

2. A declaration that the purchase of motor vehicle registration number KCL 689 B is fully paid, the same is payable by the 1st defendant.
 3. An order directed to the 2nd defendant Alginza Automobile Limited to transfer motor vehicle registration number KCL 689 B to the plaintiff Ashford Riungu absolutely within 21 days from the date of delivery of this judgment and in default the NTSA be ordered to effect a force transfer.
 4. A permanent injunction restraining the defendants, their agents, family members, employees, contractors, auctioneers or any other person acting at their behest, direction, order from repossessing, taking, chasing, apprehending, alienating, transferring, selling or in any other way interfering with or disposing KCL 689 B.
 5. Cost of the suit be paid by 1st defendant.
2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the amended Memorandum of appeal dated 7th August, 2024;
1. The learned magistrate erred in law and fact in finding that motor vehicle registration number KCL 689 B Toyota Hilux is owned and is the property of Ashford Gerrard Riungu.
 2. The learned Magistrate erred in law and facts in declaring that the purchase price of motor vehicle registration number KCL 689 B was fully paid without an acknowledgement receipt and or sale receipts to that effect.

3. The trial Magistrate erred in law and fact in failing to find that the term of the written motor vehicle sale agreement dated 29th March 2018 superseded the oral agreement between the appellant and 1st respondent.
4. The trial magistrate erred in law and fact in failing to find that the appellant had no capacity to sell and or to enter into an oral agreement for sale of motor vehicle registration number KCL 689 B with the 1st Respondent.
5. The trial magistrate erred in law in failing to find that the oral agreement between the Appellant and 1st Respondent was an illegality and was invalid agreement as it offended the provisions of Section 46 of the Advocates Act.
6. The trial magistrate erred in failing to find that disputed issues of legal fees in an advocate client relationship were only subject to taxation and did not form part of the purchase price of motor vehicle registration number KCL 689 B.

Evidence

3. **PW1 Ashford Riungu**, the Respondent herein, and an advocate adopted his statement dated 22/10/2021 as his evidence and produced the documents filed therewith as exhibits. He told the court that he had acted for the Appellant, who was his friend, in several matters. He entered into an oral agreement with the Appellant for the purchase of a Kluger, with the proceeds from the sale of his RAV 4. The Appellant subsequently failed to give him the logbook, yet he was the beneficial owner thereof. The Appellant paid for his services as an advocate and he did not give him the vehicle to facilitate his movement.

4. **DW1 Albert Gitari Luka**, the Appellant herein, produced the list of documents as exhibits. He told the court that the Respondent was his neighbour and his advocate on record. He denied authorizing Al ginza to transfer the car, and insisted that he paid for the legal services rendered by the Respondent. The car could not be transferred due to a debt of Ksh. 3,000,000 with Al Ginza, and when the Respondent started working for him, he temporarily allowed him to use the car Registration No. KBQ 801 G. The Respondent also took his motor vehicle Registration No. KCH 689 B, and although he paid Ksh. 5,000,000 via Mpesa as legal fees, he did not have any receipt in proof thereof. He withdrew Ksh. 800,000 and gave to the Respondent but he did not have receipts. He denied writing the letter dated 14/4/2021 and the signature thereon was a forgery. The Respondent took his cash bail in Chuka Criminal Case No. 628/2018, and sued him when he asked for his car back.

Submissions

5. The Appellant through the firm of OMK Advocates filed submissions dated 18/6/2025 faulting the trial court for holding that the motor vehicle in question belonged to the Respondent merely on basis that he was in possession thereof, which finding was unsupported by credible evidence and applicable law. Counsel contended that the Appellant was not the registered owner of the motor vehicle, and thus he had no ownership rights capable of passing to the Respondent. Counsel asserted that the vehicle was registered in the name of a 3rd party, and the Appellant lacked the legal capacity to sell, transfer or otherwise enter into the oral agreement, without the express written

authority of the registered owner. Counsel submitted that there existed no privity of contract between the Respondent and the 3rd party, and cited **Daniel Kiprugut Maiywa v Rebecca Chepkurgat Maina [2019] KEELC 842 (KLR) and Agricultural Finance Corporation v Lengetia Limited & Jack Mwangi (1985) eKLR**. Counsel further submitted that the alleged oral agreement, if at all it existed, was *void ab initio* and unenforceable for want of capacity, violation of a prior written agreement and lack of authorization from the lawful owner. According to counsel, declaratory orders must be founded upon properly tested and analysed evidence, and cited **Njogu & Company Advocates v National Bank of Kenya Limited [2016] KECA 85 (KLR)**. Counsel faulted the trial court for holding that the purchase price of the motor vehicle was fully paid where there arose a disputed issue of legal fees payable in an advocate client relationship.

