

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CIVIL APPEAL CASE NO. E062 OF 2024

JAMES NGURU NDEGWA

.....APPELLANT

VERSUS

ANN

NYANJAU

WAMUCII.....RESPONDENT

JUDGEMENT

1. Before this Court is the Memorandum of Appeal dated **23rd September 2024** by which the Appellant **JAMES NGURU NDEGWA** seeks the following orders:-

- “1. THAT the entire judgment and decree of the Honourable Evelyn Gaithuma Magistrate in Nyeri Small Claims Court Case No. E257 of 2024 delivered on 12th September 2024 be set aside and the claimants case be dismissed.**
- 2. THAT the costs of this appeal and of the suit be awarded to the Appellant.”**

2. The claimant/Respondent **ANN NYANJAU WAMUCII** opposed the appeal. The matter was canvassed by way of written submissions. The Appellant filed the written submissions dated **15th December 2025** whilst the Respondent relied upon her written submissions dated **23rd January 2026**.

BACKGROUND

3. This appeal arises from a suit filed by the Respondent in the Nyeri Small Claims Court. In that suit the respondent stated that the Respondent was a man whom she knew very well and that they had a child together. Sometime in the year **2011** she advanced to the Appellant a soft loan in the amount of **Kshs. 650,000**.

4. The Respondent states that she made several calls to the appellant seeking to be refunded the money to no avail. That on **13th December 2023** the respondent reported the matter to the police and that police summoned the Appellant. At the police station the parties executed another agreement by which the Appellant undertook to repay the

- Respondent the sum of **Kshs. 650,000** within six (6) months. However the Appellant did not fulfil this agreement.
5. The Respondent consulted a lawyer who wrote the Appellant a demand letter dated **18th June 2024**. Thereafter the Respondent filed the suit in the Small Claims Court.
 6. The Appellant filed a defence to the claim in which he denied owing the Respondent any money at all. He stated that sometime in the year **2011** the Respondent approached him for assistance in selling her coffee through his account with the Coffee Board of Kenya.
 7. That the Respondents coffee fetched **Kshs. 629,293.67** and out of this he paid to her **Kshs. 479,221.42**. The Appellant states that he retained an amount of **Kshs. 150,470/=** to cover the cost of a coffee nylex, that he had purchased for the respondent. That after eleven (11) years the Respondent reported the matter to the DCI.
 8. The Appellant claims that at the police station he was coerced into signing the agreement to the effect that he owed the respondent **Kshs. 650,000**. The Appellant denies

that he was ever involved in any business venture with the respondent.

9. On **12th September 2024**, **Hon E. GAITHUMA, Principal Magistrate** delivered her judgment in which she allowed the Respondents claim and entered judgment in favour of the Respondent for **Kshs. 650,000** and directed that each party bear their own costs.

10. Being aggrieved by the decision of the trial court the Appellant filed this Memorandum of Appeal which is premised on the following grounds:-

“1. The learned trial Magistrate failed to address her mind to the pleadings on record and evidence by the appellant.

2. The learned trial magistrate erred in law and facts

by failing to consider and evaluate the entire evidence as well as supporting documents presented by the appellants and or their counsel on record.

3. The learned trial magistrate erred in law and fact in

failing to consider the weight of the evidence by the appellants and ended up with a wrong finding.

4. The learned trial magistrate erred in law and fact by

failing to find that the appellant had proved to the required standards that the agreement the basis of the case was entered through intimidation, duress and undue influence.

5. The learned trial magistrate erred in law and fact by

failing to consider that the suit was time barred.

6. The decision of the trial court was against the weight of evidence.

ANALYSIS AND DETERMINATION

11. I have considered the appeal before this court, the Record of appeal as well as the written submissions filed by both parties.
12. This is a first appeal and in this regard I take cognizance of the holding in **Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR)** in which the Court of Appeal stated as follows:-

This being a first appeal it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal is 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. See Selle and Another v Associated Motor Boat Company Limited and others [1968] EA 123 and Williamson Diamonds Ltd. V Brown [1970] E.A.L

As we discharge our mandate of evaluating the evidence placed before the High Court, we keep in mind what the predecessor of this Court said in Peters -vs- Sunday Post Ltd [1958] EA 424. In its own words:-

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide.....”

13. The main issue for determination is whether there existed a valid and legally enforceable contract between the parties. The Respondent relied on a first Agreement dated **4th November 2011** executed by both parties [see **Page 18 - 19** of the Record of Appeal] by which the Appellant admitted to owing the Respondent a sum of **Kshs. 705,000/=**. According to the respondent this first agreement was not honoured by the Appellant forcing her to report the matter to police.
14. At the police station the parties entered into a second agreement dated **13th December 2023** [**Page 9** of the Record] in which the Appellant agreed to refund to the respondent the sum of **Kshs. 650,000** within six (6) months. The Appellant does not deny the existence of this second agreement nor does he deny having executed the same.
15. The Appellant however attempts to repudiate this second agreement by claiming that he was coerced into agreeing to and executing the same by the police.

