Wahome v Wanjiku (Civil Appeal E001 of 2025)
[2025] KEHC 4382 (KLR) (27 February 2025) (Judgment)

Neutral citation: [2025] KEHC 4382 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CIVIL APPEAL E001 OF 2025

DKN MAGARE, J

FEBRUARY 27, 2025

BETWEEN

SUSAN NJERI WAHOME ..... APPELLANT

AND

JANE MUMBI WANJIKU ..... RESPONDENT

(An appeal from the Judgment and decree of the Honourable Ismail S.I. (Adjudicator) dated 11.12.2024 in Nyeri SCCCOMM No. E241 of 2024.)

JUDGMENT

1. This is an appeal from the Judgment and decree of the Honourable Ismail S.I. (Adjudicator) dated 11.12.2024 in Nyeri SCCCOMM No. E241 of 2024. The Appellant was the Respondent in the Small Claims Court.

2. In the Statement of Claim dated 20.5.2024, the Respondent herein prayed for judgment of Kshs. 554,000/- as against the Appellant with costs and interest on a contract relating to money had and received. It was pleaded that the loan was advanced to the Appellant on 26.2.2024 and would fall due within 1 month. The Appellant defaulted and was in arrears of the loan amount plus interest from 29.2.2024. Annexed to it is a blank document with a figure balance of 331,400/=. The agreement is neither witnessed by anyone nor signed by the Respondent. It is not an agreement with any party.

3. Annexed to the list of documents is a document with 520,000/= written on top. It is christened a movable security rights agreement. Susan Njeri Wahome is indicated as a guarantor, but the guarantee is not indicated.

4. In her Statement of Defence, the Appellant denied the claim and averred that she received only Ksh. 300,000/- and had in fact since repaid Ksh. 48,900/= and was willing to pay the balance of Kshs. 251,100/=. The Appellant also pleaded that she did not voluntarily enter into the alleged agreement

and also denied executing it. She stated that she received the said Ksh. 300,000/- and paid Ksh 48,900/= leaving a balance of Ksh 251,000/=. (The correct figure is Ksh.251,100/=).

5. In its judgment, the lower court found that the Respondent had proved her case to the required standard and allowed the claim. The court entered judgment against the Appellant for Kshs. 506,300/= with costs and interest.

6. Aggrieved, the Appellant lodged a Memorandum of Appeal dated 9.1.2025 on the following 3 grounds that:

   a. The learned magistrate erred in law and fact in finding that the Appellant conscientiously executed the agreement and is bound by it having willingly signed.

   b. The learned magistrate erred in law and fact in not finding that the Appellant had received only Ksh. 300,000/- from the Respondent.

   c. The learned magistrate erred in law and fact in entering judgment for the Respondent in the sum of Kshs. 506,300/-.

7. This being an appeal from the Small Claims Court, the duty of the court is circumscribed under Section 38 of the *Small Claims Court Act* which provides as doth:

   1. 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.

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

8. An appeal of this nature is on points of law. It can be pure points of law or mixed points of law but points of law it is. An appeal on points of law is akin to a second appeal to the Court of Appeal. The duty of a second appellate court was set out in the case of Otieno, Ragot & Company Advocates v National Bank of Kenya Limited [2020] eKLR: -

> " This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See: Stanley N. Muriithi & Another versus Bernard Munene Ithiga (2016) eKLR)."

9. Then what constitutes a point of law? In Twaher Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others, (2014) eKLR, the court stated as doth: -

> " 4. Although the phrase 'a matter of law' has not been defined by the *Elections Act*, it has been held in Timamy Issa Abdalla V Swaleh Salim Swaleh Imu & 3 Others, Malindi Civil Appeal No. 39 Of 2013 (Court Of Appeal), (Okwengu, Makhandia & Sichale, JJA) of 13.01.2014 that a decision is erroneous in law if it is one to which no court could reasonably come to, citing Bracegirdle v Oxney (1947) 1 All ER 126. See also Khatib Abdalla Mwashetani V Gedion Mwangangi Wambua & 3 Others, Malindi Civil Appeal No. 39 of 2013 (Court Of Appeal), (Okwengu, M'inoti & Sichale, JJA) of 23.01.2014 following AG v David Marakaru (1960) EA 484."

10. To this court, even where the matter involves application of judicial discretion, such discretion though unfettered must be exercised in accordance with the law. This Court therefore is persuaded that the exercise of judicial discretion is a point of law. In Peter Gichuki King'ara V Iebc & 2 Others, Nyeri

Civil Appeal No. 31 Of 2013 (Court Of Appeal) (Visram, Koome & Odek, JJA) Of 13.02.2014, the Court of Appeal held as follows: -

> "It was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanour – is an issue of law."

