



REPUBLIC OF KENYA



**Munene v Kinyua (Civil Appeal E104 of 2024)
[2026] KEHC 353 (KLR) (21 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 353 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E104 OF 2024
RM MWONGO, J
JANUARY 21, 2026**

BETWEEN

ABISAG MBANDI MUNENE APPELLANT

AND

ROSALINE WANJIRU KINYUA RESPONDENT

*(Appeal arising from the decision of Hon. M.N. Kinyua, Adjudicator
in Embu SCCCOMM No. E011 of 2024, delivered on 23rd May 2024)*

JUDGMENT

The Appeal

1. The appellant filed a memorandum of appeal dated 05th December 2024 seeking orders that:
 1. This appeal be allowed; and
 2. This Honourable Court do proceed and set aside the entire judgment and decree of the court as follows:
 - a. Principal Amount Kshs.157,800/=.
 - b. Interest @12% per annum & Costs of the suit.
 - c. The costs of the subordinate court and this appeal be awarded to the Appellant.
2. The appeal is premised on the following grounds:
 1. That the learned trial magistrate erred in law and in fact in relying on the wrong principles in making an award of Kshs.160,757.13/= as the principal amount;



2. The learned trial magistrate erred in law and fact in failing to take into consideration the facts presented by the Respondent surrounding the circumstances under which the Respondent had paid the monies alleged into the Appellant's account;
3. The learned trial magistrate erred in law and in fact in awarding the Respondent Kshs.157,800/= as a principal sum in spite of the fact that the Respondent had not lent the Appellant any monies;
4. That the learned trial court erred in law and in fact in failing to consider the entirety of the Appellant's response to the claim; and
5. That the learned trial magistrate's judgment was wholly not supported in law by evidence tendered in court by the parties.

Background of the case

3. In the lower court, the respondent filed a statement of claim seeking judgment against the appellant in the sum of Kshs.247,800/=, as compensation plus costs. She stated that on 04th September 2023, the appellant borrowed Kshs.157,800/= from her so that she could repay a loan she had at the Kenya Women Finance Trust (KWFT) Bank. That the parties agreed that the money would be repaid on or before 11th September 2023, together with interest of Kshs.4,500/= per week. She claimed that the appellant had failed to repay the money as agreed, and at the time of filing the claim, the interest had accrued to Kshs.90,000/=, bringing the total claim to Kshs.247,800/=. That efforts to recover the money were futile.
4. In her response to the statement of claim, the appellant entirely denied the averments made by the respondent.
5. The matter was heard viva voce, and the evidence that transpired was as follows;
6. PW1 was the respondent who stated that when the appellant borrowed money from her, she deposited it in her KWFT account in 2 installments; The first being for Kshs.82,800/= and the second being for Kshs.75,000/=. They agreed that after 11th of September 2023, the money would accrue interest at the rate of Kshs.4,500/= per week until payment in full.
7. She stated that the appellant borrowed the money in the presence of two witnesses, namely, Michael Kinyua and Victoria Wanjiru Gichovi. That the appellant failed to repay the money on the day when they had agreed, and so it continues accumulating interest upto a total of Kshs.247,800/= from the initial Kshs.157,800/=. In cross-examination, she stated that they did not reduce their agreement into writing because they both had witnesses.
8. PW2 was Michael Kinyua who stated that he was with PW1 when the appellant borrowed Kshs.157,800/= being arrears she owed at KWFT. PW1 agreed to loan the appellant the money on condition that it would be repaid with interest of Kshs.4,500/= per week by 11th September 2023. PW1, through M-Pesa, deposited the money into the appellant's KWFT account that was in loan default.
9. He said that he witnessed PW1 completing the transactions. PW1 later informed him that the appellant had defaulted on the repayments and the interest had accrued such that the total amount was now Kshs.247,800/=. In cross-examination, he stated that the respondent is his wife and that there was no written agreement for the transaction.



10. PW3 was Victoria Wanjiru Gichovi who testified in the same terms as PW2. In cross-examination, she stated that PW1 called her to witness her verbal agreement with the appellant and the subsequent transaction. That PW1 sent the money to the appellant's bank account from her M-Pesa account.
11. RW1 was the appellant. She stated that she is in a 5-person women group called Wonderful Ladies Kanyariri and the respondent is also one of the members. The group is a chama is under the umbrella of KWFT. That some members of the group were defaulting in loans they had taken and so they were urged to repay the loans. At the time, she owed Kshs.157,800/= She therefore sold some cows and gave the money to the appellant who was the group's treasurer on 04th September 2023. The agreement was that the treasurer would deposit the money directly into the appellant's KWFT account and she did the transaction from her M-Pesa.
12. She stated that the money was not a loan borrowed from the respondent and there was no agreement to that effect. In cross-examination, she stated that she had held her KWFT account from 2022 and it was not the first time for her to take a loan through that account. She said that she sold 5 cows at Kshs.80,000/= each and she made Kshs.200,000/=. That the respondent also deposited money for the other members of the chama who had loans too.
13. RW2 was Flora Wawira who is also a member of the chama alongside the parties herein. She stated that she, too, had defaulted on a loan. It was agreed in the chama that all defaulters would give money to the respondent, who was the Treasurer, for her to deposit the money into their KWFT accounts. On 04th September, 2023, she gave the money she owed to the respondent and she deposited it from her M-Pesa into her KWFT account. RW1 also gave the money she owed to the respondent, who also deposited it from her M-Pesa into her KWFT account.
14. According to her, RW1 did not borrow any money from the respondent. On cross-examination, she stated that the chama usually writes minutes but on that day 28th August 2023, they did not write minutes to document that the respondent would be receiving loan arrears from members and depositing the money into their accounts. They did not have it in writing that members should give the loan arrears to the respondent to deposit for them in their KWFT accounts.
15. The Adjudicator found that the appellant had not rebutted the evidence adduced by the respondent in support of her claim. That the respondent had met the standard of proof. Judgment was entered in favour of the respondent for the sum of Kshs.157,800/= plus costs and interest.

