Rana Auto Selection Limited v Kanyoro & another (Civil Appeal E024 of 2024) [2026] KEHC 4 (KLR) (7 January 2026) (Judgment)

Neutral citation: [2026] KEHC 4 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL E024 OF 2024

RN NYAKUNDI, J

JANUARY 7, 2026

BETWEEN

RANA AUTO SELECTION LIMITED .... APPELLANT

AND

WILSON MAINA KANYORO .... 1ST RESPONDENT

SKYWORLD MOTORS LIMITED .... 2ND RESPONDENT

(Being an Appeal from the Judgement/Decree of Hon. Tabitha Mbugua (Adjudicator) delivered on 15/12/2023 in Eldoret SMCCC No. E666 of 2023)

JUDGMENT

1. This Appeal emanates from the Judgment and resultant Decree of Hon. Tabitha Mbugua (Adjudicator) delivered on 15/12/2023 at the Small Claims Court at Eldoret, Case No E666 of 2023. Being dissatisfied with the said Judgement, the Appellant filed an Appeal vide its Memorandum of Appeal dated 12th February 2024 based on 10 grounds as follows:

   a. The Learned Magistrate erred in law and fact in making a finding that the Claimant had proved his case against the Appellant herein.

   b. The Learned Magistrate erred in law and fact in making a finding that there existed a valid of contract between the Appellant and the 1st Respondent.

   c. The Learned Magistrate erred in law and fact in failing to appreciate that the 2nd Respondent had no legal capacity to sell and/or transfer the suit motor to 1st Respondent.

   d. The Learned Magistrate erred in law and fact in failing to appreciate that there existed no contractual relationship between the Appellant and the 1st Respondent.

e. The Learned Adjudicator erred in law and fact in failing to appreciate that the 2nd Respondent was not an agent of the Appellant and could not have prompted to act on behalf of the Appellant.

f. The Learned Magistrate erred in law and fact in making a finding that the sum of Kshs.800,000/= was paid to the Appellant and grossly erred by directing that the Appellant pays to the 1st Respondent the sum of Kshs.800,000/=

g. The Learned Magistrate erred in law and fact in failing to appreciate that the 2nd Respondent had in actual fact purchased the subject motor vehicle from the Appellant and had a balance on account or purchase price still owing to the Appellant.

h. The Learned Magistrate erred in law and fact in ignoring the weight of evidence adduced by the Appellant thus arriving at a wrong decision.

i. The Learned Magistrate erred in law and in fact in wholly ignoring the submissions adduced by the Appellant and thereby arriving at a wrong decision.

j. The Learned Adjudicator erred in law and fact in treating the Appellants Response to the claim, evidence and submissions superficially and casually and thus ignoring the principles of law and evidence thereby arriving at a wrong decision.

2. The Appellant sought the following orders from the Memorandum of Appeal;

a. This Honourable to set aside the Judgement of the Learned Adjudicator allowing the 1st Respondent's claim and replace with a judgement dismissing the 1st Respondent claim against the Appellant.

b. This Honourable Court to allow this Appeal with costs to the Appellant.

3. The Appeal was canvassed by way of written submissions.

Appellant's Submissions

4. The Appellant filed its written submissions dated 3/06/2025. The Learned Counsel on record submitted that Appellant is mainly challenging the findings of the Trial Court in holding that the 1st Respondent had proved on a balance of probability his case as against the Appellant and that there existed privity of contract between the Appellant and the 1st Respondent. Counsel also submitted that the only issue for determination before this Honorable Court in this present Appeal is whether there existed a valid contract between the Appellant and the 1st Respondent.

5. Counsel submitted that as to whether there existed a valid contract between the Appellant and the 1st Respondent the Honorable Trial Adjudicator erred in her Judgment by finding in the affirmative. Counsel reproduced an excerpt of the impugned Judgment of the Trial Court: - ''He (Ali Marwa - Appellant's sole witness) confirmed that the Claimant (1st Respondent herein) had approached them and they entered into a sale agreement as a company." Counsel stated that the above excerpt illustrates the error made by the Trial Court in her judgment and as per the Motor vehicle Sale Agreement produced by the Appellant before the Trial Court (RExb.2), the Appellant had sold the subject Motor vehicle to the Director of the 2nd Respondent herein - one Michael Kipruto Maina; and not to the 1st Respondent herein who was the Claimant before the Trial Court.

