



**Rucha v Mwiti & another (Commercial Appeal E041 of 2025)
[2026] KEHC 3954 (KLR) (Commercial and Tax) (19 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E041 OF 2025
JWW MONG'ARE, J
MARCH 19, 2026**

BETWEEN

CHARLES P MBAE RUCHA APPELLANT

AND

ROSE GACHERI MWITI 1ST RESPONDENT

JAPHET MIRITI EUSTACE 2ND RESPONDENT

(Being an appeal from the Judgement and Decree of Hon. Ruguru N., SPM dated 31st January 2025 at the Magistrates Court, Milimani in Civil Case No.E528 of 2021)

JUDGMENT

Introduction and Background

1. Before the court for determination is an appeal filed by the Appellant that is grounded in his Memorandum of Appeal dated 10th February 2025 where the Appellant seeks to set aside the judgment of the subordinate court dated 31st January 2025 that ordered him to pay the Respondents Kshs.2,700,000.00/= together with interest and costs of the suit. The Respondents' case before the subordinate court was that they entered into an agreement for sale of a portion of land measuring approximately a quarter of an acre being UNS Residential Plot No. A Thika Municipality" Plan Tka/497/13 for a consideration of Kshs.2,900,000.00/= as the purchase price.
2. That on diverse dates, the Appellant received a total purchase price from the Respondents through Rucha Agencies by Bankers Cheque no 036927 dated 9th November 2015 and direct money transfers through RTGS dated 22nd October 2015 and 22nd December 2015 for Kshs.1,000,000.00/= and Kshs.900,000/= respectively. They claim that pursuant to a Debt Agreement dated 20th January 2017, the Appellant agreed to refund the Respondents the said sum of Kshs.2,900,000.00/= if he had



not gotten title over the same by April 2017. That on the same date of 20th January 2017 and as a sign of commitment, the Appellant only refunded a sum of Kshs.200,000.00/= leaving a balance of Kshs.2,700,000.00/= and that by April 2017 and up to date no title over the said land has been obtained by the Appellant neither has he made any effort to refunding the balance as per the signed agreement.

3. As such, the Respondents contended that the Appellant had breached the Agreement by neglecting, ignoring and refusing to refund the agreed balance of Kshs.2,700,000.00/= and sought the same plus all accrued interest from the Appellant. In response, the Appellant filed a defence and took the position that he was wrongly sued as an individual, that Rucha Agencies is a separate legal entity, and as a director, he cannot be personally liable for its obligations unless the corporate veil is pierced. The Appellant claimed all alleged payments were made directly to Rucha Agencies, not to him personally, that that there was no valid agreement for the sale of the property as section 3(3) of the *Law of Contract Act* states that any contract for the disposition of interest in land must be in writing, signed, and witnessed to be enforceable.
4. The Appellant disputed receiving Kshs.2,900,000.00/= as consideration and that the payments were for different purposes, such as construction for a perimeter wall, rather than for the land purchase. He further claimed that the Debt Agreement was executed under duress from armed police officers and that the same null for want of consideration. For these reasons, the Appellant urged the subordinate court to dismiss the suit against him. In its judgment, the subordinate court found that the Appellant was the proper party to be sued as the Agreement was made between him and the Respondents and that his assertion that he was not involved in the transaction was without merit. On whether there was an agreement for the sale of land, it was held that there was a common intention between the parties in relation to the land and that the Appellant all along acted on the basis and represented that the Respondents would be able to acquire the land. The subordinate court agreed that the banker's cheque and the RTGS transfers indicates performance of the Agreement showing acceptance of payment. Thus, the court found that there was an oral agreement between the parties and that the same was enforceable.
5. The subordinate court also found that the Appellant received the full sum of Kshs.2,900,000.00/= and that the refund agreement demonstrated that the Respondents were entitled to the Kshs.2,700,000.00/= claimed due to the Appellant's failure to deliver the title by the agreed deadline of April 2017. As such the Appellant was ordered to pay the Kshs.2,700,000.00/= hence present appeal which has been canvassed by way of written submissions that I have considered and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

6. Since this is the first appeal, this court is enjoined by the provisions of section 78 of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) to evaluate and examine the subordinate court record and the evidence presented before it in order to arrive at its own conclusion. I am in agreement with the Respondents' submission that this principle of law was well settled in the case of *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123 where the Court of Appeal outlined the duties of a first appellate court as follows:

[An appellate court] is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear



in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...

