



**Barclays Bank of Kenya Limited v Ng'ang'a (Civil Appeal E1260 of 2023)
[2026] KEHC 1241 (KLR) (Civ) (8 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 1241 (KLR)

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

CIVIL

CIVIL APPEAL E1260 OF 2023

JM CHIGITI, J

JANUARY 8, 2026

BETWEEN

BARCLAYS BANK OF KENYA LIMITED APPELLANT

AND

JANE WANJIKU NG'ANG'A RESPONDENT

*(Being an Appeal from the judgement of the Chief Magistrate's
Court of Kenya at Nairobi delivered on 19th May 2023 by
Honorable (Ms.) M. W. Murage (RM) in Civil Suit No. 1873 of 2017)*

JUDGMENT

1. The Appeal that is before this court for determination is anchored on the Memorandum of Appeal that is dated 20th November 2023 wherein the appellant seeks orders that;
 1. This Appeal be allowed.
 2. The Judgment by Honourable (Ms.) M. W. Murage (RM) in Civil Suit No. 1873 of 2017 delivered at the Chief Magistrate's Court of Kenya at Nairobi on 19th May 2023 be set aside.
 3. The Complaint dated 17th March 2017 be dismissed with costs.
 4. The costs of this Appeal be borne by the Respondent.

Appellants Case;

2. The Appellant herein relies on the grounds that:
 1. The Learned Magistrate erred in fact by finding that the Respondent held Bank Account Number 8022374 with the Appellant.



2. The Learned Magistrate erred in fact and in law by finding that the Respondent had provided sufficient and undisputed evidence that she held two accounts - including Bank Account Number 8022374 — in the Appellant Bank despite:
 - a. The Respondent's admission that she did not have any documentary evidence demonstrating that she held Bank Account Number 8022374 with the Appellant Bank; and
 - b. The Appellant disputing that the Respondent held Bank Account Number 8022374 and demonstrating that the said account was in the name of another person namely Hannah Mburui, and had been closed.
3. The Learned Magistrate erred in fact and in law when she found that the Respondent was entitled to payment towards Cheque Number 052318 dated 22nd May 2007 despite the said cheque having been issued to other persons namely Erastus Wachira Mwangi and Peter Mwangi Mbuthia, persons not before the Court.
4. The Learned Magistrate erred in fact and in law when it awarded the Respondent Kshs.670,530 with interest from 7th November 2016 until payment in full.
3. The bank submits that the Respondent did not provide a single document to demonstrate that she was the owner of the Disputed Account.
4. When challenged on this, she sought to rely on documents belonging to Account Number 817668, which she held with the Appellant which is an undisputed Account.
5. In the Judgement the Court the Court relied on the letters from the Appellant dated 12th June 2008 and 4th August 2008 in arriving at the decision that the Respondent was the owner of the Disputed Account awarding her the Respondent was awarded the sum of Kshs. 670, 530 together with interest at 14% from the date of filing the suit.
6. It is the appellant's case that a banker- customer relationship is established when a banker opens an account in the name of a customer. The account is then allocated a unique account number which is used to identify the owner of the account.
7. It submits that ownership of a bank account is easily verifiable through bank accounting opening forms, bank statement or any official correspondence from the bank.
8. During the hearing, it is submitted, the respondent's case was that she opened two bank accounts with the Appellant in 2000 being Account Number 8022374 (the Disputed Account) and Account Numbers 0758176681 (the Undisputed Account).
9. In July and November of 2007, the Respondent wrote to the Appellant requesting for activation of an Account she held with them. The Appellant responded through its letter of 2nd August 2007 and 23rd November 2007 informing her the Account has been closed and cannot be reactivated.
10. It submits that the respondent received two letters dated 12th June 2008 and 4th August 2008 from the Appellant advising her to collect a Banker's cheque number 052318 for Kshs. 670,530/- being money processed out of her dormant account.
11. While still out of the country, the Appellant's staff made telephone calls to her requesting that she picks up the cheque. In 2014, she authorized one Grace Wambui Ngangato to collect the cheque on her behalf but the Appellant declined to give out the cheque.



