

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL NO. E214 OF 2023

GLADYS JEBIWOT KIPYEGO APPELLANT

=VERSUS=

**SALIM MWANGI
RESPONDENT**

*(Being an appeal from Judgment of **Hon. T. W. Mbugua, Resident Magistrate/Adjudicator**, in Eldoret Small Claims Commercial Case No. E591 of 2022 delivered on **27th October 2023**)*

Coram: Justice R. Nyakundi
M/S Kiplagat J. Misoi & Co. Advocates

JUDGMENT

1. This is an appeal arising from the judgment of Lower Court dated 27th day of October 2023 in which the trial Court ruled as follows:

“I note with concern that there was an agreement regulating the Claimant and the Respondent’s dealings or any text message or communication between them. In view of the Claimant’s concession that she received some money in cash as per her audit report and the Respondent’s explanation of the nature of their dealings and that he did not owe the Claimant, I find that the Claimant’s case hangs on her word against the Respondent and she has not been able to prove her case against the Respondent on a balance of probabilities. The upshot of the foregoing is that the Claimant’s case against the Respondent is dismissed with costs to the Respondents.”

2. The Appellant being aggrieved with the judgment of the court filed a memorandum of appeal dated 3rd November 2023 setting out the following grounds:

- (a) That the Learned Trial Magistrate erred in law and fact in not considering the evidence tendered by the Appellant in particular on the balance claimed by the Appellant.
- (b) That the Learned Trial Magistrate erred in law and fact in failing to consider the documentary evidence.
- (c) That the Learned Trial Magistrate erred in law and fact in failing to appreciate the critical aspect of the amount paid out to the Respondent vis-à-vis what was refunded to the Appellant by the Respondent.
- (d) That the Learned Trial Magistrate erred in law and fact in showing in dismissing the claim.
3. The statement of the claim at the trial Court was based on the statement by the Claimant dated 24th October 2022 which in context states as follows:

(a) Claimant's Personal Details:

Name: Gladys Jebiwot Kipyego

ID No: 22277589

Tel: 0722-140227

(b) Respondent's Personal Details:

Name: Salim Mwangi

Postal Address: (Resident of Kapsila/Kwa Sila Estate)

Tel: 0726-285634

(c) Legal status of the Respondent

Individual Sole Proprietorship Partnership company

Cooperative State Department

(d) Nature of claims:

Money transferred by the Claimant to the Respondent for business purposes the transaction period between November 2020 and April 2021.

(e) Briefly explain

- (i) The Claimant transferred a sum of Kshs 874,500/= to the Respondent between November 2020 and April 2021, on an agreement that the Respondent was to source for maize

from farmers. The Respondent despite receiving the cash from the Claimant failed to deliver the maize which prompted the Claimant to ask for refund. The Respondent has refunded only Ksh 200,000/= remaining a balance of Ksh 674,500/= which the Claimant is claiming from the Respondent.

- (ii) That the amount claimed is Ksh 674,500/=.*
- (iii) That several calls and request made by the Claimant for payments are undertakings to pay made by the Respondent all in vain.*
- (iv) Remedy sought*
 - Judgment in the sum of Ksh 674,500/=*
 - Costs at Court rates.*
 - Interest in (i) and (ii) above.*

4. In answer to the Claimant's claim herein is the response by the Respondent:

- The Respondent does not owe the Claimant any money.*
- If the response is in denial of the whole or part of the claim. Give reasons why the claim is denied.*
- The Claimant and the Respondent were in a joint venture agreement for purchase of maize from October 2020 and the capital contribution by either party did not constitute debt nor was it enforceable.*
- The Respondent used opt source for maize and they could pool funds with the Claimant and after sales they could split proceeds and the process could go over and over.*
- The Claimant could give the Respondent her capital contribution and share of profits in cash, Mpesa or through Bank transfer while she insisted that the Respondent to pay her in cash when he got the proceeds after sales.*
- The Respondent was at one time forced to sign acknowledgment and agreement to pay alleging the existence of a debt to his utter shock and consternation.*