7. With the above in hindsight, the court is to determine whether the subordinate court arrived at the correct conclusion both in law and fact in its finding that the Respondents were entitled to the Kshs.2,700,000.00/=. The Appellant's first ground of appeal is that he was sued in his personal capacity, yet the money was paid to Rucha Agencies, which he claimed is a company and he relies on the principle of separate legal personality as set out in the case of *Salmon vs Salmon* [1987] AC 78. However, going through the record, this argument is a red herring and is contradicted by the evidence as the Debt Agreement, which is the cornerstone of the Respondents' claim, was signed by the Appellant himself in his personal capacity, not on behalf of a company. The Agreement acknowledges the debt and the obligation to repay it and by personally signing it, the Appellant expressly stated that he had bound himself to the Agreement and cannot now hide behind a corporate veil.
8. As pointed out in the Respondents' submissions, the Appellant's own Defence at para. 8 refers to standing as a "surety" for the debt of Rucha Agencies which is a clear admission that a debt existed and that he personally assumed liability for it. I also note that in his testimony, the Appellant could not provide a certificate of incorporation for the said Rucha Agencies, leaving its legal status ambiguous and the subordinate court was correct to find that the transaction and the subsequent agreement to refund were personal to the Appellant.
9. On the grounds of the validity of the oral agreement and receipt of funds, I find that by signing the Debt Agreement, the Appellant explicitly acknowledged receiving Kshs.2,900,000.00/= from the Respondents and one cannot acknowledge a debt for money they never received. He also admitted in his evidence that he made a partial refund of Kshs. 200,000.00/= on the very day he signed the agreement and this act of part-performance is completely inconsistent with his denial of receiving the money and leaves the court questioning why someone would refund money they never got. I also find that the trial court correctly invoked the doctrine of constructive trust and that the Respondents rightly cited the Court of Appeal in *Maina & 87 others v Kagiri* [2014] KECA 880 (KLR) where it was held that an oral agreement for the sale of land can be enforced by way of constructive trust or proprietary estoppel where one party has acted on the faith of the agreement. The Respondents paid the full purchase price, and the Appellant accepted it. It would be unconscionable to allow him to keep the money while hiding behind the technicality of an unwritten agreement.
10. On the ground that the subordinate court did not consider the Appellant's submissions and authorities, I find that this has no basis considering the learned magistrate expressly stated that the subordinate court had "...carefully considered the pleadings, submissions and evidence including the legal principles to determine the appropriate cause of action". A trial court is presumed to have considered all the evidence and submissions before it unless the contrary is shown. The Appellant has not pointed to any specific, binding authority he presented that the court ignored. The judgment shows a clear analysis of the facts and the applicable law, including the doctrine of constructive trust, which directly counters the Appellant's main defence. The mere fact that his arguments were rejected does not mean they were not considered. This ground therefore fails.
11. Having found that the Appellant personally signed an agreement to refund the Kshs.2,700,000.00/= if he failed to get a title deed and that he actually failed to get the title deed and he only refunded Kshs.200,000.00/=, the only logical and just conclusion was that he must refund the balance. To hold otherwise would be to reward him for his breach of contract and allow him to be unjustly enriched at the Respondents' expense. I also find that the award of interest and costs is the standard consequential order following a successful suit, as provided for under sections 26 and 27 of the [Civil Procedure Act](#).



Conclusion and Disposition

12. In the end, I find that the subordinate court's judgment was sound as it was based on a meticulous evaluation of the evidence, particularly the pivotal Debt Agreement, the Appellant's own admission of part-performance, and the application of well-established legal principles like constructive trust to prevent injustice. The Appellant's appeal is a poor attempt to resile from a valid personal obligation he freely entered into. The appeal is devoid of merit and is dismissed in its entirety with costs to the Respondents assessed at Kshs.50,000.00/=.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF MARCH 2026

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J.W.W. MONGARE

JUDGE

In The Presence Of

N/A for the Appellant.

Ms. Tuwei holding brief for Mr. Kirimi for the Respondent.

Amos - Court Assistant