6. Counsel also submitted that there was no iota of evidence produced before the Trial Court showing that the Appellant and the 1st Respondent herein had entered into a Sale Agreement. Counsel added

that no such allegation was ever made before the Trial Court and flowing from this erroneous finding, the honorable Trial Adjudicator could only reach the wrong conclusion and issue an erroneous Judgment. It was also the Counsel's submission that it is discernible that as regards the sale of the subject Motor vehicle the Appellant only had dealings with the 2nd Respondent and at no point dealt with the Respondent and in other words, there existed no privity of contract between the Appellant and the 1st Respondent. Moreover, Counsel states that Privity of contract presupposes that there is a nexus between the parties for the agreement and there existed no Principal - Agency relationship as between the Appellant and the 1st Respondent herein and none was proved.

7. The Learned Counsel further submitted that the sale agreement relied on by the 1st Respondent before the Trial Court is between SKYWORLD OTORS (the 2nd Respondent herein) and the vendor MAINA KAYORI (the 1st Respondent herein) as the purchaser and the Appellant is not a party to the motor vehicle sale agreement executed between the 1st and 2nd Respondents. The Learned Counsel also submitted that the 2nd Respondent on its part did not participate in these proceedings and it therefore goes without saying that the assertion by the Appellant that the 2nd Respondent was not its agent is unchallenged and uncontroverted and the receipt for Kshs.500,000/= as part payment of the purchase price was issued to the 1st Respondent by the 2nd Respondent.

8. Counsel further said that the subsequent payment as evidenced in the M-Pesa statement was remitted to one ALEX KIBET and This person is not an employee, servant and/or agent of the Appellant and no evidence was adduced to show any linkage between the said KIBET and the Appellant. Counsel also stated that the sale agreement relied on by the 1st Respondent is between himself and the 2nd Respondent and there existed no single clause in the agreement between the 1st Respondent and the Appellant that shows that the Appellant was the principal and/ or was to receive the purchase price or did receive the purchase price or part thereof. Moreover, it was submitted that there was no clause in the said agreement that the 2nd Respondent was acting on behalf of the Appellant.

9. The Learned Counsel furthermore submitted that from the Motor vehicle Copy of Records, it is clear that the Appellant herein was the registered owner and therefore the 2nd Respondent having misrepresented itself as the owner, the 2nd Respondent is the party that ought to have been fully liable before the proceedings in the Trial Court. Reliance on this point was placed in the case of Nzilu v Ngungua (Civil Appeal 570 of 2019) [2023] where the Honorable Court observed: - "on the issue as to whether there was a valid sale I find that the Respondent did not tell the Appellant the truth that the motor vehicle was in arrears. There was misrepresentation which vitiated the contract. I find that there was no valid contract in the light of misrepresentation.

10. Counsel opined that the Appellant having sold the subject motor vehicle to the 2nd Respondent and the 2nd Respondent having defaulted in payment of the purchase price as contractually agreed, the Appellant simply exercised its contractual right of repossession and indeed re-assessed the subject motor vehicle. Counsel also opined that there is no reasonable cause of action that was disclosed by the 1st Respondent against the Appellant and as such urged that the Honorable Court sets aside the Judgment of the Learned Adjudicator allowing the 1st Respondent's claim and replace it with a Judgment dismissing the 1st Respondent's claim as against the Appellant; with costs to the Appellant.

Respondent's submissions

11. The 1st Respondent filed his submissions dated 9/06/2025. The Learned Counsel for the 1st Respondent submitted 2 issues for determination as follows:

a. Whether the contract between the Appellant and the 2nd Respondent was valid and enforceable.

b. Whether there existed an agency relationship between the Appellant and the 2nd Respondent.

12. On the first issue, the learned Counsel submitted that the absence of consideration and failure to prove payment, the Appellant alleged that the 2nd Respondent paid a deposit of kshs 350,000/= and was to pay the balance of Kshs. 370,000/= in three installments as consideration. Counsel noted that there was no documentary evidence produced at trial to prove that such payment was ever made or even initiated and in law failure to prove consideration renders a contract void or, at the very least, unenforceable. Reference was made to the case of Omar Gorhan Vs Municipal Council of Malindi (Council Government of Kilifi) Vs Overlook Management of Kenya Ltd [2020] KEHC 6789 (KLR) where the Court held as follows: "The basis of any suit in contract performance or non-performance is as per requirements in Subsection 3 of the Law of contract. Act (Cap 23 of the Laws of Kenya). The Appellant was therefore expected to proof on a balance of probabilities the following essential elements to a lease agreement with the Respondent:

(a) An offer.

(b) An acceptance.

(c) Any consideration.

(d) Any intention to create legal relations.

