



**Hayir t/a Late House Coffee v Farah & another (Commercial Case E97075 of 2025) [2026] SCC 9 (KLR) (6 March 2026) (Judgment)**

Neutral citation: [2026] SCC 9 (KLR)

**REPUBLIC OF KENYA  
IN THE MILIMANI SMALL CLAIMS COURT  
COMMERCIAL CASE E97075 OF 2025  
GK WAITHIRA, SRM  
MARCH 6, 2026**

**BETWEEN**

**ABDIWAHAB DEGHOW HAYIR T/A LATE HOUSE COFFEE ..... CLAIMANT**

**AND**

**ABDI ARESS FARAH ..... 1<sup>ST</sup> RESPONDENT**

**ZAHARA MOHAMED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Sometime in December 2024, the claimant and the 1<sup>st</sup> respondent entered into an oral agreement for purchase of a coffee machine and grinder for use in the claimant's business, Late House Coffee. According to the claimant, the agreement between the parties was for purchase of a new coffee machine. He paid the purchase price of Kshs. 425,000/= through the 2<sup>nd</sup> respondent, who is the 1<sup>st</sup> respondent's wife, but the machine was never delivered as agreed. Attempts to reach the 1<sup>st</sup> respondent for an explanation were met with silence. The claimant therefore commenced the instant suit vide the statement of claim dated 2<sup>nd</sup> July 2025 for the following orders;
  - a. Judgment in the sum of Kshs. 425,000/=;
  - b. Damages;
  - c. Interest on the above at court rates from the date of filing of this claim; and
  - d. Costs of the claim.
2. For his part, the respondent asserted in his response dated 28<sup>th</sup> July 2025, that before the claimant paid the purchase price, he had inspected a Rancilio coffee machine and confirmed that it met his requirements. He thereafter paid the purchase price of Kshs. 425,000/= in installments and when he made the final installment on 15<sup>th</sup> January 2025, the coffee machine was delivered to his coffee shop. He claimed that the claimant used the coffee machine for two months before returning it to the



respondent's shop claiming that it was faulty. The respondent averred that he had assigned a technician to assist the claimant but he declined to take the machine back. He later began demanding a higher specification machine, which he could not afford. Eventually, the claimant began demanding a refund which request was untenable, as the terms of the sale did not provide for a return of the goods or full refund after sale. The respondent averred that the machine was still stored in his shop and remained available for collection as it was working.

### **The Evidence**

3. At the hearing of the matter, the claimant adopted his written statement and added that the respondent had informed him that the coffee machine was in the port and would be delivered at his shop by the time he finished setting up his coffee shop. The claimant paid the initial deposit of 200,000/= at that point. When the date to open his coffee shop got closer, the respondent informed him that he would avail a second-hand machine which he used as a backup.
4. The respondent brought the second-hand machine on 21<sup>st</sup> January and had it repaired right there in the shop. The claimant informed the court that after two days, the machine broke down. He bought a new machine worth Kshs. 450,000/= on 29<sup>th</sup> January from Nairobi in time for the opening of his shop on 31<sup>st</sup> January. He denied the claim that he had used the second-hand machine for 2 months and claimed that what he was to get was a Serb machine and not the second-hand machine delivered to him by the respondent. He referred the court to messages exchanged between him and the respondent in January, February and March where he had demanded a refund of his money.
5. In cross examination, the claimant denied ever receiving a receipt from the respondent. He testified that the machine had been brought to his shop on 21<sup>st</sup> January after pressurizing the respondent and not on 15<sup>th</sup> January. A technician had gone to the shop to repair it but it had a similar issue and he had to return it.
6. Asha Abdulahi Mahmud (CW2) adopted her statement confirming that the claimant had paid the full purchase price through her. She also maintained that the claimant was not issued with a receipt when he made the payment.
7. Contrarily, the respondent informed the court that he was supposed to deliver a second-hand machine which he did as his trade involved the sale of second-hand Ex-UK equipment. He testified that upon the sale, he issued the claimant with a receipt. At that moment, the machine was in his store and was in good condition.
8. In cross-examination, the respondent claimed that he had delivered the machine to the claimant in December and issued him with a receipt on 15<sup>th</sup> January. He stated that the claimant had sent him messages complaining about the machine in January. The respondent sent a technician to fix the problem and it was discovered that the claimant had caused the issue as he did not use water as required. Regarding the purchase of a brand-new machine by the claimant, the respondent pointed out that every machine had its value. The machine he had sold the claimant was from Italy while the origin of the machine purchased by the claimant was unknown.

### **Issues, Analysis And Determination**

9. The main issue for determination in this suit is whether the claimant received the coffee machine he purchased from the respondent and if not, what remedies he is entitled to.