11. A point of law is similar to a preliminary point of law but has a broader meaning. Justice Prof. J.B. Ojwang J (as he then was) succinctly addressed the issue of preliminary objection in the case of Oraro v Mbaja [2005] eKLR as follows:

> "I think the principle is abundantly clear. A preliminary objection as correctly understood is now well settled. It is identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. I am in agreement that where a court needs to investigate facts, a matter cannot be raised as a preliminary point.

12. In this case, the lower court found that the Respondent had proved her case to the required standard. The burden of proof is set out in Sections 107-109 of the *Evidence Act*; Cap 80 Laws of Kenya thus:

> 107.(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
>
> (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
>
> 108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
>
> 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

13. The philosophy that informs the preponderance of probabilities as a standard of proof in civil claims derives from the understanding that in percentage terms, a party, be it claiming or responding who is able to establish their case to a percentage of 51% as opposed to 49% of the opposing party is said to have established a case on the balance of probabilities. Kimaru, J in William Kabogo Gitau v. George Thuo & 2 Others [2010] 1 KLR 526 stated as follows:

> "In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance

of probabilities. He has established that it is probable than not that the allegations that he made occurred."

14. The evidential burden, on the other hand, rests upon any party with the obligation of proving any particular fact that they desire the court to believe in its existence. The Respondent herein had the duty to prove her claim against the Appellant in terms of the existence of the loan agreements and the remittance of the claimed amount of money to the Appellant. In Anne Wambui Ndiritu –v- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, the Court of Appeal held that:

> " As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act."

15. In this case, the initial burden of proof was with the Respondent, but the same was shifted to the Appellant, to show that she did not receive Ksh 300,000/=. This is contrary to the tenets of proof. It is the party asserting in positive who has the burden of proof. In the case of Evans Nyakwana –v- Cleophas Bwana Ongaro [2015] eKLR it was held that:

> " As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail fi no evidence at all were given as either side."

16. The Small Claims Court proceeded on the assumption that the burden of proof was on the Appellant, who was the Respondent in the court below. The court proceeded without any scintilla of evidence to declare that there was a contract for Ksh. 520,000/=. I am unable to find such a contract. The claim was not a breach of contract. It was for money had and received.

17. Both parties produced in court evidence that Ksh 300,000/= was received by the Appellant as follows:

    i. 26.02.2024 – Ksh. 140,000/=

    ii. 26.02.2024 – Ksh 60,000/=

    iii. 27.02.2024 – Ksh. 100,000/=

18. The Respondent received the following amounts:

    i. Ksh, 7,000/= through the advocate - not dated.

    ii. Ksh.30,300/= through her advocate on 10.6.2024

    iii. Ksh 11,600/= on 11.3.2024.

19. A claim for money had and received is just that. It does not include interests and other usurious charges. Further interest cannot start counting before a suit is filed. There can be no claim of breach of contract in respect of money had and received. The court thus erred in changing the cause of action from money had and received to breach of contract.

20. In any case, the court is not entitled through hyperbole, surmise, conjecture, and rhetoric to create a cause of action other than that which parties filed. Parties admitted before me that only Ksh. 300,000/= was given out. The rest was the interest.

21. Had parties intended to claim interest in the shylock business, which is an illegal banking business, they should say so. In such a case, the illegal banking business cannot obtain sanction from the court. Therefore, the court fell into error by finding an agreement existed when there was no evidence.

22. In fact, if the agreement under the movable property rights had been entered into, it would have been illegal unless registered, as provided under the Section 32 of the said Act. A blank piece of paper cannot be an agreement.

23. When the court entered judgment on the basis of no evidence, it was a matter of law. It was pleaded and not controverted that only Ksh 300,000/= was had and received. 48,900/= was paid to the Respondent, including 37,300/= to the advocate. Equity follows the law. It is unjust enrichment to receive that money and still claim the same.

24. The alleged agreement was said to be made under the *Movable Property Security Rights Act*, 2017. The same offended Section 6 of the said Act. Subsections 3 and 4 provide as follows:

    3. A security agreement shall be in writing and signed by the grantor; identify the secured creditor and the grantor, except in the case of an agreement that provides for the outright transfer of a receivable, describe the secured obligation; and describe the collateral as provided in section 8.

    4. A security agreement entered into in accordance with this section is enforceable and creates a security right, irrespective of the satisfaction of the requirements that may be imposed by any other written law.

25. The purported agreement is not signed by both parties. Terms thereto are not provided. Figures inserted relate to different amounts. Such an agreement is a nullity and is not cured by Section 32 of the Small Claims Act. More importantly, it is not registered. There was nothing before the court to show the payment in the face of such a nullity. There can be no agreement if not signed by both parties. In Macfoy v. United Africa Co. Ltd [1961] 3 All E.R. 1169, Lord Denning, delivering the opinion of the Privy Council at page 1172 (1) said;

> "If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."

