



REPUBLIC OF KENYA



KENYA LAW
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Kubwa v Geoffrey Bwire Mang'eni t/a Wise Skills Engineering Works & another (Civil Appeal E114 of 2024) [2025] KEHC 9123 (KLR) (Civ) (26 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9123 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E114 OF 2024

AN ONGERI, J

JUNE 26, 2025

BETWEEN

GEOFFREY KUBWA APPELLANT

AND

**GEOFFREY BWIRE MANG'ENI T/A WISE SKILLS ENGINEERING
WORKS 1ST RESPONDENT**

HYDROUNIVERSE TRADING COMPANY LIMITED 2ND RESPONDENT

*(Being an appeal from the Judgment of Hon. C. A. Okumu (RM/Adjudicator)
in Nairobi SCCC No. E5495 of 2023 delivered on 15th January 2024)*

JUDGMENT

1. The parties entered into a verbal agreement where the Respondents were to supply the Appellant with goods for Kshs. 1,608,700/=
2. The 1st Respondents delivered the goods – solar panels and equipment and the Appellant paid the 1st Respondent a deposit of Kshs. 800,000/= in cash.
3. The Appellant was to pay the balance of Kshs. 808,700/= upon full deliver of the goods and completion of the installation.
4. The 1st Respondent fulfilled his obligation but the Appellant insisted on being given invoices and VAT receipts to enable him pay the balance of Kshs. 808,700/=
5. The 1st Respondent issued the ETR to the Appellant for the total sum of Kshs. 1,608,700/= but to date the balance has not been paid.



6. The Appellant in their response to the claim said the work was completed after 3 weeks from 2nd March 2023 and that the works got spoilt after 3 months.
7. The trial court found that the parties entered into a verbal contract and that the Appellant paid the Respondent Kshs. 800,000/= even before the works started.
8. The trial court found that the claim that works were poor was an afterthought.
9. The trial court entered judgment in favour of the Respondents against the Appellant in the sum of Kshs. 808,700/=.
10. The Appellant is aggrieved and has filed this appeal on the following grounds:-
 - i. The learned Resident Magistrate erred in law and fact by holding that the Appellant by his declaration, act or omission, intentionally caused or permitted the Respondents to believe a thing to be true and to act upon such belief, without any evidence in support thereof.
 - ii. The learned Resident Magistrate erred in law and in fact by entering Judgment for the Claimant against the Respondent in the sum of Kshs. 808,700/= a fact not borne by the evidence and pleadings before her.
 - iii. The learned Resident Magistrate erred in law and in fact by holding that the evidence adduced by the Respondent on the quality of works being poor was an afterthought. The trial Magistrate addressed herself on extraneous issues not borne of pleadings and evidence on record hence arriving at erroneous findings.
 - iv. The learned Resident Magistrate erred in law and in fact by relying on the case of *Pickard v Sears* 112 E.R 179 on Doctrine of Estoppel, which is not applicable in this case.
 - v. The learned Resident Magistrate erred in law and in fact by failing to take into account and to consider the evidence adduced on behalf of the Appellant. She failed to appreciate the submissions of the Learned Counsel for the Appellant by finding in favour of the Respondent herein.
 - vi. In all the circumstances of the case, the findings of the Learned Resident Magistrate are unsupported in Law or on the basis of the evidence adduced.
11. The parties filed written submissions as follows:-
12. The Appellant submitted that the trial court erred in several material respects in its judgment.
13. Firstly, that the court incorrectly applied the doctrine of estoppel, holding that the Appellant's conduct led the Respondents to believe an obligation existed when no evidence supported such a finding.
14. That the Appellant fulfilled his contractual payment of Kshs. 800,000 and never represented that he would pay the additional sum claimed.
15. The reliance on *Pickard v Sears* was misplaced, as estoppel cannot arise where no inducement or acknowledgment of debt was proved.
16. Secondly, that the judgment awarding Kshs. 808,700 lacked evidentiary basis.
17. That the Respondents failed to discharge their burden of proof under Section 107 of the [Evidence Act](#), as they did not substantiate their claim with signed agreements, delivery notes, or credible accounts.



