



**Morara t/a Ladder Publications & another v Longhorn Publishers PLC (Civil Appeal E121 of 2024) [2025] KEHC 9251 (KLR) (Civ) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9251 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E121 OF 2024  
AN ONGERI, J  
JUNE 27, 2025**

**BETWEEN**

**ANDREA NYABOGA MORARA T/A LADDER PUBLICATIONS .... 1<sup>ST</sup>  
APPELLANT**

**NELLY CHANZU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**LONGHORN PUBLISHERS PLC ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon. S. M. Musili (RM/Adjudicator)  
in Nairobi SCCC No. E2629 of 2023 delivered on 15th January 2024)*

**JUDGMENT**

1. The Respondent in this appeal, Longhorn Publishers PLC filed Milimani Small Claims Court Case No. E2629 of 2023 against the two Appellants seeking Kshs. 1,047,658.56 plus costs and interest.
2. The money was in respect of several consignments of books supplied to the Appellant while trading as Ladder Publications.
3. The Respondent raised a counter claim of Kshs. 166,609.59.
4. The trial court found that there were unpaid claims of Kshs. 310,758.13 and agreed balance unpaid of Kshs. 736,900.43 making a total of Kshs. 1,047,658.56.
5. The trial court found the counter claim unproved and dismissed it.
6. The Appellant has appealed to this court on the following grounds:-



- i. That the learned trial Magistrate erred in law in finding that the Appellants were wholly liable for the alleged debt yet it was the Appellant's uncontroverted evidence that they returned some consignment to the Respondent, which consignment is part of what the Respondent demanded from the Appellants and which consignment is currently in the Respondent's possession.
  - ii. That the learned trial Magistrate erred in law and applied wrong principles in law that led to the determination which in the end unjustly enriches the Respondent.
  - iii. That the learned trial Magistrate erred in law by failing to appreciate that the Respondent did not contend that indeed the Appellants returned some consignment, which ought to have been set off from the decretal sum.
  - iv. That the learned trial Magistrate erred in law in that she failed to take into consideration the Appellant's pleadings and submissions while arriving at the determination dated 15<sup>th</sup> January 2024.
  - v. That the learned trial Magistrate erred in law in that he arrived at a determination that is not fully backed by the evidence on record.
  - vi. That the learned trial Magistrate erred in law by failing to appreciate that the Respondent's claim was defective in that the 1<sup>st</sup> Appellant was improperly sued in the suit before the trial court.
7. The parties filed written submissions as follows:-
  8. The Appellants, Andrea Nyaboga Morara (trading as Ladder Publications) and Nelly Chanzu, have appealed against the judgment on 15th January 2024 in Nairobi Small Claims Court Case No. E2629 of 2023.
  9. The Respondent, Longhorn Publishers PLC, had sued the Appellants to recover a debt exceeding Kshs. 1,000,000 for allegedly supplied but unpaid books.
  10. The Appellants contended that the trial magistrate erred in several respects, leading to an unjust outcome.
  11. Central to their appeal is the argument that the magistrate failed to account for evidence showing that part of the debt claimed by the Respondent was attributable to the Respondent's own employees—Steve Juma, Michael Mbuthia, and Nickson Okeyo—who allegedly conducted unauthorized transactions using the Appellants' account.
  12. The Appellants provided correspondence (emails, WhatsApp messages, and letters) demonstrating that these employees took books for sale without the Appellants' knowledge or consent, accumulating a debt of Kshs. 693,744.15, which remains unreturned or unreconciled.
  13. Despite raising this issue repeatedly, the Respondent took no action against its employees, and the trial court overlooked this critical evidence.
  14. The Appellants further argued that the magistrate misapplied legal principles, resulting in unjust enrichment for the Respondent.
  15. They emphasized that the Respondent's employees, who were under its control, should have been summoned to testify, as their absence warranted an adverse inference against the Respondent.