26. Further, the Respondent did not sign the alleged contract. This means she cannot enforce a contract not signed by her. In the Agricultural Finance Corporation v Lengetia Ltd (supra), quoting with approval from Halsbury's Laws of England, 3rd Edition, Volume 8, paragraph 110, Hancox, JA, reiterated that:

> "As a general rule a contract affects only the parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom

the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract."

27. Parties must signal an intention to enter into an agreement. None was expressed. By law, there was no agreement. The Appellant had, however, admitted receiving Ksh. 300,000/= and repaying 48,900/=. This was a common ground. The court cannot allow her to escape as doing so will amount to unjust enrichment. In Samuel Kamau Macharia v Kenya Commercial Bank Limited, Kenya Commercial Finance Company Limited [2003] eKLR, R. Kuloba J, as he then was stated:

> Forming the foundation of quasi-contractual claims, such as actions for money had and received, and for money paid to a third party from which the defendant has derived a benefit, and equitable relief from undue influence and catching bargains, amongst other restitutionary claims, the idea of unjust enrichment or unjust benefit is intended to prevent a person from retaining money or some benefit derived from another which it is against conscience that he should keep it, and he should, in justice, restore it to the plaintiff. The gist is that a defendant, upon the circumstances of the case is obliged by the ties of natural justice and equity to make restitution. As Lord Goff of Chieveley and Professor Gareth Jones state in their monumental treatise, The Law of Restitution , 5th edn (1998), at pp 11-12:
>
> > " Most mature systems of law have found it necessary to provide, outside the fields of contract and civil wrongs, for the restoration of benefits on grounds of unjust enrichment."
>
> This statement is founded on the observation of Lord Wright in the English case of Fibrosa Spolka Akeyjna v Fairbairn Lawson Combe Barbour, Ltd, [1943] AC 32, at p 61 where he said:
>
> > " It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit ..... Such remedies ..... are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi - contract or restitution."

28. In the case of Chase International Investment Corporation and Another v Laxman Keshra and 3 others [1978]eKLR, the court of appeal (Madan, Wambuzi & Law JJ A), addressed the question of unjust enrichment as doth:

> The benefit of Laxman's work went to Chase as equitable owner of the property under the charge secured by the debenture. As counsel put it, every brick that Laxmanbhai laid became a Chase brick. And as the judge put it:
>
> Chase took his money and his services and materials in the lodges when it scooped the proceeds of the sale of the lodges by the receiver which Chase asked [Devco] to effect under the trust deed for its debenture by appointing receivers and managers for [the company].
>
> In Fibrosa Spolka, Lord Wright ([1943] AC at page 61):
>
> It is clear that any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in

tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution.

It seems to me that upon a fine analysis the first category, ie the contract of guarantee which I have discussed above, blends into the theory of restitution which gives it the foundation to justify it. Goff and Jones in their treatise, Law of Restitution, state (page 11):

Most mature systems of law have found it necessary to provide, outside the fields of contract and civil wrongs, for the restoration of benefits on grounds of unjust enrichment. There are many circumstances in which a defendant may find himself in possession of a benefit which, in justice, he should restore to the plaintiff.

Obvious examples are where the plaintiff has himself conferred the benefit on the defendant through mistake or compulsion. To allow the defendant to retain such a benefit would result in his being unjustly enriched at the plaintiff's expense, and this, subject to certain defined limits, the law will not allow ... The principle of unjust enrichment presupposes three things: first, that the defendant has been enriched by the receipt of a benefit; secondly, that he has been so enriched at the plaintiff's expense; and thirdly, that it would be unjust to allow him to retain the benefit.

All the three foregoing conditions are satisfied in this case: the appellants have been enriched by the receipt of benefit at the expense of Laxmanbhai, and, so obviously, it would be unjust to allow the appellants to retain the benefit of it to the full extent of Laxmanbhai's claim. Goff and Jones also state (at page 12):

The principle of unjust enrichment is placed in the forefront of the American Restatement of Restitution. Paragraph 1 provides that 'a person who has been unjustly enriched at the expense of another is required to make restitution to the other'.

29. Therefore, having admitted owing Ksh 251,100/=, the same is repayable as money had and received, notwithstanding that the underlying agreement was a nullity in law.

30. The court below was in error in its finding of the existence of the contract contrary to all acceptable tenets of the law. The Respondents' claim was for money received on or about 26.2.2024. She did not plead breach of contract. The lower court thus erroneously found that the Appellant breached the contract. Faced with similar circumstances, the court in John Kisaka Masoni v Nzoia Sugar Co. Limited [2016] eKLR stated as follows:

> The Claimant prayed for several remedies during the hearing including some that were not pleaded in the plaint. Obviously those prayers that were not contained in the plaint cannot be considered by the court. The only prayers in the plaint which the court has considered are for general damages for unlawful dismissal, costs and interest.

