



**Githehu & another v Nthiga (Civil Appeal E557 of 2025)  
[2026] KEHC 2813 (KLR) (Civ) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 2813 (KLR)

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

**CIVIL**

**CIVIL APPEAL E557 OF 2025**

**WA OKWANY, J**

**JANUARY 27, 2026**

**BETWEEN**

**PETER KARIUKI GITHEHU ..... 1<sup>ST</sup> APPELLANT**

**EAST AGGREGATES CONSTRUCTION LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**WILSON NYAGA NTHIGA ..... RESPONDENT**

*(Being an appeal from the judgment delivered by Hon. Kiongo Kagenyo ((RM) on 17th May 2025 in SCCCOMM/E23441/2024)*

**JUDGMENT**

1. The Respondent herein was the Plaintiff before the lower court where he sued the Appellants seeking the payment of Kshs. Kshs. 774,000 being the alleged balance of the price for the supply of industrial diesel. The trial court allowed the Respondent's claim thereby setting the stage for the instant appeal.
2. The appellants contend that the trial magistrate fundamentally erred in law and jurisdiction by delivering judgment outside the mandatory sixty-day period prescribed under section 34(1) of the [Small Claims Court Act](#), thereby rendering the judgment a nullity. They further argue that the magistrate improperly lowered the statutory and evidentiary threshold required to prove the existence of a binding sale of goods contract, wrongly shifting the burden of proof to the appellants and faulting them for allegedly withholding information despite their consistent denial that any such contract existed.
3. In addition, the appellants challenge the magistrate's factual and legal findings that a binding contract existed between the respondent and either appellant. They argue that the court relied excessively on limited text messages and M-Pesa payments whose context was not adequately established, and



erroneously conflated alleged dealings between the respondent and the 1st appellant with liability on the part of the 2nd appellant, a separate limited liability company. The appellants maintain that this evidence was insufficient to establish contractual privity or binding obligations against either party.

4. The appellants also fault the trial magistrate for contradictory and illogical findings on liability, particularly in acknowledging that only a portion of the claimed amount had been paid yet still holding the appellants fully liable for the entire sum claimed by the respondent. They argue that these errors, taken cumulatively, led to an unjust outcome and warrant the setting aside of the judgment and dismissal of the respondent's claim with costs.
5. The appeal was canvassed by way of written submissions which I have considered.

### **The Appellants' Submissions**

6. The Appellants challenged the judgment on two principal grounds namely; jurisdiction and failure of proof of contract.
7. On jurisdiction, it was submitted that the judgment was a nullity having been delivered outside the statutory 60-day timelines set under Section 34(1) of the *Small Claims Court Act*. Reference was made to the decision in *Shades of Africa Travel Ltd vs. Bett* [2025] KEHC 15205 (KLR), where the High Court nullified/quashed the judgment of the Small Claims Court and held that the Adjudicator had no jurisdiction whatsoever, after the expiry of 60 days.
8. On failure to prove contract, the Appellants cited Section 107 of the *Evidence Act* and contended that the Respondent failed to prove the existence of a specific contract for supply of goods worth Kshs. 774,000. They argued that the Respondent produced ambiguous text messages, Mpesa statements, and references to a long-standing relationship, but did not produce any delivery notes, invoices, or requisition forms. They submitted that the case of *Mugunga General Stores vs. Pepco Distributors Ltd* [1987] eKLR, that Respondent had referred to was distinguishable from the instant case as in that case, the Plaintiff had provided invoices and delivery notes thereby establishing a clear prima facie case.
9. It was the Appellant's case that the Respondent's case was built on speculation. The Appellants relied on Section 6 of the *Sale of Goods Act* which requires that contracts for goods over Kshs. 200 be in writing, or part performance proven, or a written memorandum signed and argued that none of these were proven.
10. The Appellants submitted that text message is not proof of contract or the contract amount. In this regard the Appellants stated that the 1st Appellant's text message proposing instalment payments of Kshs. 50,000 does not reference the amount of Kshs. 774,000, does not indicate the terms of supply and cannot be an unequivocal admission of indebtedness. They cited the case of *Ali Abid Mohamed vs. Kenya Shell Ltd* [2017] eKLR where the court discussed the need to clearly establish contract terms.
11. It was submitted that the trial court erred in holding the 1st Appellant personally liable despite the Respondent suing a company. [1897] AC 22 (HL) principle on corporate personality, arguing that no evidence of fraud was adduced.  
They relied on the *Salomon vs. Salomon*
12. The Appellants further argued that the trial court's judgment is logically inconsistent as it found that the Appellants had paid a quarter of the amount yet proceeded to award the entire sum thereby demonstrating a flawed reasoning process. They urged this court to set aside the judgment and dismiss the claim.



