Kenyariri v Motachwa (Civil Appeal E023 of 2025)
[2025] KEHC 15834 (KLR) (5 November 2025) (Judgment)

Neutral citation: [2025] KEHC 15834 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

CIVIL APPEAL E023 OF 2025

JK NG'ARNG'AR, J

NOVEMBER 5, 2025

BETWEEN

JAMES KENYARIRI ..... APPELLANT

AND

JOHN KENNEDY MOTACHWA ..... RESPONDENT

(Being an Appeal from the Judgment of Adjudicator Rono C.C. at the Small Claims Court at Kisii, Suit Number E360 of 2024)

JUDGMENT

1. The Appellant (then Claimant) sued the Respondent for a refund of Kshs 240,000/= plus interest that he had lent him (Respondent). During the trial, both parties testified before closing their respective cases.

2. In its Judgement dated 30th January 2025, the trial court entered Judgement in favour of the Respondent to the tune of Kshs 20,000/= and costs of Kshs 5,000/=.

3. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 12th February 2025 appealing against the whole Judgement and specifically that the trial court erred when it failed to find that the monthly payments of Kshs 20,000/= were in the nature of an appreciation for the principal sum owed.

4. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify.

5. I now proceed to summarise the respective parties' cases in the trial court and their submissions in the present Appeal.

The Claimant's/Appellant's case.

6. Through his Statement of Claim dated 11th November 2024, the Appellant stated that on diverse dates between 17th July 2024 and 21st August 2024, he lent the Respondent Kshs 240,000/= and that the Respondent had failed to refund the said monies.

7. In his written submissions dated 4th September 2025, the Appellant submitted that it was undisputed that the Respondent was advanced a loan of Kshs 240,000/= and it was further undisputed that the Respondent was to pay a monthly amount of Kshs 20,000/= per Kshs 100,000/= until the amount was paid in full. That it was apparent from the Respondent's oral and documentary evidence that the loan had been repaid in full on 10th November 2024.

8. It was the Appellant's submission that the he loaned the Respondent the Kshs 240,000/= on the condition that the Respondent was to pay a monthly appreciation of Kshs 20,000/=. That upon the lapse of the first month i.e.15th August 2024, the Respondent paid the monthly appreciation of Kshs 20,000/= and requested for a top up of Kshs 100,000/= which the Appellant disbursed to him thereby making the total loan amount to be Kshs 200,000/=. It was the Appellant's further submission that upon the lapse of the second month i.e.15th September 2025, the Respondent paid the monthly appreciation of Kshs 20,000/= but failed to repay the loan amount. That in an attempt to repay the loan amount plus the monthly appreciation, the Respondent issued two cheques dated 16th August 2024 and 20th September 2024 which were dishonoured by the bank due to insufficient funds.

9. The Appellant submitted that the Respondent had paid a total of Kshs 260,000/= instead of Kshs 280,000/= because the loan was to be repaid over four months and the monthly appreciation would have been Kshs 80,000/=.

The Respondent's case

10. Through his Response to the Claim and Counter Claim dated 2nd December 2024, the Respondent admitted to having received Kshs 240,000/= from the Appellant. The Respondent stated that he had fully paid the Appellant his Kshs 240,000/=.

11. In his counter claim, the Respondent stated that he had overpaid the Appellant by Kshs 20,000/= and claimed that the Appellant had refused to refund the Kshs 20,000/=.

12. In his written submissions dated 26th September 2025, the Respondent submitted that the Appellant's claim amounted to unjust enrichment. That he produced M-pesa statements which showed that he had paid the Appellant Kshs 260,000/=, which was more than the Kshs 240,000/= he owed the Appellant. The Respondent further submitted that the Appellant admitted on oath that he had been paid by the Respondent and therefore could not claim double payment.

13. I have gone through and carefully considered the Record of Appeal, the Appellant's written submissions dated 4th September 2025 and Respondent's written submissions dated 26th September 2025. The singular issue for my determination was whether the Appeal had merit.

14. I have gone through the record and there was no evidence of a written contract between the parties. The parties' engagement was based on an oral contract. In Attorney General v Kabuito Contractors Limited [2023] KECA 230 (KLR), the Court of Appeal held: -

> " .....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....."

15. However, courts can infer the existence of certain facts. Section 119 of the *Evidence Act* provides: -

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

16. It was an undisputed fact that parties entered into an oral contract for a loan of Kshs 240,000/=. The Appellant stated that he lent the Respondent the Kshs 200,000/= in which he gave the Respondent Kshs 100,000/= on two occasions with the understanding that the Respondent would repay the loan amount with an interest of Kshs 20,000/= per Kshs 100,000/= which would take the total loan amount plus interest to Kshs 240,000/=. This was confirmed by the Respondent during his testimony.

17. When the Appellant was cross examined, he testified that he claimed Kshs 240,000/= from the Respondent and that the Respondent had paid him Kshs 200,000/= as the loan amount. In further cross examination, the Appellant testified that the Respondent had paid him Kshs 60,000/= as appreciation. It is also salient to note that the Appellant had admitted in his submissions that the Respondent had fully paid him.

18. The Respondent produced M-pesa statements as R. Exh 1. I have looked at the statements and they indicate that on diverse dates between 15th August 2024 and 10th November 2024, the Appellant received Kshs 20,000/=, Kshs 20,000/= Kshs 20,000/= Kshs 100,000/= and Kshs 100,000/= totalling to Kshs 260,000/=. This was the same amount that the Appellant had confirmed that he was in receipt from the Respondent.

19. I fail to understand the Appellant's claim that he was supposed to be paid Kshs 80,000/= as appreciation fee. If the agreement was to have an appreciation fee of Kshs 20,000/= per Kshs 100,000/ = how does the Kshs 80,000/= come about? I ask so because the Appellant advanced the Respondent Kshs 200,000/= in batches of Kshs 100,000/ each and as indicated above, the sum was received by the Respondent and the Respondent paid the Kshs 40,000/= as appreciation fee. For the Appellant to claim an appreciation fee of Kshs 80,000/=, it would mean that he advanced the Respondent Kshs 300,000/= which he did not.

20. From the above, it is my finding that the Respondent paid the Appellant Kshs 260,000/= in satisfaction of the loan and interest accrued which was a total of Kshs 240,000/=. In essence, the Respondent overpaid by Kshs 20,000/= which he claimed in his counterclaim.

21. For this court to interfere with an award, it must be satisfied that the trial magistrate has misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice. See Kimatu Mbuvi t/a Kimatu Mbuvi & Bros v Augustine Munyao Kioko [2006] KECA 130 (KLR).

22. Flowing from the above, it is clear that the trial court neither erred nor considered wrong principles in its Judgement dated 30th January 2025. Therefore, there is no reason for this court to interfere with the trial court's Judgment.

23. In the end, the Appeal dated 12th February 2025 has no merit and is dismissed. The Respondent shall have the costs of the Appeal.

JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5TH DAY OF NOVEMBER, 2025.

.....

J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of;

Siele (Court Assistant).

Maronga for the Appellant

No appearance for the Respondent