The essential components of a contract as was observed by Harris JA in Garvey v Richards {2011} JMCA 16 ought to ordinarily reflect the following principles: "It is a well-settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into contractual relationships and consideration. For a contract to be valid and enforceable an essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral or written agreement is in existence."

13. Reference was also made to Section 3 of the *sale of Goods Act* and section 107 of the *Evidence Act*. The Learned Counsel submitted that the transaction of 7/02/2018 between the Appellant and the 2nd Respondent having been called to question, the Appellant ought to have tendered documentary evidence to prove that the transaction had occurred, and the receipt of payment thereof acknowledged at the very least and in absence of a receipt of payment, the Appellant would be misleading the Court into believing that a sale of the suit vehicle ever occurred. Reference was made to the case of Muriungi Kanoru Jeremiah Vs Stephen Ungu M'warabua [2015] eKLR where the Court held as follows: - "in law, the burden of proving the claim was the Appellant's including the allegation that the Respondent did not pay the sum claimed as agreed; i.e. into the account provided... The trial magistrate was absolutely correct in so holding and did not shift any legal burden to the Appellant... The Appellant was obliged in law to prove that allegation; after the legal adage that he who asserts or alleges must prove."

14. The learned Counsel also submitted that the Appellant's assertion that the statements were printouts of electronic records, they did not produce a certificate of electronic record as required under Section 106B (4) of the *Evidence Act* and is further discussed in the Court of Appeal in County Assembly of Kisumu & 2 Others V Kisumu County Assembly Service Board & 6 Others [2015] eKLR where the Court held as follows; "Section 106B of the *Evidence Act* states that electronic evidence of a computer

recording or output is admissible in evidence as an original document "if the conditions mentioned in this section are satisfied in relation to the information and computer." In our view, this is a mandatory requirement which was enacted for good reason. The Court should not admit into evidence or rely on manipulated (and we all know this is possible) electronic evidence or record hence the stringent conditions in sub-section 106B (2) of that Act to vouchsafe the authenticity and integrity of the electronic record sought to be produced."

15. It was the learned Counsel's final submission on this issue that the purported agreement between the Appellant and the 2nd Respondent is invalid, cannot form a basis for claiming back the motor vehicle from the 1st Respondent and it is flawed, unsupported by evidence and incapable of being enforced as against a third party not privy to its terms. Counsel also stated that having established as such, the only impeccable conclusion is that the relationship of the Appellant and the 2nd Respondent was that of a principal and agent where an agent does not pay consideration to the principal but rather sells on their behalf and receives a commission to the effect after making the sale and remitting the consideration.

16. On the second issue, the learned Counsel submitted that the 1st Respondent testified without contradiction that he was expressly informed by the manager of the 2nd Respondent that they were acting as an agent, dealer and/or distributor of the Appellant in the sale of the suit motor vehicle. Reference was made to section 23(1) of the *Sale of Goods Act* and in the case of Wanjiru Vs Niyibizi & Another [2022] KEHC 13700 (KLR). Counsel also submitted that having established that the purported agreement between the Appellant and the 2nd Respondent's director was unenforceable for want of essential elements of a contract, the 1st Respondent's position is that the 2nd Respondent, a car dealership had the suit vehicle in its possession as a factor agent and sold the vehicle to the 1st Respondent on behalf of the Appellant, its principle therefore, the Appellant is precluded from denying the actions of its agents.

17. Counsel further submitted that an agency relationship did exist, or at the very least, ostensible or apparent authority was created, binding the Appellant to the conduct of the 2nd Respondent and by the fact that the Appellant chose not to pursue the director of the 2nd Respondent to clear the balance of the purchase price and instead chose to repossess the suit motor vehicle from the 1st Respondent herein. Reference was made to the case of Heifer Project International Vs Forest City Export Services Ltd & Another [2017] eKLR where the Court citing Halsbury's Law of England 4th Edition Volume 1(2) para 19 and 20 was of the view that; "a principal agency relationship is created by the express or implied agreement of principal and agent or by ratification by the principal of the agent's acts done on his behalf. Express agency is created where the principal or some person authorized by him, expressly appoints the agent whether by deed, by writing under hand or orally. Implied agency arises from the conduct or situation of parties."

18. The learned Counsel moreover submitted that the Appellant did not disown or disclaim the 2nd Respondent's status as a dealer or distributor at any point prior to the transaction and the 1st Respondent relied on this representation, paid the full purchase price, and took possession of the motor vehicle. Counsel also urged this Court to invoke the doctrine of estoppel by representation under section 120 of the *Evidence Act* which bars a principal from denying an agency relationship where their conduct or silence has misled a third party to their detriment and as such the 1st Respondent is entitled to the protection of this equitable principle. Reference was made to the case of Milgo Vs Laboso [2023] KEELC 947 (KLR).

