



REPUBLIC OF KENYA



**KENYA LAW**  
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**Cheruiyot v Kibet (Civil Appeal E008 of 2024)  
[2025] KEHC 3985 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3985 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E008 OF 2024**

**JR KARANJA, J  
MARCH 26, 2025**

**BETWEEN**

**CHARLES KIPKORIR CHERUIYOT ..... APPELLANT**

**AND**

**DOMINIC KIBET ..... RESPONDENT**

**JUDGMENT**

1. The Appellant Charles Cheruiyot, was the defendant in Kericho small claims cause No. E001 of 2024 in which the Respondent, Dominic Kibet, made a claim of Ksh. 80,000/= inclusive of costs from him based on a loan agreement made orally between the two of them on the 4<sup>th</sup> September, 2020.
2. After hearing both Appellant and Respondent as well as the witness availed by the Claimant/ Respondent, the Trial Court in its judgements delivered on 29<sup>th</sup> February, 2024 concluded that the Respondent/Claimant had proved his case against the Appellant/Defendant on a balance of probabilities.
3. Judgement was therefore entered in favour of the Respondent against the Appellant for the sum of Ksh. 80,000/= inclusive of costs. Being aggrieved, the Appellant preferred the present appeal on the basis of the grounds set out in the memorandum of appeal dated 14<sup>th</sup> July, 2024.
4. Both parties appeared in person at the hearing of the appeal which was canvassed by way of written submissions.

The Appellant's written submissions are dated 15<sup>th</sup> November, 2024 while his supplementary submissions are dated 7<sup>th</sup> March, 2025. In opposing to the appeal, the Respondent filed herein his submissions dated 28<sup>th</sup> November, 2024 and made a brief response to the Appellant's supplementary submissions when the matter came up for hearing.



5. The appeal was given due consideration by this court on the basis of the supporting grounds and the rival submissions for and against the appeal. The duty of the court was to reconsider the evidence availed at the trial and draw its own conclusion bearing in mind that the Trial Court had the advantage of seeing and hearing the witnesses.
6. In that regard, the claimant's case was that on 4<sup>th</sup> September, 2020 at around 11.00am the Appellant called him on phone and requested financial assistance to boost his business of buying and selling motor vehicles. Thereafter, the two met somewhere within Kericho town at which point the Appellant indicated that he needed Ksh. 80,000/= which was advanced to him on the same day by the Respondent drawn from his savings on condition that the amount be refunded within a period of three (3) months. However, the Appellant failed to refund the amount as agreed and instead kept giving promises of refunding the amount.
7. In the statement dated 2<sup>nd</sup> January, 2024, the Claimant's witness, Benard Cheruiyot, indicated that he witnessed the Appellant receiving the sum of Ksh 80,000/= from the claimant/Respondent. The witness did however, not testify in court to confirm the statement.
8. In the statement dated 19<sup>th</sup> January, 2024 the Claimant's other witness, Gilbert Kipkurui Langat, also indicated that he witnessed the Appellant receiving the sum of Ksh 80,000/= in cash from the Appellant. This witness testified as much as witness number 2 in the trial and went on to state that he actually counted the money which was given inside a motor vehicle on the road side.
9. In his statement and testimony, the Respondent/Claimant submitted a statement from Imarisha Sacco Society Limited to show that he withdrew Ksh 100,000/= from his account on 1<sup>st</sup> September, 2020. He stated that Ksh 80,000/= of that amount was what was paid to the Appellant as per his request.
10. The Appellant vehemently denied the claim and contended that he never had any transaction with the Respondent as alleged.  
He did not call any witness in support of the denial, but generally implied that the claim was not genuine and is an off shoot of a wider dispute amongst members of his family.
11. Basically, the claim fell within the jurisdiction of the Small Claims court whose proceedings are less formal and straight forward than regular court proceedings. Such courts are established under the *Small Claims Court Act* (Cap 10A Laws of Kenya) to provide for the jurisdiction and procedure of the court and for connected purposes.
12. Under Section 12 of the Act a Small Claim Court has jurisdiction to determine any Civil Claim relating to "inter-alia" a contract relating to money held and received. This is where the present dispute fell in as much as there was an allegation that the Appellant obtained a friendly loan of money from the Respondent but failed to refund it as agreed. The agreement was said to have been oral.
13. Despite the advantages of written agreements, there is no general rule of law that all agreements must be in writing. It is only in certain specified cases that written agreements are mandatory (see Section 3 of the *Law of Contract Act* (Cap 23 Law of Kenya).
14. In proceedings under the *Small Claims Court Act*, strict rules of evidence are excluded such that the court may admit credible or trustworthy material as evidence.  
Section 32(1) of the Act Provides that the court shall not be bound wholly by the Rules of evidence. This is not to say that the rules of evidence are generally inapplicable in such proceedings.



