



**Ndiritu & 2 others v Nyale Investment (Civil Appeal E568 of 2023)
[2026] KEHC 1684 (KLR) (Civ) (9 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1684 (KLR)

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

CIVIL

CIVIL APPEAL E568 OF 2023

WM MUSYOKA, J

FEBRUARY 9, 2026

BETWEEN

EPHANTUS NDIRITU 1ST APPELLANT

PRINTTOUCH LIMITED 2ND APPELLANT

POTTERS GROUP 3RD APPELLANT

AND

NYALE INVESTMENT RESPONDENT

(Appeal from the judgement and decree of Hon. BM Cheloti, Principal Magistrate, PM, in Milimani CMCC No. E424 of 2021, of 29th May 2023)

JUDGMENT

1. The appeal herein arises from judgment that was rendered in Milimani CMCCC No. E424 of 2021, on 9th May 2023. 2 original trial court records, both relating to Milimani CMCC No. 424 of 2021, were made available, and placed inside this appeal file. One relates to a suit, Ephantus Ndiritu & 20 others vs. Nyale Investments Ltd, while the other relates to Margaret N. Kamau & another vs. African Reinsurance Corporation & another. The appeal herein relates to the suit between Ephantus Ndiritu & 20 others vs. Nyale Investments Ltd. The 2 suits are totally unrelated.
2. I believe I should say this that it would be wrong to retain the file relating to case in Margaret N. Kamau & another vs. Africa Reinsurance Corporation & Another. It is unfair to the parties in that suit, to have their file sit in this appeal file, when it has nothing whatsoever to do with the other suit, and this appeal. The suit, in Margaret N. Kamau & another vs. Africa Reinsurance Corporation & Another, cannot proceed, because the file is not available at the Magistrate's Court registry, for it is here at the High Court, where it is not required at all.



3. Be that as it may. The suit, at the trial court, between the parties to the appeal herein, had been initiated by the appellants, against the respondent. The appellants had been allegedly requested the respondent to fabricate and convert used shipping containers into a shopping complex or market, at Gachie, on property owned by the appellants. The appellants provided the technical details on what they wanted, and the respondent raised an invoice of Kshs. 803,000.00, towards purchasing 14 containers, 63 metal shutters, among other items. The plaintiffs purchased the items abroad, and shipped them to Kenya. The appellants paid various amounts of money to the respondent. However, the project fell through, after the County Government of Kiambu declined to approve it. Whereupon, the respondent released some of the containers, meant for the project, to the appellants, but allegedly declined to release the rest. The claim, before the trial court, was for the moneys paid to the respondent, and for the containers that were not released to them.
4. The respondent resisted the claim. It acknowledged the engagements between itself and the appellants, but contested that it was responsible for transportation of the containers, for its sole role was fabrication and installation. It averred that it had only 15 units, which it released to the appellants. It averred had it had incurred expenses, of Kshs. 135,400.00, on some installations, before the project was rejected by the County Government. It also averred that the appellants owed it Kshs. 245,000.00, for another project in Kajiado.
5. A trial was conducted. 2 witnesses testified for the appellants, and 1 for the respondent. Judgment was delivered, on 29th May 2023. It was concluded that no refund was due to the appellants, as the containers were purchased directly by the appellants, and that the respondent was only bound to release the 3 containers that were in its possession, pending reconciliation of accounts.
6. The appellants were aggrieved, hence the appeal. They argue that the trial court did not appreciate the dispute; the refund of Kshs. 1,660,000.00 was for works not carried out; their evidence was not properly evaluated; and there was failure to award costs.
7. Directions were given, on 2nd May 2025, for canvassing of the appeal by written submissions. I have only come across written submissions by the respondent. Those written submissions relate to an appeal in Nairobi HCCA No. E023 of 2024, which turns on a road traffic accident.
8. The claim, by the appellants, was for 3 items, refund of Kshs. 1,660,000.00, USD 16,250.00 and USD 2,025.00. Kshs. 1,660,000.00 had been paid to the respondent, for the fabrication and installation services. USD 16,250.00 was the value of the containers the appellants claimed were not delivered to them, after the project collapsed. USD 2,025.00 was in respect of expenses incurred, for the handling of the containers, when they landed at Mombasa. There was an alternative prayer, that, in lieu of the payments, an order ought to issue to compel the respondent to hand over the remaining 10 containers. The alternative prayer was limited to the 10 containers.
9. Let me start with the containers. 16 had been imported, for the project. According to the appellants, io the 16, only 6 were released to them by the respondent, leaving a balance of 10. The suit sought to recover the 10, yet to be released. The appellants sought to get the monetary equivalent, or the actual containers.
10. Oral evidence was taken. PW1, the 1st appellant, who was also a director of the other 2 appellants, did not testify on that aspect. His witness, PW2, Stanley Mwangi, testified that he picked 4 containers, from a depot in Mombasa, and delivered them to the respondent. He said that out of the 16, containers, he picked 4, leaving 12, and he delivered the 4. He stated that the remaining containers, which he said were 14, were released to the 3rd appellant. That was the evidence from the appellants.



