Chirag Builders Limited v Greenview Developers Limited (Civil Suit E391 of 2020) [2025] KEHC 16109 (KLR) (Commercial and Tax) (7 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16109 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

CIVIL SUIT E391 OF 2020

H NAMISI, J

NOVEMBER 7, 2025

BETWEEN

CHIRAG BUILDERS LIMITED ..... PLAINTIFF

AND

GREENVIEW DEVELOPERS LIMITED ..... DEFENDANT

JUDGMENT

1. By Plaint dated 28 September 2020, the Plaintiff instituted these proceedings against the Defendant seeking:
    a. Special damages comprised of:
        i. Kshs 91,117,157.46 as per the final accounts rendered by the Project QS;
        ii. Kshs 9,768,500.32 as the value of external work done on the 11 units;
        iii. Kshs 648,000/= as the cost of sil paint for the premises;
    b. Interest on (a) above at court rates pf 14% from the date of the final letter of demand until payment in full;
    c. Costs of this suit from the Defendant and interest thereon at court rates from the date of judgment until payment in full;
    d. Any other relief that this Honourable Court may deem fit and just to grant in the circumstances of the case.
2. The Plaintiff's claim is for monies due and owing for works performed on a project known as 'Peponi Villa 64 Residential Apartments' erected on property LR No. 1870/VIII/268, Nairobi. The Plaintiff

alleges breach of an oral agreement entered on or about 9 January 2015, which was based on verbal representations and mutual agreements as to the scope of the project. Secondly, and in the alternative, the Plaintiff brings a claim on the equitable doctrine of quantum meruit for the value of the work done and services rendered, which it avers, were accepted by the Defendant.

3. The Defendant filed a Statement of Defence dated 31 May 2024, denying the Plaintiff's claim in toto. The Defence fundamentally denies the existence of an oral contract and disputes the validity and quantum of the sums claimed.

4. When the matter proceeded to hearing, the Plaintiff called one witness, Niral Suresh Fatania. The Defendant did not call witnesses or adduce any evidence.

Plaintiff's Case

5. PW1, Niral Suresh Fatania, a director of the Plaintiff company, adopted his Witness Statement dated 28 September 2020 as his evidence in chief. He confirmed that a family relationship exists between the two companies: his father, Suresh Fatania, is the chairman of the Plaintiff company and also a director of the Defendant company. His father's brother, his uncle, is a director of the Defendant company. PW1 stated that the parties had undertaken some developments together in the past, and that even then, there was no written agreement.

6. PW1 testified that in 2014, the Plaintiff was engaged to carry out works on 11 villas. Specifically, the work comprised of finishings, staircase, roofing, cabro works, windows and internal paint work. The witness stated that the Plaintiff was not involved in erecting the building. The works were completed in 2016 and the Plaintiff submitted its costs, which precipitated this dispute.

7. According to PW1, the Defendant then hired an independent Quantity Surveyor (QS), Tower Costs Consultants, to re-evaluate the works. The QS prepared a report dated 1 February 2017 (Plaintiff's Exhibit 1), valuing the work at Kshs 12 million for the main building (per villa) and Kshs 9 million for external works. It was PW1's testimony that the QS valuation was never approved by any parties, and was subsequently sent to the Project Architect, Monica Mwangi of Castles Architecture. The Architect inspected each and every villa and redid the summary of costs, arriving at a value of Kshs 91,117,146/-. The witness asserted that this Report by the Architect has never been disputes and that the 11 villas are now occupied.

8. The cross examination of the witness elicited several critical admissions and contradictions. There was significant discrepancy between the oral testimony, in which the Plaintiff stated that the work done was finishing work. The pleadings, on the other hand, referred to erection and construction. PW1 admitted that the Plaint was incorrect.

9. On the existence and terms of the oral agreement, PW1 admitted that the common practice is to have a written contract. He confirmed that there was no statement from any person who was present when the oral agreement was made.

10. PW1 confirmed that the Minutes of the meeting where the debt was allegedly acknowledged (Exhibit 3) were not signed. He further agreed that no one had confirmed the same as a true and accurate record. Most significantly, the witness admitted that the Minutes did not contain any resolution on the issue of payment to the Plaintiff. Further, Exhibit 1, the QS report was not signed by the contractor. Similarly, the Architect's letter (exhibit 5) was not signed by Monica Mwangi.

Submissions

11. At the close of the hearing, parties filed their respective submissions.

12. The central pillar of the Plaintiff's submissions is that the Defendant's election not to call witnesses is fatal to its defence. The Plaintiff argues that in the absence of rebuttal evidence, the Plaintiff's evidence is uncontroverted and unchallenged. The Plaintiff relies on the cases of North End Trading Company Limited (carrying on the business under the name of Kenya Refuse Handlers Limited) vs City Council of Nairobi eKLR and Motex Knitwear Limited vs Gopitex Knitwear Mills Limited Nairobi (Milimani) HCCC No. 834 of 2002. The Plaintiff submits that these cases establish the principle that where a defendant fails to adduce evidence, then the plaintiff is taken to have proved its case on a balance of probabilities.