Parties' submissions

16. The appeal was canvassed by way of written submissions.
17. In her submissions, the appellant, rehashed the facts of the case and relied on the cases of Patrick Peter Kithini v Justus Mwangela [2020] KEHC 1990 KLR and Mbuthia Macharia v Annah Mutua Ndwiga & another [2017] eKLR. She argued that it was her word against that of the respondent who did not produce sufficient evidence to prove her case. Further reliance was placed on the case of Manyara v Odhiambo [2024] KEHC 11880 (KLR) where the court found that the evidential burden of proof had not been discharged since the claimant failed to prove that the money sent to the respondent was a debt to be repaid.
18. The respondent submitted that there was an oral contract between her and the appellant who borrowed money from her. That she had produced proof that the money was to be repaid with interest. She referred to the testimonies of her witnesses and stated that they witnessed the oral agreement being made. She relied on the cases of Alfred Anekeya Mangu'la t/a Alfabetty Enterprises v Paul Indimuli



& another [2022] eKLR and Patrick Peter Kithini v Justus Mwangela (supra) and urged the court to uphold the findings of the Small Claims Court.

Issue for Determination

19. The issue for determination is whether the appeal has merit.

Analysis and Determination

20. An appeal lies to the High Court from the Small Claims Court, only on issues of law. Section 38 of the *Small Claims Court Act* provides as follows:

“(1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High court on matters of law.

(2) An appeal from any decision or order referred to in subsection (1) shall be final.” [Emphasis added]

21. In *Directline Assurance Co. Ltd v Nyawa* [2023] KEHC 2021 (KLR), the court stated thus regarding this provision:

“I am alive to the fact that this is a final Appeal. Therefore, the duty on the court is enormous. This is because, whatever, this court decides, the parties have to find a way of living with it. Appeals from Small Claims court to this court are on points of law only. However, what constitutes a point of law is not defined. Nevertheless, this court is bound by antecedent findings to settle what a point of law is. It also needs to settle what a point of law is not... This then takes the same turn as an appeal to the court of appeal, where the court gives deference to finding of fact. Only when the findings of fact are based on no evidence will that be seen as a point of law.”

22. A matter of law or issue of law is a question of law which is defined in the 9th Edition Black’s Law Dictionary as follows:

1. “An issue to be decided by the judge, concerning the application or interpretation of the law; or
2. A question that the law itself has authoritatively answered, so that the court may not answer it as a matter of discretion; or
3. An issue about what the law is on a particular point; an issue in which parties argue about, and the court must decide, what the true rule of law is.”

23. Conversely, a question of fact is defined in the same dictionary as follows:

- “1. An issue that has not been predetermined and authoritatively answered by the law; or
2. An issue that does not involve what the law is on a given point; or
3. A disputed issue to be resolved by the jury in a jury trial or by the judge in a bench trial”



Determination

24. The appellants herein have challenged the findings of the Small Claims Adjudicator essentially and substantially on issues of fact. The grounds of appeal are drawn in such a manner that they oblige this court to re-examine in detail the facts of the matter argued in the trial court, and not points of law arising therefrom. The essence of the arguments made in this appeal are that the evidence adduced before the Small Claims Court does not meet the required standard of proof and that this court should re-examine it. In a similar case HCCA No.E012 of 2025 I held as follows in connection with an appeal on issues of fact evidence:

“In either case, I think that this Court can only interfere with aspects of evidence of fact where the trial Court’s assessment thereof is so unreasonable, ridiculous or ludicrous as to negate or be so inconsistent with any known principles of law. In such cases, the party alleging the unreasonableness must so clearly and specifically highlight the unreasonableness or ludicrousity, so as to pre-empt this Court, an arbiter on issues only of law, from entering into the factual mine-field.

What the appellant is in fact challenging before this court are purely matters of fact or evidence. In fact, he has called upon this appellate court to re-examine the evidence adduced before the trial court so as to make different conclusions thereon on the quantum. As clearly stated under section 38 of the *Small Claims Court Act*, an appeal of this nature must raise points of law only and not issues of fact. There must be specificity and particularization of such points of law. These questions of law are conspicuously missing from the grounds of appeal and the submissions”

25. It must be remembered that the Small Claims Court is not a Court in the nature of the Magistrate Court. It does not apply strict rules of evidence and the *Civil Procedure Act* has little place therein, if at all. The decision maker is called an Adjudicator and has wide powers of inquisition and discretion to use the information received. The philosophy underpinning the Small Claims Court does not bow to the strictures of evidential and procedural law under which regular courts are circumscribed. It is upon that understanding that the High Court is limited to determine matters on appeal from that Court on issues of law only.
26. Accordingly, I adopt the same position in the present case as that I held in HCCA E012 of 2025, and consequently reject the appeal on these grounds.
27. For the foregoing reasons, the appeal cannot be entertained as drawn, and it is hereby dismissed.
28. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 21ST DAY OF JANUARY, 2026.

R. MWONGO

JUDGE

Delivered in the presence of:

Mburu for Appellant

Ms. Kinyua holding brief for K. Ndolo for Respondent

Francis Munyao - Court Assistant