31. The Supreme Court of the United Kingdom later stated as follows in the case of RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG (UK Production) [2010] UKSC14,[45]:

> " The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective

appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement."

32. As the claim was for money had and received and it was not in dispute that the Appellant received the amount of Kshs. 300,000/-, that is the amount the Respondent was entitled to, subject to the payments of Ksh 48,900/= that the Appellant had made. There was no basis for interest on the money had and received. I dismiss the claim for interest on the amount of Ksh.300,000/= as it was without basis.

33. This court must triangulate on two aspects. Evidence that the Respondent had the money and the money left the Respondent to the Appellant as pleaded and whether there is such agreement. This is based on the principle of Nemo dat quod non-habet. Though used in relation to transfer of ownership, the term means that there needs to be evidence that the Respondent had money and capacity to transfer the money and did indeed transfer on the said date to the Appellant since no one can give what they do not have.

34. The Respondent could not give that which she did not have. It was not controverted that the amount of Ksh. 300,000/= was given and nothing more. A sum of Ksh 251,000/= was admitted to be due. The Respondent dismissed the same. This has consequences. Once the tender is rejected but found to be owing, the claimant must pay costs. Though pleaded as a debt, the Respondent did not tender any evidence supporting her case. There was thus a finding based on no evidence at all. This is a question of law. Can a court give a judgment based on no evidence at all?

35. This was addressed succinctly by the court of appeal [P Nyamweya, JW Lessit & GV Odunga, JJA] in AT v Republic (Criminal Appeal 63 of 2022) [2023] KECA 1393 (KLR) (24 November 2023) (Judgment), where they addressed the question of what a matter of law is as follows:

> We have considered the material placed before us in this appeal. Before us is a second appeal and we are cognisant of the limitation of our role under section 361(1) (a) to consider issues of law only as opposed to matters of fact that have been tried by the first court and re-evaluated on first appeal. In Njoroge v Republic [1982] KLR 388 it was held by this Court on the said mandate as follows:
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> " On a second appeal, we are only concerned with points of law and consider ourselves bound by the concurrent findings of fact arrived at in the courts below, unless shown to be based on no evidence."
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> 13. As to what constitutes "matters of law" in relation to this court's jurisdiction as the second appellate court, the Supreme Court in Gatirau Peter Munya v Dickson Mwenda Kithinji and three others [2014] eKLR characterized the three elements of the phrase "matters of law" thus:
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> a. the technical element: involving the interpretation of a constitutional or statutory provision;
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> b. the practical element: involving the application of *the Constitution* and the law to a set of facts or evidence on record; and
>
> c. the evidentiary element: involving the evaluation of the conclusions of a trial Court on the basis of the evidence on record."

36. This appeal turns on the phrase - unless shown to be based on no evidence. This was shown by the Appellant. I shall, however, ignore matters of fact that were raised as they are outside the remit of this court. In Katana Kalume & another v Municipal Council of Mombasa & another (2019) eKLR, the

court cited with approval the holding in Bishopsgate Motor Finance Corporation Ltd v Transport Brakes Ltd (1949) 1 KB 322, at pp. 336-337 where it was held as follows:

> " In the development of our law, two principles have striven for masterly. The first is for the protection of property; no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times."

37. Consequently, I find no basis for which the lower court found that the Respondent had proved her case to the required standard. The appeal is thus merited and is allowed. Costs follow the event. Section 27(1) of the *Civil Procedure Act* provides as doth:

> Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:
>
> Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
>
> 2. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

38. The determination of costs payable to the successful party is also a judiciously exercised discretion of the court, accommodating the special circumstances of the case while being guided by ends of justice. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

> " (18) It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

39. It is my considered view that the Appellant is entitles to the costs of the appeal. I assess the same at Ksh.55,000/-.

40. Having incurred unnecessary costs after the Appellant admitted owing the sum now found due in law, the Respondent is not entitled to costs in the lower court pursuant to Section 33 of the *Small Claims Court Act*. Each party shall bear their costs in the Small Claims Court.

Determination

41. In the upshot, I make the following orders:-

    a. The appeal is merited and is allowed.

    b. The award of Ksh. 506,300/= is set aside and substituted with an award of Ksh. 251,100/= payable by the Appellant to the Respondent.

    c. The Appellant shall have costs of this appeal of Ksh 55,000/=.

    d. If the Appellant pays the sum of Ksh 251,100/= less costs of Ksh 55,000/= within 45 days, interest shall not be payable.

    e. Should the said amount not be paid, or part thereof, within 45 days, the balance shall attract interest from the date of this judgment.

    f. There shall be 45 days stay of execution.

    g. Each party to bear their own costs in the lower court.

    h. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 27TH DAY OF FEBRUARY, 2025. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

Makura for the Appellant

No appearance for the Respondent

Court Assistant – Michael