

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CIVIL APPEAL NO E034 OF 2025**

WILDON OMOTO T/A EKAVI VENTURES-----  
APPELLANT

VERSUS

THE CHAIRMAN, BOARD OF MANAGEMENT NYAKWAKA GIRLS SECONDARY  
SCHOOL----- 1<sup>ST</sup> RESPONDENT

THE PRINCIPAL NYAKWAKA GIRLS SECONDARY SCHOOL----- 2<sup>ND</sup>  
RESPONDENT

THE HONOURABLE ATTORNEY GENERAL-----3<sup>RD</sup>  
RESPONDENT

*(being an appeal arising from the judgment of the Honourable Caroline Cheruiyot, Resident Magistrate in the Kakamega small claims court case No. SCCOM No. E 1794 of 2024. Wildon Omoto T/A Ekavi Ventures versus the Chairman, BOM, Nyakwaka Girls secondary school & another delivered on 21/3/2025)*

**JUDGMENT**

1. The appeal herein arises from the decision of the small claim adjudicator Hon. Caroline Cheruiyot in small claims case No E1794 of 2024 delivered on 21<sup>st</sup> March 2025.
2. The appellant herein had filed a claim dated 8<sup>th</sup> October 2024, where he sued the respondent, breaching the contract of sale, stating that on or about the 25<sup>th</sup> day of January 2022 and 2<sup>nd</sup> March 2023, he delivered goods, being firewood stacks, to the respondent valued at Kshs. 576,000/= and was paid Kshs. 50,000/= leaving a balance of Kshs. 526,000/=
3. The respondent never entered an appearance despite being served, and the matter proceeded exparte in its judgment dated 21<sup>st</sup> March

2025. The trial adjudicator, in assessing the evidence before it, questioned the LPO, noting that it was dated 28/02/2023, while the invoices dated 25/1/2022 and 2/03/2023 were for 32 and 64 stacks of eucalyptus fire wood. She stated that the invoices were issued before the LPO, which is questionable.

4. The trial court further faulted the appellant's failure to adhere to the procedures under the Public Procurement and Asset Disposal Act before procuring goods on behalf of the respondents, who are the chairman and Principal of a public school, which is governed by a board of managers, despite their being issued with an LPO dated 28/02/2023.
5. The court dismissed the claim, stating there was no valid contract capable of being enforced between the parties
6. The appellant, being aggrieved by the decision of the adjudicator, filed his appeal based on the following grounds;
  - a) THAT the Learned Trial magistrate erred in law and fact in holding that the appellant's absence of tender document, despite the Appellant attaching the Local Purchase order and the invoices he used to deliver the goods, amounted to the Appellant not having delivered the said goods.
  - b) THAT the learned trial Magistrate's evaluation of the evidence placed before her was wanting.
  - c) THAT the learned trial magistrate did not place any weight on the submissions made in support of the appellant's case, and mainly is the fact that the Respondent, despite having served

with the demand notice, and further summons from the court they only entered an appearance and never defended their case, meaning they were as guilty as charged.

d) THAT the respondents never disputed the claim as they were aware and had even committed themselves by paying a deposit of Kshs. 50,000, which the appellant pointed out in his court papers.

e) THAT the Honourable trial magistrate erred in relying on extraneous matters of fact that were not before her for determination.

f) THAT the learned trial magistrate exhibited actual bias.

g) THAT the learned trial magistrate's decision has caused the appellant a gross miscarriage of justice.

7. The appeal was canvassed by way of written submissions.

8. At the time of writing the judgment, the appellant was the only party that had filed their submissions.

### **Appellant's submission**

9. In their submission dated 2<sup>nd</sup> July 2025, the appellant raised one issue for determination, being whether the appeal had merit. He avers that they sought judgment against the respondent for the sum of Kshs. 526,000/= together with costs and reliefs and avers between the dates of 25<sup>th</sup> January 2022 and 2<sup>nd</sup> March 2023, he had supplied goods worth Kshs. 576,000 being firewood to the respondent, and he was paid Kshs. 50,000, leaving a balance of

Kshs. 526,000, which he now seeks. He claimed that he produced the demand letter, a copy of the invoice dated 25/01/2022 and 2/03/2023 and a copy of the Local Purchase order dated 8/2/2023 and a copy of the certificate of registration of his business.

10. He avers that the respondent did not enter an appearance and that the office of the Attorney General entered an appearance on behalf of the respondent but failed to file their defence. He relied on the case of **Board of Trustees Meru Diocese Kirimara Parich vs. Dores Wanja Bore (2020) eKlr** to support his case of the respondent's failure to enter an appearance.

11. He faulted the trial court in stating that there was no valid contract when he had presented sufficient evidence, and as such, the decision was arrived at erroneously since the respondent failed to fulfil their part of the contract and prayed that the decision by the lower court be set aside and he be awarded the claim as well as costs of the suit.

**Analysis and determination.**

12. This being a first appeal, this Court is under a duty to reconsider, re-evaluate, and re-analyse the evidence that was before the trial court and arrive at its own independent conclusion, while bearing in mind that it did not have the advantage of seeing or hearing the witnesses testify. This principle was succinctly set out in **Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123.**

13. I have considered the evidence tendered before the trial court and the submission made before me. This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the Small Claims Court Act provides for the jurisdiction of this Court in determining appeals from the Small Claims Court. It provides thus:

*a) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.*

*b) An appeal from any decision or order referred to in subsection (1) shall be final.”*

14. It is clear from the foregoing that the jurisdiction of this Court from the Small Claims Court will only be on matters of law and not on factual issues.

