



REPUBLIC OF KENYA



KENYA LAW
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**Olande v Hajee (Civil Appeal E1022 of 2023)
[2025] KEHC 9063 (KLR) (Civ) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9063 (KLR)

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

CIVIL

CIVIL APPEAL E1022 OF 2023

AN ONGERI, J

JUNE 26, 2025

BETWEEN

RONALD ODHIAMBO OLANDE APPELLANT

AND

BASHIR-UD-HASSAN ALI JUMA HAJEE RESPONDENT

*(Being an appeal from the Judgment of Hon. G. Simatwo (RM/Adjudicator) in Nairobi
Milimani Small Claims Court Case No. E7479 delivered on 1st September 2023)*

JUDGMENT

1. The Respondent Bashir-ud-hassan Ali Juma Hajee was the Claimant in Nairobi Milimani Small Claims Court Case No. E7499 of 2022 where he sued Respondent who is the Appellant in this appeal seeking judgment in the sum of Kshs. 600,000/= and damages for breach of contract.
2. The suit arose out of an oral agreement entered into in January 2019 where Joshua Onguti was to be the caretaker of Apartment No. B10-2-23 on LR No. 71/14 and was to remit payments to the Respondent.
3. The Respondent's evidence was that the Appellant told him that during the period December 2019 to February 2021, the property was vacant.
4. The Respondent came to discover that there was a tenant in the property during the said period and he claimed Kshs. 600,000/= in respect of rent arrears.
5. The Respondent said the tenant was paying Kshs. 40,000/= per month and the period the money was not remitted was 15 months amounting to Kshs. 600,000/=
6. The Appellant did not call any witnesses.



7. The trial court found the Appellant liable to pay the sum of Kshs. 600,000/= plus costs of the suit.
8. The Appellant has appealed to this court on the following grounds:-
 - i. The trial Magistrate erred in law, particularly Section 3(3) of the Law of Contracts Act Cap 23 which applies to the validity of contracts in an interest in land.
 - ii. The Honourable Magistrate erred in law if failing to appreciate the decision and/or the law in Patrick Tarzan Matu & Another =Versus= Nassim Shariff Abdulla & 2 Others (2000) eKLR and thus arriving at a decision lacking in law.
 - iii. The Honourable Magistrate erred in law by failing to recognize the law founded under Sections 107, 108 and 109 of the *Evidence Act* that infers that the legal burden of proof is constant towards he who asserts and nonetheless the evidential burden of proof shifts to the party who would fail if no evidence at all were given on either side.
 - iv. The Honourable Magistrate erred in law if failing to appreciate the decision and the law in Hydro Water Well (K) Limited =Versus= Nelson Mukara Sechere & 2 Others (2021) eKLR thus arriving at a decision lacking in law.
 - v. The Honourable Magistrate erred in law and fact by failing to appreciate that the Claimant blatantly without any compulsion, intimidation, and/or constraint admitted that the agreement between the Respondent and him was not in writing but orally entered.
 - vi. The Honourable Magistrate erred in law by failing to appreciate the Appellant's submissions as filed in court and thus arrived at unlawful, improper and unjust conclusions in law.
 - vii. The Honourable Magistrate erred in law by failing to properly examine the Respondent's testimony both in examination in chief and cross examination thus arriving at an improper and unjust conclusion in law.
 - viii. The Honourable Magistrate made substantial error in matters of law by neglecting to recognize that the purported contract, which the Claimant asserted as legally binding, should be categorized as a statutory form of contract.
 - ix. The Honourable Adjudicator erred in law and fact by overlooking the evidence indicating that the purported agreement in question lacked written documentation, bore no signatures, and remained unattested. This oversight constituted a clear violation of statutory prerequisites, rendering the alleged agreement utterly devoid of any legal validity or entitlement.
 - x. The Honourable Magistrate gravely erred both in matters of law and fact displaying a lamentable disregard for the precepts embodied within Section 3(3) of the *Law of Contract Act* Cap 23 as they pertain to the locus in quo. Whereby, the Magistrate failed to acknowledge that the rental payments purportedly delivered to the Appellant should be construed as bona fide interests in real property.
 - xi. The Honourable Magistrate erred in law and fact in failing to examine the Claimant's alleged M-pesa statements sourced from Safaricom by the Claimant. These documentary exhibits, upon cursory scrutiny, evinced a prima facie semblance of contrived origin, as they conspicuously lacked the imprimatur of an official seal or a duly registered insignia requisite to affirm and validate their probative worthiness.
 - xii. The Honourable Magistrate erred gravely both in matters of law and fact by neglecting to ascertain whether the Claimant had satisfactorily established the existence of a valid contract.