### **The Respondent's Submissions**

13. The Respondent supports the judgment and contended that the trial court properly found the existence of a binding oral contract.
14. The Respondent argued that he presented evidence that showed that the parties had a binding contract as the Appellants requisitioned diesel supplies worth Kshs 774,000 between May 2023 and October 2023. He claimed that the Appellants accepted the supply, acknowledged the debt and proposed a repayment plan via text message dated 23rd October 2024. He cited the case of Alfred Anekeya Mangu vs. Paul Indimuli [2022] eKLR where it was held that there is no general rule requiring all agreements to be in writing and that a contract may be inferred from conduct.
15. Reference was also made to the case of Total Kenya Ltd vs. D Pasacon General Construction [2022] KECA 593 (KLR) where the Court of Appeal held that the conduct of the parties as well as the prevailing facts showed that there was an orally binding contract.
16. The Respondent maintained that the Appellant provided no plausible explanation for the requisitions, Mpesa payments and the proposal to pay Kshs 50,000 per month. According to the Respondent, his case was proved on a balance of probabilities.

### **Issues for Determination**

17. Upon considering the record of appeal and the parties' submissions, I find that the following issues arise for my determination: -
  - a. Whether the trial court acted without jurisdiction.
  - b. Whether the Respondent proved the existence of a binding contract for supply of goods worth Kshs. 774,000.
  - c. Whether the 1st Appellant was properly held personally liable.
  - d. Whether the trial court erred in its assessment of evidence and findings.

### **Analysis and Determination**

18. The duty of the first appellate court is to re-evaluate the evidence tendered before the trial court afresh with a view to making its own independent conclusions while bearing in mind the fact that it neither heard nor saw the witnesses testify. (See Patrick Njuguna Kimondo vs. Geoffrey Vamba Mbuti [2019] eKLR).

### **Jurisdiction**

19. On whether the impugned judgment was delivered out of time, the Appellant alleged non-compliance with Section 34(1) of the *Small Claims Court Act* which requires delivery of judgment within 60 days. The Appellants allege non-compliance but produced no evidence showing when the 60-day period lapsed.
20. No formal record was placed before this Court demonstrating the breach. I therefore find the ground unproven.
21. On whether a binding contract was proven, the Respondent produced Mpesa records, text messages from the 1st Appellant and evidence of a supply relationship since 2019.



22. I note that even though no invoices or delivery notes were produced, the totality of evidence shows previous dealings, supply requests, payments made, later refusal to pay the balance and a proposal for settlement.
23. It is trite that the law recognises oral contracts and contracts inferred from conduct. (See *Total Kenya vs. Pasacon* case (supra) which affirmed that the absence of a written contract does not invalidate an oral contract.
24. In the instant case, the Appellants did not file any documents or statements and did not give any alternative explanation for the dealings or proposal to settle the claim by instalments of Kshs. 50,000
25. In *Mugunga General Stores vs. Pepco Distributors Ltd* [1987] KECA 68 (KLR), the Court of Appeal held that:-

“ Mere denial is not a sufficient defence in this type of case. There must be some reason why the defendant does not owe the money. Either there was no contract or it was not carried out and failed. It could also be that payment had been made and could be proved. It is not sufficient therefore to simply deny liability without giving some reason.”
26. In this case, the Appellant did not offer any reason for the payments it that it made to the Respondent and for his proposal to make payments by instalments and I therefore find that the trial court’s conclusion on the existence of the contract was properly supported.

#### **Personal Liability of the 1st Appellant**

27. The evidence showed that the 1st Appellant personally communicated with the Respondent and proposed repayment terms.
28. I note that the Appellants did not distinguish personal acts from acts of the company and that no company documents were produced.
29. I find that given the 1<sup>st</sup> Appellant’s conduct, the trial court did not err in holding the 1st Appellant liable as an agent whose principal’s identity remained blurred by the Appellants’ own conduct. It is my finding that the *Salomon vs. Salomon* doctrine does not apply where parties themselves blur the corporate veil.

#### **Inconsistency in Findings**

30. On the issue of the inconsistency in the trial court’s findings, the Respondent submitted that the said court’s reference to partial payments was not inconsistent with the ultimate finding as the said reference merely contextualised the dealings but did not constitute a finding that a quarter had been paid. The trial court rendered itself as follows on the said issue: -

“ The Respondent did not give a context of how this Kshs. 207,000 was transferred from the 1<sup>st</sup> Respondent to the claimant. In the same vein, the court notes that as the Respondents hardly said that they ever gifted the claimant, the sum of Kshs. 207,000 must have exchanged hands on the strength of a commercial transaction.”
31. From the above extract of the trial court’s judgment, and from my full reading of the entire judgment, I am unable to find any inconsistency in the trial court’s findings. It is clear that the trial court’s reference to the payments made by the Appellant was to show that the parties had past dealings.



**6. Conclusion**

32. Having re-evaluated the evidence and the law, I find that the Respondent proved the existence of an enforceable oral contract through evidence that the Appellants did not rebut. I further find that the trial Magistrate’s findings were grounded on sound reasoning and proper legal principles.

33. In sum, I find that the appeal lacks merit and I therefore dismiss it with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JANUARY, 2026.**

**HON. W. A. OKWANY**

**JUDGE**

**27/01/2026**

For Appellant.....

For The Respondent.....

Court Assistant Uber