19. It was the learned Counsel's final submission that the Appellant's grounds of appeal are without merit and are an afterthought intended to defeat a valid and just judgement rendered by the lower Court upon full consideration of facts and law and law and urged this Honourable Court to find that the

trial Court properly applied the law and evaluated the evidence; the alleged contract between the Appellant and the 2nd Respondent was invalid and unenforceable and there existed an apparent agency relationship binding the Appellant to the acts of the 2nd Respondent.

Analysis and Determination

20. I have carefully considered the record, the grounds of appeal, the rival submissions by the parties, the cited authorities and the law. This being a first appeal, my duty as stipulated is to re-evaluate and consider afresh the evidence tendered before the trial Court and come to my own independent conclusion. This duty was reiterated in Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR where this Court pronounced itself as follows:

21. This being a first appeal, we are reminded of our primary role as a first appellate Court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of Kenya Ports Authority v Kustron (Kenya) Limited 2000 2EA 212."

22. Having carefully perused the record and the rival pleadings by the parties, we have framed the following 4 main issues for our determination:

    a. Whether there was any valid contract between the Appellant and the 2nd Respondent

    b. Whether there was privity of contract between the Appellant and the 1st Respondent with respect to the contract with the 2nd Respondent,.

    c. Whether there exists an agency relationship between the Appellant and the 2nd Respondent. Whether the 2nd Respondent is an agent of the Appellant

Whether was a valid contract between the Appellant and the 1st Respondent

23. The Black's Law Dictionary defines a contract as follows: -

    An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.

24. In RTS Flexible Systems Ltd vs. Molkerel Alois Muller GmbH & Co, KG (UK Production) (2010) UKSC14, [45] the Supreme Court of the United Kingdom stated that: -

    "...The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. even if certain terms of economic or other significance to the parties have not been finalized, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement."

25. In Charles Mwirigi Miriti vs. Thananga Tea Growers Sacco Limited and Another (2014) eKLR the Court of appeal stated that it is trite that there are three essential elements for a valid contract. That is an offer, acceptance and consideration.

26. On the question as to whether there was any valid contract between the Appellant and the 2nd Respondent, the Appellant's case was that vide a sale agreement dated 7/02/2018 the Appellant had sold the subject Motor vehicle to the Director of the 2nd Respondent herein - one Michael Kipruto Maina at an agreed consideration of Kshs.720,000/=. In this case there was a written contract between the Appellant and the 2nd Respondent herein which was produced in the trial Court as Exhibit 2. RW1 also testified that Appellant got into a contact one Michael Kipruto Maina for the sale of motor vehicle registration number KCP 155E.

27. With the foregoing in mind, it is my finding that a valid contract existed between the Appellant and the Respondent herein. All the elements of a valid contract such as offer and accepted consideration and consent of the parties were present. The terms of the contract were also clear.

Whether there was privity of contract between the Appellant and the 1st Respondent with respect to the contract with the 2nd Respondent,

28. The general rule is that the only persons who have rights or obligations under a contract are those who are privy or party to it. See Tudor Jackson, The Law of Kenya, 3rd edition, Kenya Literature Bureau, Nairobi, 2005, pages 175 and 176. In other words, a contract can only be enforced by or against the persons who are parties to it, for a contract cannot confer rights or impose obligations on persons who are not party to it. See Agricultural Finance Corporation v Lengitia Limited [1985] KLR 765 (Hancox, Nyarangi & Platt, JJA), Aineah Likuyani Njirah v Aga Khan Health Services [2013] eKLR (Nambuye, Maraga & M'Inoti, JJA), Securicor Guards (K) Limited v Mohamed Saleem Malik & another [2019] eKLR (Githua, J), Afroplast Industries Limited v Sanlam Insurance Co. Ltd & another [2021] eKLR (Meoli, J), However, the principle works hardship on persons who otherwise benefit from it, and exceptions have been weaved into it to address the same. These exceptions are discussed in Tudor Jackson, The Law of Kenya, 3rd edition, Kenya Literature Bureau, Nairobi, 2005, pages 175 and 176; Aineah Likuyani Njirah v Aga Khan Health Services [2013] eKLR (Nambuye, Maraga & M'Inoti, JJA); Keninidia Assurance Company Limited v New Nyanza Wholesalers Limited [2017] eKLR (W. Korir, J) and Helga Christa Ohany v ICEA Lion General Insurance Company Ltd [2022] eKLR (Meoli, J), effected through legislative intervention.

