



**Ondimu v Njuki (Civil Appeal E1418 of 2023)
[2025] KEHC 16762 (KLR) (Civ) (17 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16762 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1418 OF 2023

LP KASSAN, J

NOVEMBER 17, 2025

BETWEEN

ALEX OTUKE ONDIMU APPELLANT

AND

MARY WAMBUI NJUKI RESPONDENT

JUDGMENT

1. This is an appeal from the decision of the Small Claims Court in which the Respondent was awarded damages. The brief history of the Claim is that the Claimant who owned a motor vehicle registration KBR 718C met the Respondent at a car yard in Nakuru and agreed orally that he sells the said motor vehicle on her behalf at Ksh 700,000. She then handed over necessary documents to facilitate the sale. The Respondent became evasive and she came to learn much later that the motor vehicle had been sold prompting her to report the matter to police. The Appellant was arrested and charged with obtaining money by false pretense and as the case progressed the two entered into an agreement where the Appellant undertook to pay the Ksh 700,000 to the Respondent- which he never paid. On his part, the Appellant main defence was that the Respondent who was his intimate friend and that she had actually given him the car to sell so as to solve his financial problems. I have read the submissions and all relevant documents and wish to note the following;
2. The Respondent agreed to refund Ksh 700,000 which was the value of the Motor vehicle on 27th day of May 2016. This agreement was made before an advocate and was duly signed by both the Appellant and the Respondent. There is evidence that subsequently, the Appellant paid the Respondent a total of Ksh 70,000 which I attribute to be part payment of the Ksh 700,000. The statement by the Appellant that he made the payment to "assist" the Respondent who was having financial crisis does not make sense because the payments came after the said agreement. The agreement was produced as an exhibit



and there is no evidence of coercion or intimidation. In fact, this agreement supports the first oral agreement between these two parties as enunciated in the Claim.

3. In his response, the Appellant admitted that he was in the business of selling cars thus buttressing the truthfulness of the Claim. It is common knowledge that car dealers are supplied with necessary documents by car owners interested in selling their cars in order to facilitate sale of their cars and in fact when the Appellant's car selling business went down as per his statement, he used an agent to sell the vehicle to a third party and so he should not be heard to complain about the arrangement he had with the Respondent to sell the Motor Vehicle to a third party when he himself did it. He should not also castigate the oral agreement between him and the Respondent because even in this case he did not produce a written agreement between him and Salim Ndonga, a car dealer who eventually sold the car. The fact that the car was registered in the name of the Respondent secured the Respondent interests of ownership and if the car was to be sold, the records would automatically have traced the new Car owner.

The relationships of the Parties;

4. Matters of relationships are personal or are rather subjective. The Courts have no capacity to gauge the level of intimacy between parties that may have contributed into a contractual agreement unless there is a written agreement. A mere denial of such offering of a gift to a partner is sufficient for the courts to have a negative finding. Perhaps the only Court that can exclusively determine matters and deals cut in relationship is the Court of conscience that live in the minds of both parties. In this case, there is no prove of marriage or Children sired by both parties or prove of cohabitation. The promises made in an intimate relationship are incapable of being executed in Courts as they are more often made in the heat of the moment and so they have no legal implication.

Conclusion

5. The trial Magistrate made the correct finding in his judgement on when the period started running in order to determine if the agreement was time barred or not. It is a fact that the Appellant was charged with a criminal case as a result of this transaction.
6. I shall uphold the decision by the lower Court save for an additional award of punitive damages because of the conduct of the Appellant which I assess as Ksh 30,000. The Respondent shall have costs.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 17TH DAY OF NOVEMBER 2025.

HON L P KASSAN

JUDGE

In the presence of;

Ratemo for Appellant

Ondoyo for Respondent

Carol – Court Assistant

Stay for 30 days granted.