12. In 2016, she returned to the country and visited the Appellant with the aim to picking up the cheque. However, she was only given one cheque of Kshs. 43,445/-, being funds held under the Undisputed Account.
13. The Respondent in cross-examination it turned out that she had no evidence to support that the Disputed Account belonged to her.
14. She did not have documents to show that the Disputed Account was opened in her name nor any bank account statement that would verify that the account was held in her name. She also did not have any evidence nor recall any transactions that were carried out on the Dispute Account.
15. The appellant is aggrieved by the fact that in the Judgment of the Subordinate Court held that: "There is undisputed evidence that the Plaintiff held two accounts with the Defendant and proceeded to make a finding that the relationship between the Plaintiff and the Defendant is a fiduciary relationship based on trust and that can be evidenced through the correspondence made from the bank to the Plaintiff herein concerning the dormant account."
16. The claim before the Subordinate Court concerned the ownership of the Disputed Account (being Account Number 8022374). The Respondent not produce the same evidence she had produced for the Undisputed Account when it came to the Disputed Account.
17. The Respondent's entire evidence as to the ownership of the Disputed Account was the letters of 12th June 2008 and 4th August 2008 from the Appellant addressed to her. The letters- they were issued in error as the Disputed Account belonged to a different person.
18. It is its case that the Subordinate Court erred in finding that the Disputed Account belonged to the Respondent without any form of evidence.
19. On the burden to prove, 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. This principle was reiterated in Anne Wambui Ndiritu -vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, where the Court of Appeal held that: "As a general proposition under Section 107 (1) of the Evidence Act, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act {Emphasis added}
20. A banker-customer relationship is a contractual relationship as was affirmed by Foley v Hill [1848] 2 H.L. Cas 28. Paragraph 7.1, Paget's Law of Banking describes the relationship as follows: "It consists of a general contract, which is basic to all transactions, together with special contracts which arise only as they are brought into being in relation to specific transactions or banking services.". By all definitions, the banker/customer relationship is a contractual relationship which is premised on the existence of account opened by the banker and owned by the customer.
21. Lord Atkin in Joachimson v Swiss Bank Corp [1921] 13KB 110 at 127 said as much: "the bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer but the bank borrows the proceeds and undertakes to repay them. It included the customer."
22. The Respondent had not provided a single document that would reasonably lead to conclude that she the owner of the Disputed Account.



23. Even though the letters were erroneously issued, the Cheque No. 052318 dated 22nd May 2007 for the sum of Kshs. 670,530/- was not issued in the Respondent's name. It was issued in the name of Erastus Wachira Mwangi and Peter Mwangi Mbuthia. Evidently, it was not in the name of the Respondent.
24. The original cheque was issued to Erastus Wachira Mwangi and Peter Mwangi Mbuthia in May 2007.
25. It was repurchased on 9th July 2008 by Erastus Wachira Mwangi who was a payee in the original cheque of May 2007. A cheque is repurchased when it has become stale, meaning, it has not been utilized within 6 months of it being issued.
26. It submits that When a cheque is repurchased, it does not affect the details of the payee.
27. The payee remains as is on the original cheque. Importantly, a repurchase can only be issued to the original payee and on the instructions of the original payee.
28. The letters were not conclusive evidence as to the ownership of the Dispute Account nor was it a reasonable basis upon which the Court ought to have arrived at its finding.
29. It takes issue with the fact that in its Judgement, the Subordinate Court relied on the doctrine of estoppel to find that the Respondent's claim was merited. The reliance on the doctrine of estoppel was flawed for the reason that the Respondent had not pleaded it nor did she prove how the representation by the Appellant (through the letters) altered her position nor was detrimental to her.
30. The reliance on this doctrine, without any evidence of what detriment the Respondent suffered on account of the letters of 4th August 2008 and 12th June 2008, was gravely inappropriate. This is because the letters never confirmed that the Respondent was the owner of the Disputed Account and therefore entitled to the sum of Kshs. 670,530/.
31. The Respondent was not entitled to the Kshs. 670,530/- held under the Disputed Account.

The Respondents Case;

32. It is the Respondent's case that sometime in June and August 2022 she received communication from the Appellant informing her that there was bankers cheque transaction that had taken place in her account Number ... and requested her to collect the funds from her account.
33. Given that the Respondent was abroad, she instructed ...to go and collect the cheque from the bank. The bank refused to release the cheque to her.
34. When the Respondent came back into the country in September, she approached the bank for purposes of collecting the cheque. The bank declined to release the check and mounted a defect that the cheque had been collected and that the Respondent had no such account with the bank.
35. Aggrieved by the foregoing she moved to the trial court, where the case proceeded for hearing culminating the judgment which forms the subject of this Appeal.

Analysis and determination;

The issues for determination are as follows;

1. Whether the Appeal has merit.
2. Who shall be the costs.



36. In the case of *Selle v Associates Motor Boat & Co.* [1968] EA 123, which was cited with approval in *Barclays Bank of Kenya Limited v Mema* [2021] KEHC 333 (KLR), where the Court stated as much:

“As this is a first Appeal, the duty of this court, is to examine matters of both law and facts and subject the whole of the evidence to afresh and exhaustive scrutiny, drawing its own conclusions from that analysis and bearing in mind that the court did not have an opportunity to hear the witnesses first hand.”