- xiii. Consequently, the Resident Magistrate’s decision occasioned a miscarriage of justice.
 - xiv. The trial Magistrate erred in law and in fact by considering irrelevant matters and basing his opinion therefrom and arrived at unlawful and unjust conclusions in law.
 - xv. The esteemed Resident Magistrate grievously erred in factual regard by uncritically embracing the contentions proffered by the Claimant without requisite substantiation, inquiry, or any discernible scrutiny whatsoever.
 - xvi. The learned Magistrate erred in law by issuing orders in favour of the Claimant against the Appellant without affording proper consideration to the pleadings and the evidentiary record meticulously presented before the trial court. This failure to accord due diligence and heed to the essential elements of the case represents a significant lapse in judicial duty.
 - xvii. The learned Adjudicator erred in law in awarding costs to the Claimant.
9. The parties filed submissions as follows:-
 10. The appellant, Bashir-ud-Deen Hassanali Juma Hajee, submitted that he has lodged this appeal challenging the judgment in the Small Claims Court in Milimani, delivered on 1st September 2023, in favor of the respondent, Ronald Odhiambo Olande.
 11. The appellant contended that the trial adjudicator erred in law and fact on multiple grounds, rendering the decision unjust and unlawful.
 12. Central to the appeal is the argument that the respondent failed to discharge the legal burden of proof required to establish his claim.
 13. The appellant asserted that the purported agreement between the parties was oral, unsigned, and unattested, violating Section 3(3) of the Law of Contract Act, which mandates written documentation for contracts involving land or interests in land.
 14. That the respondent relied on M-PESA statements to substantiate rental payments, but these documents lacked official authentication, bearing no stamps or registered marks, thereby casting doubt on their validity.
 15. The appellant argued that the trial court failed to scrutinize these documents adequately, leading to an erroneous conclusion.
 16. The appellant further submits that the adjudicator disregarded key legal principles, including the shifting of the evidential burden of proof under Sections 107, 108, and 109 of the Evidence Act.
 17. While the legal burden rests on the party asserting a fact, the evidential burden may shift depending on the strength of the evidence presented.
 18. That in this case, the respondent’s evidence was insufficient to shift this burden, as the self-made financial records were unreliable.
 19. The appellant cited judicial precedents, including Kenya Pipeline Company Limited v Corporate Business Forms and Mbuthia Macharia v Annah Mutua, to reinforce the distinction between legal and evidential burdens.
 20. Additionally, the appellant criticized the trial court for overlooking material contradictions in the respondent’s testimony and for failing to apply binding case law, such as Patrick Tarzan Matu v



Nassim Shariff Abdulla and Hydro Water Well Ltd v Nelson Mukara Sechere, which emphasized strict compliance with statutory formalities for land-related contracts.

21. Further, that the adjudicator's failure to recognize these legal requirements resulted in a miscarriage of justice.
22. On costs, the appellant argued that the respondent's lack of credible evidence justifies an award of costs in the appellant's favor.
23. The appellant sought to set aside the lower court's judgment, contending that it was based on unsubstantiated claims and procedural irregularities.
24. The appellant urged the court to allow the appeal, rectify the injustice, and award costs, as the respondent's case was founded on untenable evidence and legal missteps.
25. In conclusion, the appellant maintained that the trial court's decision was flawed, both in its assessment of the evidence and its application of the law.
26. That the appeal presents a compelling case for reversal, as the respondent failed to meet the requisite standard of proof, and the adjudicator's errors warrant judicial intervention to restore fairness.
27. The Respondent's submissions opposed the Appellant's appeal against the judgment of Hon. G. Simatwo delivered on 1st September 2023, which awarded the Respondent KShs. 600,000 for unremitted rent collected by the Appellant.
28. The Respondent argued that a valid oral contract existed between the parties, wherein the Appellant was appointed as a property agent to manage the Respondent's apartment and collect rent on his behalf.
29. Contrary to the Appellant's claims, the contract did not involve the disposition of an interest in land under Section 3(3) of the [Law of Contract Act](#) but was a straightforward commercial agreement for property management.
30. The Respondent cited case law, including *Ali Abdi Mohammed v Kenya Shell and Company Limited* (2017), to support the enforceability of oral contracts inferred from the parties' conduct, as well as Section 119 of the [Evidence Act](#), which allows courts to presume facts based on human conduct.
31. The Respondent asserted that the Appellant breached the contract by failing to disclose the presence of a tenant and withholding rent payments totaling KShs. 600,000 over 15 months.
32. That evidence of these payments was provided through M-Pesa statements, which the Respondent argues are admissible under Section 78A of the [Evidence Act](#), as affirmed in *Lucy Ndungu v. New Wilde Garment EPZ* (2021).
33. The Respondent emphasized that the Appellant failed to rebut this evidence or provide contrary proof, rendering his denials baseless.
34. The Respondent further contended that the Appellant's appeal lacks merit, as it relies on misapplications of law, including the erroneous invocation of Section 3(3) of the [Law of Contract Act](#) and unsupported allegations about the M-Pesa statements' authenticity.
35. The Respondent urged the court to dismiss the appeal, uphold the trial court's judgment, and allow the Respondent to enjoy the decree's fruits without further delay.
36. The submissions concluded that the Appellant has not demonstrated any legal or factual errors in the trial court's decision warranting reversal.