11. DW1, a director of the respondent, testified that the respondent was not handling that aspect of the project, as that was for PW2. He stated that PW2 delivered 9 containers. When the project collapsed, the respondent was advised to retain the containers, to be collected later. 6 were subsequently collected, leaving a balance of 3. The respondent still had 3, in its possession, awaiting reconciliation of accounts.
12. After hearing that evidence, the trial court believed the respondent, and opted to order the release of the 3 containers, in its possession, to the appellants. The trial court had the benefit of seeing and hearing those who testified. It had the opportunity to observe their demeanour. It believed DW1, as against PW1 and PW2. I have no basis for coming to a contrary finding. The appellants have not given me any reason to. It appears, from the material on record, that the transportation was being handled by the 3rd appellant.
13. The claim for USD 16,250.00 was disposed of, by the order in the judgment, that the respondent release, to the appellants, the containers in its possession.
14. The trial court did not address itself to the claim for USD 2,025.00. According to the plaint, that money was what was spent, by the appellants, on the logistics of handling the containers, after they landed in Mombasa. PW1, the 1st appellant was the principal actor on the side of the appellants. He was the driver of the process, for he was also a director of the 2nd and 3rd appellants. He should have known everything about what transpired. He did not testify on how that amount came about. His witness statement did not help either. It merely reiterates what was in the plaint. As it is, no evidence was adduced, on how that amount came about. Who was paid? How much? For what services? In the absence of that, there would have been no basis for award of that amount. In any event, the containers, belonged to the appellants. They reverted back to appellants, upon the collapse of the project. The handling expenses related to those containers, which belonged to the appellants, and not the respondent. The expense of USD 2,025.00 was to the benefit of the appellants.
15. On the Kshs. 1,660,000.00, it was pleaded that the same was paid to the respondent, to cover partitioning, and the making of saddle beams and shutters. The witness statement of PW1 said as much. It was identified as meant for initial deposit, in the appellants list of issues. In the defence, the respondent acknowledged the payment, and claimed he had incurred some initial expenses, was unpaid for another contract in Kajiado, and a refund had not been asked for.
16. At trial, PW1 did not talk about it, in his own testimony. DW1 conceded that it was a deposit, meant for making shutters, for plumbing works, fabrications, ground preparations and ground work. In the judgment, the trial court did not make a finding on it. As the DW1 acknowledged the payment, in his testimony, and did not account for it, and as the project collapsed, it should mean that the purpose for which it was paid was not met, and the court should have ordered its refund.
17. I find merit, in the appeal, on the aspect of the Kshs. 1,660,000.00, but not on the USD 16,250.00 and USD 2,025.00. The appeal herein succeeds to that limited extent. The judgment of the trial is hereby affirmed on all aspects, except that an order shall be added, for a refund of Kshs. 1,660,000.00, by the respondent, to the appellants. The appellants shall have costs of the appeal. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 9TH DAY OF FEBRUARY 2026.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.



Mr. Maurice Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Ms. Pyoko, instructed by Mutua Waweru & Company, Advocates for the appellants.

Mr. Njeru, instructed by Njeru Nyaga & Company, Advocates for the respondent.