18. That the quotations and invoices alone, unsigned and unsupported by proof of delivery, were insufficient to establish liability, per *Five Continents Ltd v Mpata Investments Ltd*.
19. That the court ignored this deficiency and erroneously shifted the burden to the Appellant.
20. Thirdly, that the trial magistrate dismissed the Appellant's evidence on the poor quality of work as an "afterthought" without proper justification.
21. That the Appellant's documents were filed in compliance with Rule 18 of the Small Claims Court Rules, yet the court refused to consider them, leading to a flawed assessment of the merits.
22. Lastly, the court failed to evaluate whether the contract was validly varied to justify the claimed amount.
23. That no mutual agreement or fresh consideration was demonstrated for any variation, as required under principles outlined in *Halsbury's Laws of England and Housing Finance Co. v Gilbert Kibe Njuguna*. The unilateral quotations produced by the Respondents could not alter the original contract.
24. The Appellant urged the appellate court to set aside the judgment, as the Respondents neither proved additional work was performed nor that the Appellant acknowledged further liability.
25. The appellant said that the award was speculative and contrary to contractual principles.
26. The respondents opposed the appeal, arguing that the trial court correctly applied the law and evidence in reaching its judgment.
27. They contended that the oral agreement for solar installation works, evidenced by conduct, text messages, and quotations, was valid under Section 119 of the [Evidence Act](#), which permits courts to presume facts based on the parties' conduct.
28. The respondents highlighted that the appellant paid KShs. 800,000 as a deposit, received two quotations totaling KShs. 1,608,700, and instructed the respondents via text message to proceed with additional work, which was completed without objection.
29. They asserted that the appellant's refusal to pay the balance of KShs. 808,700 was unjustified.
30. The respondents dismissed the appellant's claim that the full contract price was KShs. 800,000 as illogical, noting it would be unreasonable to pay the entire sum upfront before work commenced.
31. They argued the trial court properly inferred a contract variation from the parties' conduct, supported by the doctrine of estoppel, as the appellant authorized additional work after receiving the second quotation.
32. They further rejected the appellant's belated allegations of poor workmanship, pointing to inconsistencies in his evidence—such as conflicting dates for replacing the inverter and the lack of a counterclaim or prior complaint.
33. They urged the appellate court to uphold the trial court's findings, emphasizing that the judgment was based on a thorough evaluation of the evidence, including delivery notes, invoices, and communications.
34. The respondents submitted that the appeal lacks merit and should be dismissed with costs.
35. This being an appeal from the Small Claims Court, the same can only be entertained on a point of law.
36. The issues for determination in this appeal are as follows:-



- i. Whether the trial court was right in entering judgment against the Appellant.
 - ii. Whether there was a valid verbal contract between the parties.
 - iii. Whether the Appellant was in breach of the verbal contract.
37. The evidence on record amounts to the word of the Appellant against that of the two Respondents.
 38. The appeal raises critical issues regarding the validity of a verbal contract, the burden of proof, and the application of the doctrine of estoppel.
 39. The trial court found that a valid verbal agreement existed between the parties, wherein the Appellant was to pay Kshs. 1,608,700 for the supply and installation of solar panels, with a deposit of Kshs. 800,000 paid upfront and the balance payable upon completion.
 40. The court further held that the Appellant's failure to pay the balance constituted a breach of contract, dismissing his claims of poor workmanship as an afterthought.
 41. In assessing the validity of the verbal contract, Kenyan courts have consistently upheld oral agreements as legally binding, provided the essential elements of a contract—offer, acceptance, consideration, and intention to create legal relations—are established.
 42. Section 3(3) of the *Law of Contract Act* (Cap. 23) exempts certain contracts, including those for the sale of goods, from the requirement of written documentation.
 43. This position was affirmed in *Githunguri v Jimba Credit Corporation Ltd* [1988] KLR 838, where the Court of Appeal held that oral agreements are enforceable if their terms can be ascertained with reasonable certainty.
 44. In this case, the conduct of the parties—particularly the Appellant's payment of Kshs. 800,000 and the Respondents' subsequent delivery and installation of the goods—sufficiently demonstrated the existence of a binding agreement.
 45. The Appellant's subsequent demand for invoices and VAT receipts did not negate this agreement but rather confirmed his acknowledgment of the outstanding balance.
 46. The trial court's reliance on the doctrine of estoppel, as articulated in *Pickard v Sears*, was not misplaced.
 47. Estoppel operates under Section 120 of the *Evidence Act* (Cap. 80), which prevents a party from denying the truth of a representation they have intentionally caused another to believe and act upon.
 48. In *Equity Bank Ltd v Bruce Mutie Mutuku t/a Diani Tour Travel* [2016] eKLR, the court emphasized that estoppel arises where one party's conduct induces another to act to their detriment.
 49. The Appellant's acceptance of the goods and subsequent failure to pay the balance, despite acknowledging the debt through his demand for documentation, estopped him from disputing the validity of the contract.
 50. The trial court correctly found that his conduct induced the Respondents to believe the balance would be paid, and they acted accordingly by completing the installation.
 51. Regarding the burden of proof, Section 107 of the *Evidence Act* places the onus on the party asserting a fact to prove it.



52. The Respondents discharged this burden by adducing evidence of the verbal agreement, the Appellant's partial payment, and the completion of the work.
53. The Appellant's allegations of poor workmanship were unsubstantiated, as he failed to provide contemporaneous evidence or a counterclaim demonstrating defects in the installation.
54. In *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2004] eKLR, the court held that mere allegations unsupported by evidence cannot displace a claimant's prima facie case. The trial court thus rightly concluded that the Appellant's claims were an afterthought.
55. The judgment sum of Kshs. 808,700 was squarely supported by the evidence, including the quotations, payment receipts, and the Appellant's own admission of the outstanding balance.
56. The court in *Five Continents Ltd v Mpata Investments Ltd* [2021] eKLR reiterated that unsigned documents, when corroborated by conduct, can still form the basis of a contractual obligation.
57. In this case, the Appellant's actions—making a partial payment and demanding invoices—confirmed his acceptance of the total sum claimed.
58. In conclusion, the trial court's judgment was grounded in law and evidence.
59. The appeal lacks merit, as the Appellant has not demonstrated any error in the trial court's application of legal principles or evaluation of the facts.
60. The judgment is upheld, and the appeal is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF JUNE 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

.....for Appellant

.....for Respondent