37. This being an appeal from the Small Claims Court, the same can only be entertained on points of law.
38. The sole issue for determination is whether the Respondent proved his case against the Respondent.
39. I have carefully considered the evidence adduced in the Trial Court and the grounds of appeal together with the submissions, this court finds that the appeal raises fundamental questions regarding the validity of the oral agreement, the burden of proof, and the admissibility of evidence.
40. The central issue is whether the Respondent discharged the legal burden of proving the existence of a valid contract and the Appellant's liability for the alleged unremitted rent.
41. The Appellant's contention that the oral agreement violated Section 3(3) of the Law of Contract Act, which requires contracts for the disposition of an interest in land to be in writing, is misconceived.
42. The agreement in question was not for the sale, lease, or other disposition of land but rather a property management arrangement where the Appellant was to collect rent on behalf of the Respondent.
43. Such an agreement does not fall within the ambit of Section 3(3), as held in *Ali Abdi Mohammed v Kenya Shell and Company Limited* [2017] eKLR, where the court recognized that oral contracts for services related to land, as opposed to dispositions of land, are enforceable.
44. The trial court correctly distinguished this case from *Patrick Tarzan Matu & Another v Nassim Shariff Abdulla & 2 Others* [2000] eKLR, which dealt with a sale of land and is thus inapplicable here.
45. On the burden of proof, Sections 107, 108, and 109 of the Evidence Act place the legal burden on the party asserting a fact.
46. The Respondent discharged this burden by adducing M-Pesa statements showing rental payments and testifying that the Appellant failed to remit the collected rent.
47. While the Appellant argued that these statements lacked official authentication, Section 78A of the Evidence Act and the decision in *Lucy Ndungu v New Wilde Garment EPZ* [2021] eKLR affirm that electronic records, including M-Pesa statements, are admissible if they meet the criteria under the Act.
48. The Respondent's evidence was prima facie proof of the payments, and the Appellant failed to rebut it, as required under Section 112 of the Evidence Act.
49. The evidential burden therefore shifted to the Appellant, who offered no credible evidence to counter the Respondent's claims, as underscored in *Kenya Pipeline Company Limited v Corporate Business Forms* [2015] eKLR.
50. The Appellant's reliance on *Hydro Water Well (K) Limited v Nelson Mukara Sechere & 2 Others* [2021] eKLR is misplaced, as that case involved a dispute over a written contract for drilling services, not an oral property management agreement.
51. The trial court properly evaluated the Respondent's testimony and the M-Pesa records, concluding that the Appellant's denial was unsubstantiated.
52. This court finds no reason to interfere with that finding, as the Respondent's evidence was consistent and unchallenged on material points.
53. The Appellant's argument that the trial court failed to scrutinize the M-Pesa statements lacks merit.
54. The court is not required to subject every document to forensic examination but must assess whether it meets the threshold of admissibility and reliability.



- 55. The Respondent’s statements, though not stamped, were corroborated by his testimony and the Appellant’s admission that he managed the property.
- 56. In *Mbuthia Macharia v Annah Mutua* [2017] eKLR, the Court of Appeal emphasized that the burden of proof is discharged on a balance of probabilities, and the Respondent met this standard.
- 57. The trial court’s award of costs was discretionary and justified under Section 27 of the *Civil Procedure Act*, as the Respondent succeeded in his claim.
- 58. The Appellant has not demonstrated any miscarriage of justice or procedural irregularity warranting interference with the lower court’s decision.
- 59. In conclusion, the appeal is devoid of merit. The trial court correctly applied the law and evaluated the evidence, and its judgment was neither unlawful nor unjust.
- 60. The appeal is hereby dismissed with costs to the Respondent. The decree of the lower court is affirmed.
- 61. The trial court was right in holding that the Respondent proved his case on a balance of probabilities.
- 62. I dismiss the appeal with costs.

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**

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