



**Keya v Kemunto (Civil Appeal 101 of 2023) [2025] KEHC 7189 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7189 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA**

**CIVIL APPEAL 101 OF 2023**

**PJO OTIENO, J**

**MAY 29, 2025**

**BETWEEN**

**BILLY BRIGHT KEYA ..... APPELLANT**

**AND**

**LUCIA NYABUTO KEMUNTO ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. Sylvia A. Wayodi (RM) in  
Kakamega SMCC Case No. E188 of 2023 delivered on 27th June, 2023)*

**JUDGMENT**

**Background of the Appeal**

1. By way of a statement of claim dated 28<sup>th</sup> April, 2023, before the small claims court, the respondent sued the appellant for judgment in the sum of Kshs 530,000/- and costs of the claim. It was pleaded that by an agreement between the parties, the claimant/respondent lent to the appellant a sum of Kshs 730,000. It was a term of the agreement that the same would be paid back in three agreed instalments. The claimant/respondent further pleaded that the Appellant/respondent paid a sum of Kshs 200,000 but refused to pay the balance hence the suit.
2. In a response to the statement of claim dated 16<sup>th</sup> May, 2023, the appellant denied owing the respondent and stated that he had never received any money from the appellant and further claimed that he was forced, by the police while being detained, to pay to the appellant a sum of Kshs. 200,000/-. He made a counter-claim for the return of that payment.
3. The matter was heard by way of viva voce evidence when the respondent called evidence from two witnesses while the appellant was the only witness on his side.
4. In her judgment delivered on 27<sup>th</sup> June, 2023, the trial court found in favour of the respondent and entered judgment in the sum of Kshs. 530,000/-, interest at court rate from the date of filing the claim and costs of the suit.



5. Aggrieved with the decision of the trial court, the appellant lodged a memorandum of appeal dated 10<sup>th</sup> July, 2023 premised on the following grounds;
  - a. The learned magistrate wholly misapprehended the nature of the suit before her, and thereby arriving to a wrong decision.
  - b. The learned magistrate having found out that the appellant had been detained for 10 days erred in failing to find out the days in custody were a plot to intimidate the appellant to consent to the terms of the contract without establishing the existence of any transactions prior to the arrest and illegal contract.
  - c. The learned magistrate erred in failing to establish that there was no evidence supporting the alleged advance in the contract the appellant signed.
  - d. The learned magistrate erred in failing to consider the elements of a valid contract is not limited to capacity thereby arriving at a wrong decision leading to miscarriage of justice.
  - e. The learned magistrate erred in failing to note the inconsistency of the amount claimed by the respondent in the acknowledgment of debt as opposed to the amount reported and recorded in the occurrence book at the police station.
  - f. The learned magistrate erred in law by failing to consider and evaluate the statement presented by the appellant and his witness and selectively admitted and/or applied evidence adduced by the respondent.
  - g. The learned magistrate erred in law and in fact by failing to take into account the submissions made on behalf of the appellant.
6. Based on the said grounds of appeal, the appellant prays that the appeal be allowed in whole and the judgment and the decree of the trial court be set aside and substituted with an order dismissing the suit with costs to the appellant, both here and in the court below.
7. The court reads the memorandum of appeal to largely raise issues of facts which the court, however, discerns to challenge the judgment on the basis that it not grounded on the evidence led. Failure to properly consider the evidence led, for purposes of arriving at the decision appealed against, is now established to be a matter of law which then qualifies the appeal for determination by this court.
8. The appeal was directed to be canvassed by way of written submissions which direction was duly honoured by the parties. The court on his part has taken time to read and derive valuable benefit from the submissions filed. The court give a summation of such submissions as below.

### **Appellant's Submissions**

9. The appellant submits that he was illegally detained for 10 days by the police on allegations of obtaining money amounting to Kshs. 630,000/- by false pretense and denied bail. He argues that he was offered freedom on condition that he agrees to make payment of Kshs. 730,000/- and he that had no choice but to part with Kshs. 200,000/- during which time he was denied access to an advocate. He was thereafter to visit an advocate's office where he signed a contract dabbed an acknowledgement of debt. He contends that the trial court failed to consider the unfavorable circumstances under which the acknowledgement of debt was signed.
10. The appellant thus urges the court to exercise its mandate on first appeal by reappraising the entire evidence afresh with a view to satisfying itself that the conclusions of the trial court are consistent with



and in sync with the evidence led. For that submission, the decision in *Peter M Kariuki vs Attorney General* (2014) eKLR is cited.

