



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CIVIL APPEAL NO. E019 OF 2025

BETWEEN

SAMWEL WAMBUGU MUTHONI..... APPELLANT

AND

PETER KAMAU MWANGI.....RESPONDENT

(Being an appeal from the judgment in the Engineer Senior Principal Magistrate’s SPMCC No. E188 of 2022 by Hon. Harrison Adika Musa – Senior Principal Magistrate.

JUDGMENT

1. Peter Thairu Mungai, the appellant, was the plaintiff in Engineer Senior Principal Magistrate’s SPMCC No. E188 of 2022. He had sued the respondent for an order of immediate and unconditional delivery of the motorcycle registration number KMCR 973R and payment of Kshs.300 per day from December 2021, damages for breach of contract and costs of the suit.
2. His claim was dismissed, and the appellant was dissatisfied with the judgment and filed this appeal through Njihia Njoroge & Company Advocates. He raised the following grounds of appeal:
 - a) The learned trial magistrate erred in law and in fact by finding in favour of the respondent, yet the appellant had proved his case on a balance of probabilities.
 - b) The learned trial magistrate erred in law and in fact by finding and holding that there was an oral agreement between the appellant and the respondent for the sale of the subject motorcycle, yet from all the material on record, there was no proof that such an agreement had been entered into.
 - c) The learned trial magistrate erred in law and in fact by dismissing the appellant’s contention that he had hired out the subject motorcycle to the respondent, yet that was how the same had changed hands from the appellant to the respondent.

- d) The learned trial magistrate erred in law and in fact by failing to find and hold that if any agreement had been entered into between the appellant and the respondent, the same had been entered into by duress and undue influence.
 - e) The learned trial magistrate erred in law and in fact by giving effect to the purported agreement between the appellant and the respondent, yet the latter had used the criminal justice system to coerce the appellant into parting with the possession of the subject motorcycle.
 - f) The learned trial magistrate erred in law and in fact by failing to find and hold that the appellant was entitled to compensation by the respondent for the loss of use of the subject motorcycle from the month of December 2021, amounting to about Kshs. 330,000/=.
 - g) The learned trial magistrate erred in law and in fact by failing to find and hold that by causing the appellant to be summoned to the police station at the behest of the respondent on 4th August 2022, the respondent was abusing the criminal justice system to intimidate the appellant into parting with the ownership and possession of the subject motorcycle.
 - h) The learned trial magistrate erred in law and in fact by failing to find that the appellant was entitled to the prayers sought in his plaint.
3. Nyawira Mureithi & Company, Advocates represented the respondent. No opposition or submissions were submitted.
 4. As the first appellate court, I recognise my responsibility to thoroughly examine all the available evidence, given that I did not have the opportunity to observe the witnesses during their testimony. The **Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123** case sets the precedent that the first appellate court must review and assess the evidence presented in the trial court and draw its conclusions accordingly.
 5. The appellant owned the motorcycle with registration number KMCR 973R after buying it from Stanley Hiuhu. They documented their transaction on September 10, 2018. This fact was not in issue.
 6. The core dispute was whether the appellant sold the motorcycle to the respondent. The respondent claimed it was sold to him, while the appellant argued that he had leased it to the respondent.

7. In his evidence, the appellant did not produce any documents to establish his claim of leasing. Neither did the respondent produce any to support his claim. He, however, conceded that he entered an agreement with the appellant when the latter was in police custody. Stanley Mwaura (DW3) testified that Kshs. 15,000.00 was taken to the police station to pay the appellant, and the respondent was told to pay the balance.
8. The testimony from both witnesses indicates that the respondent was engaged in underhand activities concerning a civil issue. Police officers are not tasked with enforcing these types of agreements.
9. The appellant did not prove his claim for Kshs. 300 per day, and the learned trial magistrate was justified in dismissing it. Equally, the respondent did not prove that he had purchased the motorcycle in issue, which explains his involvement with the police officers in the matter.
10. After the analysis of the evidence on record, I find that the appellant proved that the motorcycle had not changed ownership. The judgment by the learned trial magistrate is quashed and the orders therein set aside. It is substituted with an order for the immediate and unconditional release of the motorcycle registration number KMCR 973R to the appellant.
11. The appeal therefore succeeds with costs.

Delivered and signed at Nyandarua, this 5th day of March 2026

KIARIE WAWERU KIARIE

JUDGE