29. The facts presented at the trial disclosed that there were two sale agreements. The first sale agreement was between the Appellant and the 2nd Respondent for the sale of motor vehicle registration number KCP 155E. The second agreement was between the 2nd Respondent and the 1st Respondent for the sale of motor vehicle registration number KCP 155E. The Appellant was not party to that contract. The only connection between the Appellant and the second sale agreement was the subject matter therein being motor vehicle registration number KCP 155E.

30. From the material on record, the first contract was comprised in sale agreement executed by the Appellant and the 2nd Respondent, on 7/02/2018 for the sale of motor vehicle registration number KCP 155E for the sum of Kshs.720,000/=. Nothing in that agreement can be interpreted to mean that the Appellant was going to be privy to the second contract, to be entered between the 2nd Respondent, and whichever buyer that it settled on, which turned out to be the 1st Respondent in this case. Further the said sale agreement did not confer no rights nor imposed any obligations on either the Appellant or the 1st Respondent, with respect to the right to enforce the second sale agreement, as between the 2nd Respondent and the 1st Respondent.

31. With the foregoing, in mind there is nothing on record to prove that the Appellant was privy to the sale agreement between the 1st Respondent and the 2nd Respondent herein.

Whether there exists an agency relationship between the Appellant and the 2nd Respondent.

32. The Appellant refuted the 1st Respondent's assertion that the 2nd Respondent was its agent and argued that it has at no point in time appoint the 2nd Respondent to sell its vehicles on its behalf.

33. On the other hand, the 1st Respondent argued that an agency relationship did exist or at the very least ostensible or apparent authority was created binding the Appellant to the conduct of the 2nd Respondent. The 1st Respondent urged that the fact that the Appellant chose not to pursue the director of the 2nd Respondent to clear the balance of the purchase price and instead chose to repossess the suit motor vehicle from it. The 1st Respondent further observed that both companies sale vehicles and that in the ordinary course of such business one company may appoint another to act as an agent to sell vehicles on its behalf at an agreed commission.

34. The Black's Law Dictionary defines an Agent as a person authorized by another (principal) to act for or in place of him, while the same Dictionary defines a principal as someone who authorizes another to act in their place. A principal-agent relationship on the other hand is an arrangement in which one entity legally appoints another to act on its behalf.

35. An agency relationship and the consent of such a relationship can be inferred from the conduct of the parties and need not be in writing. Reynolds in Bowstead on Agency (15th Ed.), p.1 states that:

> Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf, and the other of whom similarly consents so to act or so acts. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is the agent. Any person other than the principal and the agent may be referred to as a third party.

36. An agent acts on behalf of a principal, and may enter into contracts with third parties on behalf of the principal, and, in the process bind the principal. Was the 2nd Respondent an agent of the Appellant? I do not think so. The only thing connecting the Appellant to the 1st Respondent is motor vehicle registration number KCP 155E. There is nothing showing that the 2nd Respondent herein was acting as the Appellant in the sale of motor vehicle registration number KCP 155E. The Appellant was not party to the contract that was entered into between the 1st Respondent and 2nd Respondent. The Appellant and the 2nd Respondent are two and separate entities that run the business of selling vehicles. In the ordinary course of business of selling cars one company may purchase a vehicle from another company and this does not necessarily mean that the buying company is an agent of the selling company unless there is express authority to do so. From the record, it is evident that 1st Respondent did not make any payments to the Appellant in regard to the suit motor vehicle. With that said, liability could not attach, on the Appellant, in any form or colour, in respect of the said second contract. The Appellant entered into only one contract with the 2nd Respondent, for the sale of motor vehicle registration number KCP 155E , it was not party, in any way, to the sale agreement between the 1st and 2nd Respondents.

37. In view of what I have stated above, it should be clear that no suit was maintainable against the Appellant by the 1st Respondent, and the case against it ought to have been struck out. The 2nd Respondent was not an agent of the Appellant, and was not bound by the contract between the Respondents. There was no privity of contract, there was no cause of action and no basis for its joinder as a party to the suit. Accordingly, the appeal is allowed in its entirety. The order, in Eldoret SCCOMM No.666 of 2023, allowing the suit against the Appellant is hereby quashed, and shall be substituted

with an order dismissing the claim against the Appellant. The Appellant shall have the costs, both here and below.

38. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 7TH DAY OF JANUARY, 2026

R. NYAKUNDI

JUDGE