11. The appellant further cites *Kenya Airways Ltd vs Satwant Singh Flora* (2013) eKLR for the proposition that no court should enforce or allow itself to be the instrument of enforcement of an illegal contract if the illegality is duly brought to its attention and knowledge together with the facts that the person seeking to enforce the obligation of the illegal contract is himself implicated in the illegality. In addition, the decision in *Jordan Properties Ltd vs Margaret Njoki Migwi* (2020) eKLR was cited for the law that illegal contract or those against public policy or morality are void and thus not capable of enforcement.
12. The appellant thus urges the court to find that the judgment is not in sync with the evidence led and therefore it is a candidate for being set aside and in its place being substituted a judgment dismissing the claim with costs to the appellant.

### **Respondent's Submissions**

13. The position taken by the respondent is that she presented an agreement before the court and their discharge of her legal burden thus shifting the evidential burden of proof upon the appellant to prove his allegations that the agreement was vitiated by illegalities. She contends that the appellant was arrested on suspicion of committing a cognizable offence in law and stayed in the police station pursuant to a court order and that the appellant approached the respondent to resolve the matter which resulted in the appellant sending the respondent Kshs 200,000/- while the parties executed an agreement for the payment of the balance of Kshs 530,000/-. She then adds that the appellant has not demonstrated that he was coerced into entering the agreement. The decision in *Amesnet Enterprises Limited and others v Susan Wanjiru Wagendo* (2021) eKLR is then cited and relied upon for the proposition that where a party to contract alleges coercion, he must demonstrate that he did not have an alternative course open to him such as adequate legal remedy, whether he was independently advised and whether after entering the contract he took steps to avoid it.
14. On the basis of the pleadings, evidence led and the judgment on record, the respondent views the appeal to lack merits and prays that it be dismissed with costs.

### **Issues, Analysis and Determination**

15. This court has considered the grounds of appeal, the proceedings of the lower court and the submissions by both the appellant and the respondent and discerns the issue for determination to be whether the appellant was coerced into executing the acknowledgement of debt and payment agreement dated 6/3/2023? In the converse, the issue is whether the judgment is in sync with the evidence on record?
16. This being an appeal from the Small Claims Court, this court is obligated by the provisions of section 38 of the Small Claims Court to only address points of law. As said before the treatment of evidence by a court or tribunal in arriving at a decision is indubitably a question of law.
17. It is trite law that he who alleges must prove. The appellant pleaded and led evidence that he was coerced into signing the agreement upon which the claim was based. Having so pleaded, and after the respondent had led evidence on the debt including a duly executed agreement and an acknowledgment of the debt, made long after the agreement was executed and part of the sum paid, it was the appellants legal burden to prove the illegality by coercion to the satisfaction of the court.



18. When cross examined by the respondent's counsel, the appellant had this to say; -

“I know the documented letter. It was sent by what's up (sic). 0741653093. I respondent (sic) to the letter. By 530k I meant 530,000. I meant I had paid Kshs 200,000.”
19. That answer was with regard to the appellants reply to a demand notice. When he received the notice, he respondent by unequivocally saying; -

“I have defaulted on one part of the agreement. 730 was the full amount. I owe 530K not 730. I have so far paid 200.”
20. To the court, the answer upon cross examination and the response and the acknowledgement made after the agreement was signed has not been challenged to have been also under compulsion. To the court, with that acknowledgment alone, there was a complete admission of the demanded sum and one needed not revisit the agreement. Once again, even the claim was sufficiently mountable upon the acknowledgment without the need to relate it to the agreement.
21. In legal parlance, coercion means compulsion, constraint, compelling by force or arms or threat. It is an unlawful act meant to push a person into acting against his will. It is thus one of the factors known to vitiate and make a contract void when established to have been employed to procure the execution.
22. Proof of coercion the defense of coercion as a vitiating factor was addressed in the case of PAO & Others –vs- LAN LIU & Another [1979] 3 ALL ER where the Privy Council stated that;

“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”.
23. In his own words, the appellant stated that he was taken to a lawyer's office where he executed the agreement. It would have been important to know from him if he was in a position to put it to the advocate that he had been coerced. He did not make such an allusion. He was in the company of another who gave evidence on his behalf, the court wonder why he was unable to seek and obtain legal advice on the demand to sign the commitment before signing same.
24. Moreover, even after executing the agreement the appellant took no action to report the illegal detention and the execution of the agreement to any authority. In fact, he was content to let the matter rest without a complaint or some action to undue the agreement until he was served with the claim paper then opted to file a suit in court.
25. when the appellant was served with a demand notice as captured on page nine of the record of appeal, he stated as follows; This message does not depict an individual coerced into an agreement.
26. The court upon reappraisal of the record and appreciation of the law applicable, finds no merit in the appeal. It determines that the trial court properly appreciated the evidence let when applied to the law and made the determination it reached. There is thus no error in principle or failure to properly apprehend the facts and the law applicable.
27. For the conclusions reached above, the court finds the appeal to be devoid of any merit and, it is therefore dismisses it with costs.



**DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**PATRICK J O OTIENO**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**S. MBUGI**

**JUDGE**

In the presence of:

No appearance for the parties

C/A: Agong'a