15. Section 32(2) of the Act provides that; -

“without prejudice to the generally of section (1), the court may admit as evidence in any proceedings before it, any oral or written testimony recorded or other material that the court considers credible or trust worthy even though the testimony, record or other material is not admissible as evidence in any other court under the law of evidence”

And section 32(3) of the Act provides that; -

“evidence tendered to the court by or on behalf of a party to any proceedings may not be given on oath but that court may at any stage of the proceedings requires that such evidence or any thereof be given on oath whether orally or in writing”

16. From the pleadings and evidence in this suit it was clear to this court that the existence of the impugned agreement was the main issue for determination and if the agreement indeed existed, the next issue would be whether the contractual amount was actually received by the Appellant from the Respondent. What was not received by or paid to a person cannot be repaid or refunded by that person, otherwise that would amount to outright theft against the person.

17. On the other hand, what was received or paid to a person who fails to refund or repay in accordance with an agreement would attract liability upon the recipient.

In this case, there was sufficient and reasonably credible evidence from the Respondent/Claimant and his witnesses, whether or not they gave evidence under oath, indicating that most probable than not there was an oral agreement between the Respondent and the Appellant for a friendly loan of Ksh 80,000/= to the Appellant from the respondent for whatever purpose.

18. The Appellant, denial of the existence of such an agreement was clearly rebutted on a balance of probabilities. The Respondent, having proved the existence of the agreement was required to next prove that he fully implemented the agreement by advancing the contractual amount of Ksh 80,000/= to the Appellant to be repaid within three (3) months from the actual date of the agreement i.e 4<sup>th</sup> September, 2020.

19. There was nothing in written from which was presented by the Respondent to prove that the amount was actually given to and received by the Appellant in cash. The bank statement from the Imarisha Sacco only established that the Respondent withdrew a sum of Ksh. 100,000/= from his amount, three or so days prior to the material date of the impugned agreement. The statement was incapable of establishing and proving receipt of Ksh. 80,000/= by the Appellant.

20. However, the Respondent’s evidence as corroborated by that of his two witnesses did show that most likely than not the Appellant did receive the loan amount from the Respondent. The two witnesses were present at the material time and one of them (Gilbert) did state on oath that he actually counted the amount before it was received by the Appellant.

21. Apparently, the Trial Court believed the evidence of the Respondent and his witnesses and found it to be consistent and corroborative. As this was a case which depended more or less on the credibility of the witnesses given that it was the word of the respondent against that of the Appellant, it would appear that the Trial Court found the Respondent and his witnesses more credible than the Appellant and arrived at findings which were favourable to the Respondent.

22. This court cannot interfere with such findings noting that it did not have the benefit or advantage of seeing and hearing the witness. In any event, the findings, of the trial court did not go against the weight of the evidence which was cogent and sufficient against the Appellant.



23. In sum, all the six grounds of appeal preferred by the Appellant are hereby overruled with the result that the appeal is dismissed for want of merit. The Respondent shall have the costs of the appeal.
24. Ordered accordingly.

**DATED AND DELIVERED THIS 26<sup>TH</sup> DAY OF MARCH, 2025.**

**J.R. KARANJAH.**

**JUDGE.**

In the presence of; -

Appellant – Present

Respondent - Present