10. Being a civil suit, the claimant was required to prove his claim on a balance of probabilities, which was defined as follows in the case of *Eastern Produce (K) Ltd – Chemomi Tea Estate v Bonfas Shoya* (Civil Case 113 of 2015) [2018] KEHC 3759 (KLR) (3 October 2018) (Judgment)<sup>1</sup>;

“ 14. The burden of proof in civil cases on the balance of probability was defined in the case of *Kanyungu Njogu vs Daniel Kimani Maingi* [2000] eKLR that when the court is faced with two probabilities, it can only decide the case on a balance of probability, if there is evidence to show that one probability was more probable than the other.”

11. From the evidence presented before this court, it is not in doubt that the claimant paid the respondent a sum of Kshs. 425,000/= to purchase a coffee machine for use in his business. He produced copies of Mpesa statements to prove that the 1<sup>st</sup> respondent had received the full purchase price in installments through the 2<sup>nd</sup> respondent, from CW2.

12. It is also agreed that a coffee machine was delivered to the claimant’s coffee shop at the material time, although the exact date of delivery was neither proved nor agreed upon by the parties. The crux of the matter however, is whether the machine delivered by the respondent to the claimant’s shop matched the description of what had been purchased. The claimant testified that before he paid for the coffee machine, the respondent had indicated that he would deliver a brand-new machine which was in the port at the time. He claimed that the respondent had promised to have the coffee machine delivered to him by the time his shop opened in January the following year. Conversely, the respondent claims that he only traded in second-hand machines and what he delivered to the claimant was a quality second-hand Italian brand which was in good working condition.

13. The parties in this case did not reduce their agreement into writing. Therefore, the terms of their agreement can only be deciphered from their testimonies and the documents they presented as evidence.

14. The claimant’s oral assertion that he purchased a brand-new coffee machine from the respondent is not supported by any additional evidence. On the other hand, the respondent produced a receipt dated 15<sup>th</sup> January 2025 which was issued to the claimant for the sum of Kshs. 425,000/=. The receipt specifies the make of the coffee machine and grinder purchased in the transaction and is duly signed by the customer, who in this case, is the claimant.

15. Although the claimant challenged the authenticity of the receipt, he did not discharge the onus of proof for claims of forgery which is usually higher than proof on a balance of probabilities. This duty to strictly prove claims of forgery was elucidated by the court in the case of *Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Company Ltd* [2004] KECA 145 (KLR)<sup>2</sup> thus;

“ Fraud is a serious quasi-criminal imputation and requires more than proof on a balance of probability though not beyond reasonable doubt.”

16. The claimant maintained that the agreement between the parties was for purchase of a brand-new machine. He informed the court that he subsequently purchased a new machine at approximately the same price as the machine bought from the respondent. While that may be the case, the respondent

<sup>1</sup> < <https://new.kenyalaw.org/akn/ke/judgment/kehc/2018/3759/eng@2018-10-03> >

<sup>2</sup> < <https://new.kenyalaw.org/akn/ke/judgment/keca/2004/145/eng@2004-12-17> >



- rightly noted that the similarities in price could be explained by the differences in make and quality, notwithstanding the fact that what he delivered was a second-hand machine.
17. The receipt expressly stated that the goods were not returnable once sold. Thus, by appending his signature to the receipt, the claimant is deemed to have accepted the goods as described therein.
  18. It could be argued that the claimant may still have had a claim for refund despite the “no return policy,” if the machine was not fit for purpose. However, in this case, the claimant did not prove that the goods were unfit for the purpose that they were purchased for. His claim that the coffee machine was faulty was countered by the respondent’s assertion that the machine was in proper working condition and any fault in its operations had been caused by the claimant’s failure to use the machine appropriately.
  19. According to the 1<sup>st</sup> respondent, the claimant returned the coffee machine claiming it was faulty after using it for two months and thereafter began demanding for a machine of a higher specification. Such a scenario could have been avoided had the parties entered into a written agreement. A written agreement would have clarified the exact make of the coffee machine intended to be sold and purchased and would have provided clear evidence of the agreed terms, thereby minimizing misunderstandings, particularly given the colossal amounts involved.
  20. In the absence of a written agreement or other cogent evidence to support his claim that the respondent was to deliver a brand new coffee machine, this court finds that the claimant failed to discharge his burden of proof. The evidence on record demonstrates that the respondent delivered a coffee machine upon receipt of the full purchase price and the same was received by the claimant. Further, the respondent’s claim that the machine remains in good working condition and is available for collection by the claimant was not adequately challenged. His claim for storage charges was not pleaded and cannot therefore be allowed.
  21. The upshot of the foregoing is that this court finds that the claimant failed to prove his claim. It is therefore dismissed. However, given the circumstances of this case, the parties shall bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 6<sup>TH</sup> DAY OF MARCH 2026.**

**HON. GRACE WAITHIRA**

**SENIOR RESIDENT MAGISTRATE/ADJUDICATOR**

Judgment Sent Via Cts Platform In Accordance With Rule 23 (4) (b) Of The Small Claims Court Rules.

The Execution Of This Judgment Is Stayed For 30 Days.

Any Aggrieved Party Has Leave To Exercise Their Right Of Appeal Within 30 Days Of The Date Hereof.

