe Plastic Sankolt Ltd Civil appeal No 95 of 1999.
17. They aver that the appellant was in police custody and agreed to refund the sum while he was detained, claiming that the agreement was signed under pressure and threats and thus to allow the agreement as evidence of admission amounted to a miscarriage of justice by the adjudicator.
18. On whether the respondent proved its claim on a balance of probability, they claimed that it was up to the respondent to prove that the appellant was liable to advance the payment to the customs which he failed to do and the adjudicator's finding that the appellant was solely liable for the audit, absent of proof was an error as the respondent was to proof the chain of distribution and accounts linking the appellant to sum claimed. He relied on sections 107-109 of the *Evidence Act* and the case of Timesales Ltd vs. Wilson Makokha Murefu (2011) KEHC (KLR) on the claim that he who alleges must prove.
19. They finally submit that the appeal raised questions of evidentiary fairness and voluntariness of consent occasioned by the trial court, and as such, this court ought to allow the appeal as prayed and set aside the decision and decree by the small claims court.
20. The respondent did not file their submissions

Analysis and determination.

21. I have considered the pleadings, the record of the trial court, the grounds of appeal, and the submission filed by the Appellant and find that the main issues for determination are;
 - a. Whether the trial court had jurisdiction to entertain the claim when the sum was over Kshs. 1,000,000/=
 - b. Whether the contract dated 30/04/2023 was valid and enforceable;



- c. Whether the respondent proved his claim on a balance of probabilities; and
 - d. Whether the appeal has merit.
22. The role of the first appellate court to reexamine and to reevaluate evidence to come up with its own findings was set out in *Selle v Associated Motor Boat Co.* (1968) E. A 123 as follows: -
- “ ... 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 ...”
23. This being an appeal from Small Claims Court, the jurisdiction of this court is limited to section 38 of the *Small Claims Court Act*, which provides as follows;
- a. A person aggrieved by the decision or an order of the court may appeal against that decision or order to the High Court on matters of law.
 - b. An appeal from any decision or order referred to in subsection (1) shall be final.
24. On the first issue of jurisdiction, I note that the appellant challenged the jurisdiction of the trial court on the basis that the transaction allegedly involved an amount exceeding Kshs. 1,000,000/=. However, I have perused the record of proceedings from the lower court and the pleadings before the trial court show that the claim was specifically for Kshs. 630,000/=.
25. Section 12(3)(a) of the *Small Claims Court Act*, No. 2 of 2016, provides that the jurisdiction of that court extends to civil claims whose pecuniary value does not exceed one million shillings.
26. The claim before the learned Adjudicator fell well within that limit as stipulated under the Small Claims Act. I therefore find that the trial court properly assumed jurisdiction. Consequently, this ground of appeal fails.
27. In their submission, the appellant in-depth analysed the claim that the agreement dated 30th April 2023, which was attested to by his client at the police station, was signed under duress and coercion and as such it was not a valid contract, a claim that the trial court failed to consider.
28. I am in agreement with the counsel that the law recognizes that a contract must be based on free consent, as provided under Section 14 of the Contracts Act, Cap 23, which defines consent as free when not caused by coercion, undue influence, fraud, misrepresentation or mistake.
29. The test for duress was articulated in *Pao On v Lau Yiu Long* [1980] AC 614, cited with approval in *Kenya Commercial Bank Ltd v Osebe* [1982] KLR 296, where the court held that for a plea of duress to succeed, the coercion must be such as to vitiate the party’s consent.
30. The trial court, after hearing the testimony of both the appellant and his wife, CW2, who was a witness at the police station when the agreement was being signed, found that the agreement was voluntarily executed. The appellant conceded that he signed the document in the presence of his wife, and she confirmed witnessing the signing.
31. While both alleged that they signed the document under “pressure,” and they never understood the consequences and implications of attesting to the agreement, no evidence of actual coercion, physical threat, or illegality was demonstrated or presented before the learned adjudicator. There was no complaint lodged against the police or the respondent regarding any alleged extortion or threat, and in that case, it was a case of who the court should believe.



32. In *Kenya Commercial Bank Ltd vs. Specialised Engineering Co. Ltd* [1982] KLR 485, the Court of Appeal held that a mere allegation of duress, without credible evidence of threat or illegality, is insufficient to invalidate an agreement voluntarily executed.
33. I find that the learned Adjudicator properly directed herself in holding that the appellant’s assertion of duress was an afterthought and that the contract, signed in the presence of his spouse, the police was valid and enforceable since there was no evidence of duress or coercion.
34. Her finding follows with the principle of freedom and sanctity of contract as reaffirmed in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd* [2001] eKLR, where the Court of Appeal held that:

“A court of law cannot rewrite a contract between the parties. It is not the business of the court to interfere with a contract freely entered into.”
35. I therefore find no error in the trial court’s determination on this claim.
36. The appellant’s advocate has raised a claim that the respondent’s case was not proved on the required standard of proof, which in civil claims is on a balance of probabilities. The respondent produced the written agreement, which the appellant admitted signing, and gave evidence supported by the sequence of transactions and an audit confirming the misapplied funds.
37. Section 107(1) of the *Evidence Act* places the burden of proof on he who alleges. Once the respondent proved the existence of an agreement for repayment of the funds allegedly misappropriated and as such, the evidential burden shifted to the appellant to rebut that claim.
38. The appellant’s only defence was that he signed under duress and that the respondent disbursed the funds directly, as he had no access to the funds. However, he never produced any bank records, receipts, or witness evidence to show that the disbursement did not pass through his control. He never produced his list of books to absolve him or any liability, and as such, I find that learned Adjudicator correctly concluded that the respondent’s case was unshaken, credible, and supported by documentary proof. In *Mbuthia Macharia v Annah Mutua Ndwiga & Another* [2017] eKLR, the Court of Appeal held that once a party adduces credible evidence on a fact, the burden shifts to the other party to disprove it.
39. In this case, the appellant failed to discredit the respondent’s claim and discharge the evidential burden.
40. In his grounds of appeal, the appellant avers that the trial court “called a non-party to testify” was not borne out by the record. I have perused the trial court proceedings and find that the only witnesses who testified were the claimant (CW1), the appellant (RW1), and his wife (CW2). There was no evidence that the court acted suo motu or invited a witness on its own motion, or if there was, the appellant did not elaborate further on this allegation and as such, I find that his claim is baseless and it fails accordingly.
41. Upon re-evaluating the entire record, I am satisfied that the trial court properly directed itself on both fact and law. The appellant’s allegations of coercion were unsubstantiated, and the respondent proved his claim on a balance of probabilities.
42. The findings of the learned Adjudicator were based on cogent evidence and consistent with established principles of contract law and evidentiary burden. I find no reason to disturb those findings.
43. In the result, this court finds that the appeal is devoid of merit and, as such, it is dismissed.
44. The judgment and decree of the Small Claims Court in *Kakamega Small Claims Case No. 443 of 2023*, delivered on 9th April 2024, are hereby upheld in full.



45. Costs of the appeal shall be borne by the appellant.

46. It is so ordered.

47. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 10TH DAY OF NOVEMBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Ms Repha for the Appellant present online.

Ms Eromba & Co. Advocates for Respondent absent.

