



REPUBLIC OF KENYA



**KENYA LAW**  
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**Washike v Jivanjee (Commercial Case E025 of 2025)  
[2026] SCC 10 (KLR) (20 January 2026) (Judgment)**

Neutral citation: [2026] SCC 10 (KLR)

**REPUBLIC OF KENYA  
IN THE SMALL CLAIMS COURT AT LAMU  
COMMERCIAL CASE E025 OF 2025  
FM MULAMA, RM  
JANUARY 20, 2026**

**BETWEEN**

**ERASTUS WASHIKE ..... CLAIMANT**

**AND**

**JIVANJEE JIVANJEE ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This claim is for Kshs.13,500/= which according to the claimant is an expense he incurred towards the replacement of a screen to the respondent's television set.
2. The claimant further avers that initially the respondent brought the said television for repairs which repairs he conducted and was paid Kshs.6,000/= in 2 instalments but after sometime the respondent claimed that the television set was not working and he informed the claimant of the same and according to him an agreement to buy a new screen was reached. The respondent admits that set facts but his point of departure is the agreement to buy a new screen.
3. The claim is opposed by the respondent on the sole reason that no agreement was reached between them as to the replacement of a new screen. He has asked the court to dismiss the claim.
4. The matter proceeded by oral evidence and documents were produced by each party in support of their respective cases which documents and testimonies I have duly considered in this judgment.

**Issue For Determination.**

- a. Whether the claim is meritorious
- b. What orders can issue in the circumstances
- c. Who bears costs of the claim.



## **Analysis And Determination.**

### **Whether the claim is meritorious.**

5. The main borne of contention that the claim turns on is whether there was an agreement for the claimant to replace the screen with a new one. The claimant avers that they agreed to replace the screen after it blew up upon his investigations. The respondent on the other hand asserts and strongly so that no agreement was ever arrived at between them as to the replacement of a new screen.
6. All the respondent recollects was that he asked the claimant to repair the television that he had just repaired some days ago and since it had developed an issue, he should also then find out what might have happened.
7. The claimant asserts that this agreement was made on call and as such there is no material to which this court can run to in a bid to confirm the truth or otherwise of the statement by the claimant.
8. It is the evidence of the claimant that when the screen was damaged for a second time, the claimant agreed to top up Kshs.13,500/= so that the screen could be replaced. The claimant in support of this has produced a receipt dated 07/04/2025 and which payment was made by Mpesa.
9. 2 issues arise from that receipt. No attendant Mpesa message was attached to demonstrate that indeed that payment was made. Secondly, if at all that was the price for the repair for the 2<sup>nd</sup> time, why wouldn't the claimant not sue for the amount incurred in the 2<sup>nd</sup> transaction yet the 2 transactions are distinct from each other?
10. Looking at the totality of the evidence on record, I am not convinced that the claimant incurred the cost of Kshs.19,500/= as no mpesa message was shared showing how and when the actual payment was done as it is clear the customer is the claimant as per the receipt from Stepper Tech electronics.
11. Secondly looking at the ordinary sense of things and especially of doing business, a service provider will not cushion the customer of any costs when it comes to repairs especially after the same service provider is being called a second time to offer a service that is distinct from the initial one and as such it is not plausible that the claimant voluntarily agreed to incur the loss of Kshs.6,000/=. Furthermore, it is not in strict sense a discount per se as the Kshs.6,000/= was an amount paid for a service that was offered and the television set repaired.
12. The claimant cannot on one hand through the receipt indicate that the cost was Kshs.19,500/= then on the other hand claim that the Kshs.6,000/= earlier paid for a different service was still for purposes of the 2<sup>nd</sup> repairs and hence the deduction of the said Kshs.6,000/= from the 2<sup>nd</sup> cost allegedly incurred.
13. In my view then based on the foregoing there is no evidence of any agreement between the claimant and the respondent as to the replacement of the screen and as such I find and hold in similar terms.
14. Even in the unlikely event that I was to find and hold that there was an oral agreement as the claimant seems to suggest, there should have been other corroborating evidence in support such as the mpesa message showing the actual payment being made that led to the issuance of the receipt I have alluded to hereinabove.

### **What orders can issue in the circumstances.**

15. Based on the foregoing therefore the claim by the claimant has not been proved on a balance of probabilities and as such no orders in the claim can issue.



**Who bears costs of the claim?**

16. Given the circumstances of the cases, let each party bear its own costs of the claim.

**Conclusion And Disposition.**

17. The upshot of the foregoing I make the following final orders;

- a. The claim contained in the statement of claim dated 18<sup>th</sup> November 2025 is dismissed with no orders as to costs.
- b. Let the file be closed forthwith.

18. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS 20<sup>th</sup> DAY OF JANUARY 2026.**

**F.M. MULAMA**

**ADJUDICATOR/RM**

In the presence of:

Court Assistant:- Daniel Damise.

Jivanjee Jivanjee.

