



REPUBLIC OF KENYA



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**Shitoshe v Muyale & another (Civil Appeal 100 of 2024)  
[2025] KEHC 17494 (KLR) (26 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17494 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL 100 OF 2024  
S MBUNGI, J  
NOVEMBER 26, 2025**

**BETWEEN**

**CALEB SHITOSHE ..... APPELLANT**

**AND**

**BENSON MUYALE ..... 1<sup>ST</sup> RESPONDENT**

**SAMSON WAPAA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. Nabibya, Principal Magistrate, delivered on 23rd December 2015 in Butali Senior Principal Magistrate's court, CC No. 131 of 2015)*

**JUDGMENT**

1. The appellant herein, Caleb Shitoshe, had filed a plaint dated 22<sup>nd</sup> September 2015 against the defendant Benson Muyale, where he had averred that they had entered into an agreement where he was to pay the defendant Kshs. 26,500 for his motorcycle bike however, the defendant received Kshs. 33,500/= and thus the defendant owed him the Kshs. 7,000 extra cash remitted. Plus, the Kshs. 9,000 he had incurred in court.
2. The claim was determined exparte and an interlocutory judgment was entered on 10<sup>th</sup> December 2015 in the sum of Kshs. 16,000/= as the principal sum; the plaintiff filed a decree including the following Kshs. 236,500/= for business losses incurred (500 per day, 14/8/2014- 17/12/2015) Kshs. 2,240 interest at the court's rate. Kshs. 3740 court fees on the plaint, Kshs. 355 court fees for filing a request for judgment; Kshs. 12,100 certificate of cost. His total amount was Kshs. 252,345/=
3. On 4/8/2016, the trial court noted that although an interlocutory judgment was entered and upon the plaintiff's request for a decree and certificate of costs, the same was not properly drawn and directed it back for an amendment of the decree.



4. On 31/10/2022, Hon. Kipngeno noted that the amended decree dated 4/2/21 indicated the amount to Kshs. 18,240/= and a certificate of costs, Kshs. 6,575 totalling to Kshs. 18,240 plus certificate of costs Kshs. 6,575 total amount Kshs. 24,815 amount paid Kshs. 17/1/2019 Kshs. 20,700/= and the balance Kshs. 4,115/=.
5. The parties were to settle the remaining balance, with the defendant to pay the plaintiff the balance of Kshs. 4,115/=. The plaintiff, however, refused to take the balance, stating that there was fault in the decree. The court noted the same and closed the matter, encouraging the plaintiff to pursue other avenues, and the court stated that it was functus officio
6. The appellant was dissatisfied with the judgment of R.S Kipng'eno, P.M. and appealed based on the following grounds;
  - a. The learned Principal Magistrate showed patent bias against the appellant/applicant.
  - b. The Learned Principal Magistrate dealt with the appellant most casually without delving into whether it contained any substantial merits.
  - c. The learned principal Magistrate failed to take note that the appellant ended the case on interlocutory grounds.
  - d. The learned Principal Magistrate further erred in failing to take note that the applicant was not paid all the amount due to him from the defendant, who then complained that he was the buyer and not the seller of the motorbike, thus giving a chance of setting aside the judgment pending hearing.
  - e. The Learned Principal Magistrate also erred in law in dismissing the application because the same was not to be demanded from the defendant.
  - f. The learned principal magistrate further erred in failing to make a note that there was a dispute as to whether the defendant was a legal owner of the motorbike or somebody else.
  - g. The said judgment was against the weight of the submissions, the contents of the application and documents before the court.
7. The court directed that the appeal be dispensed with by way of written submission.
8. In his submissions dated 1<sup>st</sup> February 2025, the appellant stated that an interlocutory judgment was entered by Hon. Nabibya of Kshs 252,345/= and that the direction issued, which was never appealed or set aside, was that he picks the motorbike from Malava police station. He claimed that the defendant paid Kshs. 24,815; however, he never surrendered the motorbike, and the payments were made through the chief's office.
9. The appellant claimed that the chief colluded with the 2<sup>nd</sup> respondent, Samson Wapaa, who claimed to be the owner of the file. He claimed that the chief made a false report claiming he had defied court orders and that he held secret meetings with the defendant.
10. He claimed that he wanted to file an appeal, but the magistrate was against it, discouraging him by stating that he was out of time.

### **Analysis And Determination**

11. This Court has carefully reviewed the memorandum of appeal, the trial court file, the interlocutory judgment, subsequent amendments, and the appellant's grounds of appeal.



12. I note that the interlocutory judgment was entered on 10th December 2015, and the final decree, though amended, was duly drawn and communicated. The court's direction to amend the decree in 2016 and subsequent observations by Hon. Kipng'eno in 2022 were procedural clarifications, not judgment as alluded by the appellant in denying him the relief he sought.
13. The appellant's allegations of bias and casual handling of the matter by the local chief and trial court are unsubstantiated. There is no evidence showing the trial court acted partially or failed to consider relevant issues. Disputes over ownership of the motorbike or alleged collusion with the chief were not formally pleaded or supported by evidence at trial. Such matters cannot form the basis for overturning a properly drawn decree.
14. The appellant's submissions demonstrate difficulty in articulating legal grounds and reliance on unspecific claims. Courts have emphasized the importance of clear, precise pleadings and legal representation to ensure proper adjudication. The appellant appears to have struggled to frame his arguments, possibly due to lack of legal training. His submissions mix factual complaints and legal arguments, some of which are not properly pleaded or supported by documentary evidence.
15. While the appeal, as currently presented, is without merit, the Court notes that the appellant may not have fully understood the procedural and evidential requirements, as he acted in person without any legal representation.
16. Having regard to the foregoing, this Court finds:
  - a) The present appeal lacks merit. The appellant has not demonstrated any clear legal or factual error warranting overturning of the trial court's decision.
17. Accordingly, the Court makes the following orders:
  - a. The appeal is dismissed for lack of merit.
  - b. There shall be no order as to costs in respect of this dismissal.
  - c. Right of Appeal 30 days explained.
  - d. File is closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**S.MBUNGI**

**JUDGE**

In the presence of:-

CA: Angong'a

Parties absent though aware of the judgment date.