6. The Respondent filed submissions dated 1/7/2025 contending that he was not privy to the purported agreement for sale of the vehicle dated 29/3/2018, and prayed for the dismissal of the appeal with costs.

Determination

7. This being a first appeal, the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.
8. In **Selle & another v Associated Motor Boat Co. Ltd [1968] EA**, the court held as follows: ***“This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put***

they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

9. I have considered the appeal herein, the trial court’s judgment which is the subject of this appeal as well as the submissions on record.

10. From the grounds of appeal, the sole issue for determination is whether the trial court’s decision was founded on law and supported by the evidence adduced.

11. In his testimony, the Respondent stated that, **“I have been buying vehicles from Al ginza (2nd defendant). We agreed as friends that I sell my vehicle, I give the defendant the money, and he gives me a car that he was driving at the time. I sold the RAV 4 and gave him the money Kshs 700,000/=. He gave me kluger. We then exchanged the money for the Kluger. In all the transaction. The 1st defendant had the logbook. A Forensic Report was done and the same confirmed that the signature on letter dated 14/4/2021 was the 1st defendant’s. The 1st defendant was paying me my services and he did not give me vehicle to facilitate my movement. The defendant has never claimed ownership of this car since 2017. We exchanged our vehicles in 2017. He has never given me the logbook.”**

12. The Appellant conceded in his testimony that he permitted the Respondent to use the subject motor vehicle, while the latter acted as his advocate, but emphatically denied authorizing the 3rd party to transfer it to the Respondent. He maintained that he duly paid legal

fees and the Respondent instituted this suit after he demanded the return of his vehicle.

13. The logbook on record indicates that the subject motor vehicle was registered in the name of Al Ginza Automobiles Limited on 21/2/2017. Further, there exists a letter authored by the Appellant dated 14/4/2021 instructing Al Ginza to effect the transfer of the subject motor vehicle to the Respondent. Although the Appellant alleged that the signature appended thereto was a forgery, the forensic report dated 23/12/2020 confirmed the signature to be his.

14. The Respondent pleaded that the Appellant delivered to him the subject motor vehicle on 27/6/2017, but thereafter, in collusion with the 3rd party, clandestinely refused to effect transfer and release the log book. The Appellant's conduct in entering into the subsequent agreement dated 29/3/2018 with the 3rd party during the subsistence of the oral agreement with the Respondent, to say the least, was highly undesirable.

15. In **Ali Abdi Mohamed v Kenya Shell & Company Limited [2017] KECA 590 (KLR)**, the Court of Appeal, espoused that; **“From the record, we note that it is not in contention that the appellant and the respondent carried on business together for a period of six (6) months before the agreement between the parties was terminated. It is instructive to note that there was an offer, acceptance and consideration, a valid contract therefore existed between the parties. In Abdulkadir Shariff Abdirahim & another v Awo Shariff Mohammed T/A A. S.**

Mohammed Investments [2014] eKLR, this Court stated: “There is no general rule of law that all agreements must be in writing.” Lord Reid in Steadman - vs- Steadman (1976) AC 536, 540 stated: “If one party to an agreement stands by and lets the other party incur expense or prejudice his position on the faith of the agreement being valid he will not then be allowed to turn around and assert that the agreement is unenforceable”. It therefore follows that a contract can exist where no words have been used but where it can be inferred from the conduct of the parties that a contract has been concluded. See Timoney and King v King 1920 AD 133 at 141. In the circumstances of the instant case, there existed an enforceable contract between the parties by reason of Conduct. Indeed it was not disputed by the respondent that it supplied petroleum products to the appellant at a specific amount per litre and for a certain period of time.”

16. On the totality of the evidence, I am satisfied that the Respondent led consistent and credible evidence, which established on a balance of probabilities, that the parties herein had entered into a lawful and binding oral agreement for the transfer of motor vehicle Registration No. KCL 689 B.

17. The upshot from the foregoing analysis is that the appeal is in want of merit and it is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT MERU THIS 28TH DAY OF JANUARY, 2026.

S.M. GITHINJI
JUDGE

APPEARANCES:

Mr. Mwirigi Batista for the Appellant.

Mr. A. G. Riungu is the Respondent (absent)