



**Muchoki v Powerlife Kardi EA Limited (Civil Appeal E460 of 2024)
[2026] KEHC 322 (KLR) (Civ) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 322 (KLR)

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

CIVIL

CIVIL APPEAL E460 OF 2024

FR OLEL, J

JANUARY 23, 2026

BETWEEN

ALICE MURUGI MUCHOKI APPELLANT

AND

POWERLIFE KARDI EA LIMITED RESPONDENT

*(Being An Appeal From The Judgment And Decree Of Hon V.k Momanyi
(rm) Delivered On 8Th March 2024 In Nairobi Scccomm No E128 Of 2024)*

JUDGMENT

A. Introduction

1. The Appellant sued the respondent before the small claims court and stated that between 14th April 2022 and 23rd April 2022 she did at the respondents request supply them with kilograms of Avocado fruits valued at Kshs.493,312.80/=, which the respondent partially paid for but for a balance of Kshs.75,512.80/=, for which she sought judgment.
2. In response, the Respondent denied owing the sum claimed and stated that for the goods supplied full settlement was made and thus urged the court to dismiss the claim.
3. Subsequently, during hearing the Appellant the rehashed the facts and produced her claim supporting documents. The respondent opted not to call any witness and upon considering the evidence adduced the trial court held that the Appellant had not discharged the burden of proof and proceeded to dismiss the Appellant's case.
4. The Appellant, being dissatisfied with the said Judgment, raised five (5) grounds of appeal, namely:



- a. That the learned Magistrate erred in law and fact in disregarding the evidence on record and dismissing her suit.
 - b. That the learned Magistrate erred in law and fact in fact in failing to take into consideration sufficiently or at all the Appellants submissions as to facts placed before her.
 - c. That the learned Magistrate erred in law and in fact in failing to take into consideration sufficiently or at all the appellants oral testimony during trial.
 - d. That the learned Magistrate erred in law and fact in dismissing the appellants suit yet no evidence was adduced by the respondent to controvert the Appellants case.
 - e. That the learned Magistrate erred in law and fact in dismissing the Appellants suit yet the respondent never cross examined the appellant on her evidence that she gave on oath.
5. The Appellant thus prayed that the appeal be allowed and the judgment of the trial court be set aside and her claim be allowed with costs.

B. Analysis And Determination

6. I have considered the entire record of Appeal and pleadings filed, the grounds of appeal raised, the submissions filed by the Appellant, and the cited authorities. This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the *Small Claims Court Act* provides that appeals from the said court shall be only on issues of law. An appeal limited to matters of law does not permit the appellate court to substitute the tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts. See John Munuve Mati Vr The returning officer, Mwingi North Constituency & 2 others (2018) eKLR
7. This Appeal is centered on the question of burden of proof, which is a purely an issue of law. Section 107(1) of the *Evidence Act* provides that;
- “whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts must prove that those facts exist.”
- Section 108 of the *Evidence Act* further provides that ;
- “The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given by the other side.”
8. This court is guided by the observation of the court in the case of *Rajah J A in Britestone Pte Ltd v Smith & Associates Far East Ltd* {2007} 4 SLR 855 where the court stated that :
- “The Court’s decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him. Since the terms proved, disapproved and not proved are statutory definitions contained in the *Evidence Act*. The term proof whenever it appears in the *Evidence Act* and unless the context otherwise suggests, means, the burden to satisfy the Court of the existence or non-existence of some fact.”
9. The plaintiff produced unchallenged documentary evidence confirming that they had a business relationship with the respondent, delivery notes signed by the respondents agents, Mpesa and bank statements to prove that there had been partially payment of the Avocadoes supplied. The said evidence



was sufficient to establish the fact that out of value of Avocadoes delivered there remained a balance of Kshs.75,512.80/= which was due and owing.

10. At that point the evidentiary burden shifted to the respondent to disapprove the same. Unfortunately, they failed to call any witness to rebut the Appellants evidence and the same passed uncontroverted. The issue of uncontroverted evidence was addressed by Justice Mwongo in Peter Ngigi & Another (suing as legal representative of the Estate of Joan Wambui Ngigi) -v-Thomas Ondiki Oduor & Another 2019 eKLR where he stated:-

22. “There are many authorities that deal with the question of uncontroverted evidence, such as the situation in the present case where the defence did not show up at the trial. The general position running through such authorities is that uncontroverted evidence bears a lot of weight and a statement of defence without any evidence to support the assertions therein will amount to mere statements.

23. In the case of Shaneebal Limited v County Government of Machakos [2018] eKLR, Odunga, J, relied on the cases below in reaching his judgment. In Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001 the learned judge citing the same decision stated that it is trite that where a party fails to call evidence in support of its case, that party’s pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the plaintiff against them is uncontroverted and therefore unchallenged.

11. The trial Magistrate holding that the Appellant failed to discharge the burden of proof, thus was made in error and cannot stand.

C. Disposition

12. I do therefore find and hold that this Appeal has merit.

13. The Judgement/Decree issued in Nairobi SCCC E128 of 2024 dated 8th March 2024 dismissing the Appellant suit is hereby set aside and substituted with an order allowing the same in the sum of Ksh.75,512.80/= plus costs and interest from the date of filing the suit until date of payment in full.

14. Each party will bear their own costs of this Appeal

15. Stay of execution 45 days

16. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MARSABIT THIS 23RD DAY OF JANUARY 2026.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 23rd day of JANUARY 2026.

In the presence of: -

N/AAppellant

N/A Respondent

Mr. JarsoCourt Assistant