13. The Plaintiff further submits that a valid contract can be established from the conduct of parties, especially in an executed or partly executed transaction, such as is in this case. The Plaintiff cites the case of Mamta Peeush Mahajan (suing on behalf of the estate of the late Peeush Premlal Mahajan) vs Yashwant Kumari Mahajan (sued personally and as executrix) eKLR.

14. The Defendant's submissions are anchored on the assertion that the Plaintiff has failed to discharge its burden of proof. The Defendant submits that the onus was on the Plaintiff to prove the existence and terms of the alleged oral contract. Citing section 107 (i) of the *Evidence Act* and the Court of Appeal decision in Attorney General vs Kabuito Contractors Limited KECA 230 (KLR), the Defendant argues that the oral contracts are harder to prove. The Plaintiff ought to have adduced the necessary evidence to establish its terms.

15. The Defendant argues that the key documents underpinning the Plaintiff's quantum, namely the final accounts (Exhibit 1) and the Minutes of the meeting (Exhibit 3) are unsigned and, therefore, possess no probative value. The Defendant relies on the case of Mugo Mungai & 4 others vs Official Receiver & Provisional Liquidator (Capital Finance Limited and Pioneer) & 2 others eKLR , in arguing that an unsigned document has no probative value as the contents genuineness cannot be proved and its contents amount to hearsay. The Defendant also relies on the case of Tedawacs Construction Limited vs Kenya Railways Staff Retirement Benefits Scheme KEHC 829 (KLR) , to argue that the unsigned Minutes cannot be given any weight.

16. The Defendant submits that the Plaintiff's alternative claim on quantum meruit must also fail. It is argued that such a claim requires the Plaintiff to prove the reasonable value of services. The Plaintiff did not do so, as the very documents tendered to prove the quantum are unsigned, unauthenticated and inadmissible.

Analysis & Determination

17. Having carefully read the pleadings, considered the evidence on record and the submissions, the following issues lend themselves for determination:

    i. Whether the Plaintiff has proved its case on a balance of probabilities;

    ii. In the alternative, whether the Plaintiff has proved its claims on the doctrine of quantum meruit;

    iii. Costs of the suit.

18. The Plaintiff's entire case, as argued in its submissions, rests on the proposition that its evidence, being uncontroverted, must be accepted as true. This proposition, however, is an incomplete and misleading statement of law. The failure of a defendant to adduce evidence does not create an automatic victory for the plaintiff. It is not a legal panacea for a weak or failed case. The law is that the primary burden of proof, as stipulated in section 107 of the *Evidence Act*, always rests on the party who asserts the

affirmative – in this case, the Plaintiff. The Plaintiff must first establish a prima facie case, built on credible and believable evidence, before the evidential burden can be said to shift to the Defendant.

19. The Plaintiff, in its own submissions, provided the very authority that clarifies this distinction. In Charterhouse Bank Limited (Under Statutory Management) v Frank N. Kamau [2016] KECA 153 (KLR), the Court of Appeal held:

> " We would therefore venture to suggest that before the trial court can conclude that the plaintiff's case is not controverted or is proved on a balance of probabilities by reason of the defendant's failure to call evidence, the court must be satisfied that the plaintiff has adduced some credible and believable evidence, which can stand in the absence of rebuttal evidence by the defendant. Where the defendant has subjected the plaintiff or his witnesses to cross-examination and the evidence adduced by the plaintiff is thereby thoroughly discredited, judgment cannot be entered for the plaintiff merely because the defendant has not testified. The plaintiff must adduce evidence, which in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities, it proves the claim. Without such evidence, the plaintiff is not entitled to judgement merely because the defendant has not testified. The proposition that failure by the defendant to call evidence lessens the burden on the plaintiff to make out his case on a balance of probabilities as propounded in Karugi & Another v. Kabiya & 3 Others (supra) is totally different from the proposition advanced by the appellant in this appeal, namely that the failure by the defendant to call evidence invariably entitles the plaintiff to judgement, irrespective of the quality and credibility of the evidence that the plaintiff has presented. In our view the latter proposition has no sound legal basis."

20. This principle was echoed in Netah Njoki Kamau & another vs Eliud Mburu Mwaniki [2021] KEHC 2810 (KLR), which affirmed that a plaintiff is not entitled to judgement merely because the defendant has not testified.