On the 1st issue;

37. It is not in dispute that there was communication between the Appellant and the respondent around the bank account number.

38. The correspondences with the respondent cannot amount to the creation of a banking Customer contract that amounts to a bank account.

39. A bank customer banking relationship can only be said to exist if the customer completes the bank account opening form, has a bank account that has customer specific unique features like a bank account and signature, has a bank credit or debit card and a password, has access to bank statements, is able to carry out banking transactions through express Instructions to the bank, has a cheque book inter alia.

40. The Respondent had an opportunity to demonstrate that the disputed account existed in her name. She did not tender any evidence to prove any of these.

41. The Respondent cannot seek to invoke or rely on the doctrine of estoppel to prove her case. The doctrine is intended to prevent injustices in case of an otherwise legal transaction. It is wrong to invoke the doctrine for purposes of advancing an illegality. The Respondent cannot rely on the doctrine pegged on the fact that she received letters that were erroneously sent to her by the Appellant. She should have tendered proof of the existence of a bank Account in her name which she failed to do. Nothing stopped her from doing that.

42. Halsbury's Laws of England renders itself as follows on estoppel: -

“Estoppel by conduct, otherwise known as estoppel in pais, arises where a person has by words or conduct made to another clear and unequivocal representation of fact, either with knowledge of its falsehood or with the intention that it should be acted upon, or has so conducted himself that another would, as a reasonable person understand that a certain representation of fact was intended to be acted upon and the other person has acted upon such representation and thereby altered his position. The estoppel arises against the party who made the representation, and he is not allowed to aver that the fact is otherwise than he represented it to be. Estoppel by conduct is generally regarded as a rule of substantive law ...”

43. In the case of *First Assurance Ltd. - Vs- Seascapes Ltd.* It was held as follows on the issue of estoppels: -

“Related to that question of estoppel. Mr. Gautama for the Respondent submitted before us that two letters in which the appellant stated that they were on cover with effect from 31st May 1997 raised an estoppel against the appellant. But for there to be an estoppel there has to be a representation which is acted upon by the opposite side to its detriment.”



44. I have considered the doctrine of estoppel. For there to be an estoppel, there has to be a representation which is acted upon by the opposite side to its detriment. I am not particularly persuaded that the doctrine of estoppel, properly speaking, applies to the matter at hand.
45. The Respondent did not plead the doctrine of estoppel and she did not in any event plead nor demonstrate that she suffered detriment. I find that the magistrate fell into error in allowing the doctrine of estoppel into the case.
46. The Trial Magistrate fell into error in arriving at the conclusion that the letters that the Appellant erroneously issued on the 4th August 2008 and 12th June 2008 formed the basis of the Respondent's ownership of the Dispute Account.
47. This court further notes that even though the letters were erroneously issued, the Cheque No. 052318 dated 22nd May 2007 for the sum of Kshs. 670,530/- was not issued in the Respondent's name. It was issued in the name of Erastus Wachira Mwangi and Peter Mwangi Mbuthia. Evidently, it was not in the name of the Respondent.
48. The original cheque was issued to Erastus Wachira Mwangi and Peter Mwangi Mbuthia in May 2007.
49. In determining whether the Applicant has proven her case, I am guided by the Supreme Court in *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* (2020) KLR where it was held as follows:

“(49) Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

50. The Respondent has not proven that she was entitled to the orders sought and I so hold.

Costs;

51. In *Halsbury's Laws of England*, 4th ed Re-Issue (2010), Vol. 10, para. 16:

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” [emphasis supplied].

52. In *Joseph Oduor Anode v. Kenya Red Cross Society*, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court



is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ... [emphasis supplied].

53. The *Civil Procedure Act* (Cap. 21, Laws of Kenya), the primary law of judicial procedure in civil matters, thus stipulates (Section 27(1)):

“Subject to such conditions and limitations’ as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order” [emphases supplied].

54. The respondent shall pay the costs.

Determination;

55. The Appeal has merit.

Order;

1. This Appeal be allowed.
2. The Judgment by Honourable (Ms.) M. W. Murage (RM) in Civil Suit No. 1873 of 2017 delivered at the Chief Magistrate's Court of Kenya at Nairobi on 19th May 2023 be set aside.
3. The Complaint dated 17th March 2017 be dismissed with costs.
4. The costs of this Appeal be borne by the Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JANUARY, 2026.

.....

J. CHIGITI (SC)

JUDGE