- *The said acknowledgment and agreement to pay is null, void and since the Respondent's signature was obtained under duress, coercion and intimidation from the Claimant's husband and the Police after prolonged detention.*
- *The Respondent avers that he does not owe the Claimant anything at all and the agreement exhibited was signed under duress and is therefore not binding nor proof of any debt.*
- *The transaction details as captured in the statement of claim is partly a reflection of capital contribution of the Claimant which was always recouped after sales and that explains the cycle while other transactions are reflective of the Respondent's share of profits transmitted to him by the Claimant.*
- *The instant claim is unfounded and has no factual or legal basis and it is a calculated move to attempt to extort money from the Respondent.*

5. These statements of claim formed part of the evidence as adduced before the trial Court including documentary evidence. In the oral testimony by the Claimant it was her evidence that in October 2020 the Respondent approached her with an idea of starting a maize business which on negotiations she agreed to provide the capital with the initial one being Ksh 160,000/=. She further sent the Respondent between the month of November and April the following year a further Ksh 173,500/=. In the month of January 2021 she also sent via Mpesa to the Respondent's Equity Bank Account Ksh 268,000/=. She did not stop there, a further cash transaction of Ksh 265,000/= was further dispatched to the Respondent. The total amount totaled cash Ksh 874,500/= but the Respondent never bought even a seed of maize as agreed with the Claimant. According to the Claimant he was either to be pressured and paid Ksh 200,000/= leaving a balance of cash Ksh 674,500/=. She relied in support of her evidence various Mpesa statements of account and KWFT account.

6. In support of the appeal, learned Counsel of the Appellant filed brief submissions in which he argued and submitted that there was sufficient evidence presented by the Appellant to discharge the burden of proof that she was owed a sum total of Ksh 674,500/=.
7. On the part of the Respondent, he denied ever owing a single cent as claimed by the Claimant. He acknowledged the maize trade transactions with the Claimant and that every money paid by the Claimant was accounted for in the entire life cycle of the business.
8. On the other hand, the Respondent in this appeal filed written submissions arguing that the Appellant has not made out her case to sustain the appeal. He placed reliance on the following caselaw and provisions of the Statute:
 - *Section 38 (1) of the Small Claims Act Cap 10A Laws of Kenya, Shamsi Hauliers Ltd v Asto Transporters Ltd (Civil Appeal E067 of 2024) [2025] KEHC 5159 [29 April 2025] (Judgment) & Mulovi Mwangangi v Kalovwe Munyau [2020] KLR.*
9. This is a commercial claim or in common language a civil debt based on commercial transactions between the Claimant and the Respondent. The standard and burden of proof is governed by Section 107(1), 108 and 109 of the Evidence Act. *In the case of **Kengere v Aisha Motor Dealers Ltd & 2 Others (2025)** it was affirmed that the Plaintiff's legal burden, with the evidential burden potentially shifting. The standard of proof is generally the balance of probabilities. However, allegations of fraud require specific pleading and proof at a higher standard, through not beyond reasonable doubt, as seen in **Kabue v Kurui & Another (2025) and Laisu & 2 Others v Sharif & Another (2024)**. Special damages also demand strict pleading and proof.*
10. In civil cases, the Plaintiff has the burden of proving their case by a preponderance of the evidence, which means the Plaintiff merely needs to show that the fact in dispute is more likely than not.

11. It must be borne in mind that the appeal from the Small Claims Court to the High Court is based on a point of law. A point of law arises when a Court must determine the legal consequences of established facts or interpret a meaning of a Statute. In the instant case, the learned Adjudicator ruled that the evidence by the Claimant did not disclose a cause of action against the Respondent and therefore dismissing the claim altogether. I have reviewed the evidence which was presented before the Small Claims Court and further the findings by the learned Adjudicator, it clear that the Claimant did not discharge the burden of proof that she was owed any money by the Respondent. In substance, nothing more on appeal was argued in the written submissions which could change the position as it stood then before the Small Claims Court. It must be reiterated that there being no written agreement as between the parties which is relevant in the circumstances of this case, the exchanged money transactions can only be tested on the truthfulness of each testimony as viewed by the learned Adjudicator. Having regard to the full treatment given to the questions raised in the memorandum of appeal, it seems to me that the true way of how the trade transaction went and the amount due and owing cannot be said to have been discharged in reference to the aforesaid documentation permissible before the trial Court. This appeal fails and is dismissed for want of merit with no orders as to costs. Each party to bear their own costs of the appeal.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 19TH
DAY OF JANUARY 2026.**

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R. NYAKUNDI
JUDGE