21. Therefore, the Defendant's election not to call witnesses was a valid legal strategy. It was an implicit submission that the Plaintiff's case, as presented, had failed to meet the requisite legal and evidential threshold; that the Plaintiff's own witness had, under cross-examination, destroyed his own case. This Court must, therefore, first analyse the intrinsic credibility of the Plaintiff's evidence before determining if any rebuttal was necessary.

22. The Plaintiff's primary claim is for breach of an oral contract. the burden is on the Plaintiff to prove, on a balance of probabilities, not only that an agreement existed, but what its essential terms were – specifically, the scope of work, the prince and the terms of payment.

23. The Court of Appeal in Attorney General vs Kabuito Contractors Limited KECA 230 (KLR) , aptly stated the high bar for such claims:

> " For oral contracts, the courts will first be concerned with whether an oral contract exists and then with ascertaining the terms... Oral contracts are harder to prove. An oral contract is not legally enforceable unless it is provable in court. This means that in the event of a breach, it is up to the plaintiff to prove the existence of the oral contract by adducing the necessary evidence."

24. The Plaintiff failed to meet this burden. The case for an oral contract collapsed when the Plaintiff's witness confirmed that it was not possible to tell what the terms of the agreement were. This admission is fatal and dispositive of this limb of the claim. A Court of law cannot be invited to speculate on the

essential terms of a commercial contract valued at over Kshs 100 million when the Plaintiff's witness, under oath, admits that he cannot state what those terms were. The fact that the parties were related and had a history of mutual trust, does not displace the fundamental principles of contract law and evidence. The Court finds that the Plaintiff has failed to prove the existence, let alone the terms, of the alleged oral contract.

25. The Plaintiff's alternative claim is for quantum meruit. To succeed on this, the Plaintiff must prove two things: that the services were rendered and accepted, and what their reasonable value is. The Plaintiff attempts to prove this reasonable value by relying on its documentary evidence, principally Exhibits 1, 3 and 5. Exhibit 1, the final account presented by Tower Cost Consultants, is the primary evidence for the quantum. PW1 admitted that it was not signed by the contractor. It is presented as an expert report, yet the expert from Tower Cost Consultants was not called to testify, to produce it, or to be cross examined on its contents.

26. The Defendant's reliance on Mugo Mungai & 4 others v Official Receiver & Provisional Liquidator (Capital Finance Limited and Pioneer) & 2 others [2019] KEHC 11476 (KLR) is well placed. The Court held:

> "In conclusion I find that an unsigned document has no probative value as the contents genuineness cannot be proved. It is worth noting that documents do not prove themselves; a witness must be examined to prove the documents. The evidence of the contents of the document is hearsay evidence unless the author thereof is known or identifies himself as owning the document."

27. This Court finds that Exhibit 1 is an unauthenticated, unsigned document from an author who was not called. It is hearsay and has no probative value. This Court cannot and will not rely on this document to establish a claim of Kshs 91,117,157.46.

28. Exhibit 3, the Minutes of meeting, was produced to prove that the Defendant acknowledged the debt. PW1's admissions on this exhibit were threefold and damning: the Minutes were not signed, no one has affirmed that they are a complete and accurate record, and they contain no resolution for payment to the Plaintiff. As held in the Tedawacs Construction Case (supra), it is difficult to attach much weight to unsigned Minutes. Further, unsigned, unverified Minutes that concededly contain no resolution for payment are worthless as evidence of an acknowledgement of debt. This document has no probative value.

29. Exhibit 5, the Architect's letter dated 7 July 2020, is the document that PW1 relies on for the Architect's valuation of Kshs 91,117,146. When a party produces a document, they produce all of it, not just the parts that are favourable to them. The Court must consider the document in its entirety, especially in light of PW1's admissions. First, the witness admitted that the letter was not signed. Second, the witness admitted that the letter confirmed that no certificates, whether interim or final, had been issued. Third, the witness admitted that the letter contained the Architect's finding that "the understanding between the contractor and developer was not clear'.

30. This document, far from proving the Plaintiff's claim, is the final nail in its coffin. It is an unsigned opinion from a person who was never called as a witness, which corroborates the Defendant's position that there was no clear, enforceable agreement. The Plaintiff cannot cherry pick the Kshs 91 million figure from a document that simultaneously states that the understanding was not clear and that no payment certificates were ever issued.

31. It is this Court's finding that the Plaintiff has failed to adduce a single piece of credible, admissible evidence to establish the reasonable value of the work it claims to have performed. The very documents

produced for this purpose are either inadmissible hearsay or actively disprove the Plaintiff's case. The claim for quantum meruit must, therefore, fail.

32. In view of the foregoing, it is clear that the Plaintiff's suit fails in its entirety. This suit is, therefore, dismissed, with costs to the Defendant.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF NOVEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Plaintiff: Ms. Kioko

For the Defendant: Mr. Nyanjwa

Court Assistant: Lucy Mwangi