16. Further, the appellants submitted that the trial court's failure to address this discrepancy or exercise its powers under Order 1, Rule 10(2) of the Civil Procedure Rules to join these employees as parties rendered the judgment incomplete and unfair.
17. The Appellants urged the appellate court to re-evaluate the evidence, set aside the erroneous findings, and dismiss the Respondent's claim with costs awarded to them.
18. In conclusion, the Appellants asserted that the trial court's oversight of their evidence and failure to ensure a just determination constitute a miscarriage of justice.
19. They prayed that the appeal to be allowed, the judgment overturned, and costs granted in their favor.
20. The Respondents' written submissions defended the trial court's judgment dated 15th January 2024, arguing that it was properly grounded in law and fact.
21. They contended that the Appellant's appeal lacks merit and should be dismissed.
22. The Respondents further asserted that the evidence presented during trial, including the executed "Bulk Order Offer" dated 28th May 2021, emails acknowledging the debt, invoices, delivery notes, and customer statements, conclusively proved the existence of an agreement and the Appellant's indebtedness.
23. They said that the Appellant failed to provide any credible evidence—such as bank statements or payment receipts—to disprove the debt or support their counterclaim.
24. The Respondents emphasized the legal principle that the burden of proof lies with the party making an assertion.
25. Since the Appellant alleged payment and disputed the debt, they were obligated to substantiate their claims but failed to do so.
26. They submitted that the trial court correctly applied this principle, as supported by case law such as *Kipkebe Limited v Peterson Ondieki Tai and Muriungi Kanoru Jeremiah v Stephen Ungu M'mwarabua*, which affirm that a party alleging payment must prove it.
27. The Appellant's reliance on unsubstantiated claims, including the alleged return of unsold books, was insufficient to discharge this burden.
28. On the issue of costs, the Respondents argued that costs should follow the event, as the appeal was necessitated by the Appellant's unfounded challenge to a valid judgment.
29. Citing precedents like *Joseph Oduor Anode v Kenya Redcross Society*, they urged the court to award costs in their favor, given the Appellant's lack of merit in the appeal.
30. In conclusion, the Respondents pray for the dismissal of the appeal, the upholding of the trial court's judgment, and an award of costs in their favor.
31. They maintained that the trial court's decision was sound and that the Appellant has provided no compelling reason to overturn it.
32. This being an appeal from the Small Claims Court, the same can only be entertained on points of law.
33. The issues for determination in this appeal are as follows:-
  - i. Whether the Respondent proved its case to the required standard.
  - ii. Whether the appeal should be allowed.



34. On the issue as to whether the Respondent proved its case to the required standard, the burden of proof in civil cases rests on the party asserting a claim, as stipulated in Section 107 of the *Evidence Act*.
35. The said Section provides that;

“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.”
36. The Respondent, Longhorn Publishers PLC, adduced evidence in the form of a Bulk Order Offer, invoices, delivery notes, and customer statements to establish the existence of a debt owed by the Appellants.
37. The Appellants, however, contended that part of the debt arose from unauthorized transactions by the Respondent’s employees and that some books were returned but not accounted for.
38. The trial magistrate found that the Respondent had proved its claim for Kshs. 1,047,658.56, dismissing the Appellants’ counterclaim of Kshs. 166,609.59 for lack of proof.
39. The Appellants argued that the magistrate erred in failing to consider their evidence, particularly the alleged misconduct of the Respondent’s employees and the uncredited returns.
40. Upon re-evaluating the evidence, this court finds that the Appellants did not sufficiently discharge their burden of proving that the Respondent’s employees acted fraudulently or that the returned books were not accounted for.
41. While they presented correspondence suggesting irregularities, they failed to provide concrete evidence, such as bank statements or signed return records, to substantiate their claims.
42. The principle in *Kipkebe Limited v Peterson Ondieki Tai* [2018] eKLR is clear that a party alleging payment or offset must prove it.
43. The Appellants’ assertions remained unsubstantiated, and the trial court was correct in disregarding them.
44. Further, the argument that the 1st Appellant was improperly sued holds no merit.
45. The record shows that the Appellants conducted business under the name “Ladder Publications,” and the suit was properly instituted against them in their trading capacity.
46. On the question of unjust enrichment, the court finds no evidence that the Respondent would be unjustly enriched.
47. The debt was proved through documentation, and the Appellants’ failure to reconcile the alleged returns does not invalidate the Respondent’s claim.
48. In conclusion, the appeal lacks merit and it is hereby dismissed with costs to the Respondent.
49. The trial court’s judgment was grounded in law and evidence, and there is no basis for interference.
50. The decree of the trial court is affirmed.

**DATED, SIGNED AND DELIVERED THIS 27<sup>TH</sup> JUNE 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**



In the presence of:-

Court Assistants: Maina/Millicent

.....for the Appellants

.....for the Respondent