16. It is noteworthy that having signed the agreement of **13th December 2023**, the appellant took no immediate steps to have the said agreement set aside. He made no report of this alleged coercion to higher authorities nor did the Appellant approach any court to have the agreement set aside.
17. Duress and/or coercion occurs when a party is placed under improper pressure from one party to decide or act in a certain way inconsistent with this free will. In **JOHN MBURU -vs- CONSOLIDATED BANK OF KENYA [2018] eKLR** the Court of Appeal cited the decision of the Privy Counsel in **PAO & Others -vs- AU YIU & Another [1979] 3 ALLER** in which the issue of duress was addressed as follows:-

“.....Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree....that in a contractual situation commercial pressure is not enough. There must be present some fact on which could in law be regarded as a coercion of his will, so as to vitiate his consent..... In determining

whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy, whether he was independently advised; and whether after entering the contract he took steps to avoid it.....” [emphasis my own]

18. From the evidence whilst at the police station the Appellant only sought for time to avail documents of which documents did not prove that he had paid the money to the Respondent. The Appellant did not present any evidence to show his protest to the agreement dated **13th December 2023**. The Appellant has also not shown that at the time he was allegedly coerced into making the contract, he did not have an alternative course open to him such as refusing to execute the agreement or pursuing any other legal remedy.

19. To merely allege coercion is not enough. The Appellant must specify the nature of that coercion and must identify which officer or officers exerted this duress upon him.
20. As pointed out by the trial court in her judgment, the evidence reveals that during the deliberations with police the Appellant sought for and was allowed time to avail documentation to prove his claim but failed to do so. I do also agree with the trial court that the discussions at the police station were quite in order and amounted to promotion of alternative Justice which is recognised by the constitution of Kenya.
21. The Appellant claimed that he executed the second agreement due to the threat that if he did not do so he would face criminal charges. That he also was apprehensive that if he did not comply he may lose his job. Once again these remain mere allegations with no concrete evidence to back the said apprehensions.
22. All in all I find and hold that the Appellant voluntarily entered into and executed the agreement of **13th December 2023** acknowledging the debt of **Kshs. 650,000** owed to the

Respondent. Therefore the said contract was valid and is legally enforceable.

23. The next question is whether the Respondents claim was time barred. The Appellant submits that since the first agreement was entered into on **November 2011** six (6) years have elapsed rendering the claim time-barred in line with **Section 4(i)** of the **limitation of Actions Act Cap 22 Laws of Kenya**. Whilst it is true that six (6) years have indeed elapsed since the first agreement was executed, by entering into the second agreement of **13th December 2023** the Appellant effectively acknowledged the debt owed to the respondent which interrupts the running of time as set out in **Sections 23 and 24** of the Act.

24. **Blacks Law Dictionary 10th Edition** defines an acknowledgement of debt as follows:-

“Recognition by a debtor of the existence of a debt. An acknowledgement of debt interrupts the running of prescription.”

25. The **Limitation of Actions Act** at **Section 23 and 24** of the said Act read as follows:-

23. Where - a.a right of action (including a foreclosure action) to recover land; or

b. a right of a mortgagee of movable property to bring a foreclosure action in respect of the property, has accrued, and - i. the person in possession of the land or movable property acknowledges the title of the person to whom the right of action has accrued; or (ii) in the case of a foreclosure or other action by a mortgage, the person in possession of the land or movable property or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest, the right accrues on and not before the date of the acknowledgement or payment.

24. Formalities as to acknowledgements and part payments

(1) Every acknowledgement of the kind mentioned in section 23 of this Act must be in writing and signed by the person making it.

(2) The acknowledgement of the kind mentioned in section

23 of this Act is one made to the person, or to an agent of the person, whose title or claim is being acknowledged, or in respect of whose claim the payment is being made, as the case may be, and it may be made by the agent of the person by whom it is required by that section to be made.

26. In her judgment the learned trial magistrate stated as follows:-

“.....The claimants alleged debt would have been time-barred as provided under Section 4(1) of the Limitation of Actions Act which stipulates that actions founded on contracts should be brought within six years from when the cause of action arose. However, the limitation period can also be extended under section 23 of the limitation of Actions Act where there is a fresh accrual of right of action on acknowledgement or part payment of a debt.....”

27. This was a exposition position of the law by the learned magistrate. In voluntarily executing the agreement of **13th December 2023** and thus acknowledging the debt owed to the respondent afresh right of action accrued from that date. As such I find and hold that the respondents claim was not time-barred.
28. Finally I find no merit in this appeal. The same is dismissed in its entirety. The judgment delivered by the trial court on **12th September 2024** is hereby confirmed and upheld. No order on costs.

Dated in Nyeri this 24th day of April 2026.

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MAUREEN A. ODERO
JUDGE