15. The appellant asserts that he had supplied firewood to the 1<sup>st</sup> respondent school, being Nyakwaka Girls Secondary School, pursuant to a Local Purchase Order that was issued to him on 28<sup>th</sup> February 2023. He went further to produce the invoices dated between 25<sup>th</sup> January 2022 and 2<sup>nd</sup> March 2023, and stated that the respondents made a partial payment of Kshs. 50,000/=. Based on the documents produced, this Court is prepared to accept, as did the trial court, that there was evidence pointing to some form of contractual engagement between the appellant and the school.

16. It is trite law that contracts may be oral, written, or implied by conduct. The essential elements of a contract were set out in **Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd [2017]**

**eKLR.** Partial payment is also capable of signifying acceptance and consideration.

17. Notwithstanding the presence of a contractual arrangement, enforceability does not arise as a matter of course, particularly where the contract is governed by a statutory procurement framework regulating its formation and performance, which must adhere to the constitutional principles of transparency, competition, and cost-effectiveness as enshrined in Article 227 of the Constitution.
18. The appellant relies on invoices, a Local Purchase Order (LPO) dated 28th February 2023, and partial payment of Kshs. 50,000/=, and the respondents' default in entering appearance or defending the suit to support their claim court notes that the said supply of goods to the respondent's school occurred between the years 2022 and 2023.
19. Nyakwaka Girls Secondary School is a public secondary school funded by public resources and managed by a Board of Management established under the Basic Education Act, 2013. It is therefore a public entity within the meaning of Section 2 of the Public Procurement and Asset Disposal Act, 2015 (PPADA).
20. Section 3(a) of the PPADA provides that the Act applies to all state organs and public entities in respect of the procurement of goods, works, and services. Section 4(2) further provides that the Act shall prevail in case of any conflict with any other legislation relating to procurement.

21. Section 53(1) of the PPADA expressly prohibits procurement unless it is carried out in accordance with the Act and the Regulations made thereunder. The section provides: ***“A public entity shall ensure that all procurement of goods, works and services is carried out in accordance with this Act.”***
22. Further, Section 74(1) of the Act requires that procurement of goods be conducted through an approved procurement method, while Section 68 mandates proper planning and authorisation before procurement.
23. In the present case, the appellant did not place before the trial court any evidence of compliance with the mandatory procurement procedures, including tendering, quotation requests, approval by the accounting officer, or minutes of the tender or procurement committee of the school’s Board of Management.
24. The issuance of a Local Purchase Order, without evidence that it followed a lawful procurement process, cannot sanitize an otherwise unlawful procurement.
25. In **Republic v Public Procurement Administrative Review Board & Another ex parte Kenya Electricity Generating Company Limited [2014] eKLR**, the court emphasised that compliance with procurement procedures is not a technicality but a substantive legal requirement.
26. The appellant is of the view that they had entered into a contractual agreement with the appellant and that the appellant is in breach of the contract, and as such, they ought to fulfil their part

of the contract. The law is settled that a contract founded on or performed in contravention of a statute is illegal and unenforceable, regardless of the parties' intentions. **In Kenya Pipeline Company Limited v Glencore Energy (U.K.) Limited [2015] KECA 835 (KLR)** the Court of Appeal held that courts cannot enforce contracts that are tainted with illegality or that are made in breach of mandatory statutory provisions.

27. Consequently, even accepting that the appellant supplied goods and received partial payment, this Court finds that the underlying transaction was undertaken in breach of the PPADA and is therefore incapable of enforcement by a court of law.

28. The appellant has further argued that the respondents' failure to enter an appearance, file a defence or call evidence or witnesses amounted to an admission of liability. While it is correct that uncontroverted evidence must be evaluated, it is equally settled that illegality is a matter of law which the court is bound to take notice of, even where it is not pleaded.

29. In **Mistry Amar Singh v Serwano Wofunira Kulubya [1963] EA 408**, the court held that no court ought to enforce an illegal contract and that illegality overrides pleadings, admissions, or acquiescence by parties.

30. The trial court was therefore entitled, and indeed duty-bound, to interrogate the legality of the transaction notwithstanding the respondents' absence at the trial process.

31. In light of the foregoing, this Court finds that although there may have existed a contractual relationship between the appellant and the respondents, the same was entered into and performed in contravention of the Public Procurement and Asset Disposal Act, 2015, and is consequently illegal and unenforceable.

32. The learned trial adjudicator cannot be faulted for dismissing the appellant's claim on that basis. The dismissal was grounded in law and did not amount to a miscarriage of justice.

33. Accordingly, the appeal herein lacks merit and is hereby dismissed.

34. Each party shall bear its own costs, given the nature of the matter.

35. This file is closed.

**DATES, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA  
THIS 21<sup>ST</sup> DAY OF APRIL, 2026.**

**S. MBUNGI**

**JUDGE**

**In the presence of:-**

**CA: Ango'nga/Velma**

Parties absent, Advocates absent, though aware of the Judgment date.  
The Court Assistant to upload the Judgment in the CTS forum.