



REPUBLIC OF KENYA



KENYA LAW
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**Muthoni v Jacben Interiors Limited (Civil Appeal E055 of 2022)
[2025] KEHC 11614 (KLR) (Civ) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11614 (KLR)

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

CIVIL

CIVIL APPEAL E055 OF 2022

REA OUGO, J

JULY 31, 2025

BETWEEN

ROSE MUTHONI APPELLANT

AND

JACBEN INTERIORS LIMITED RESPONDENT

(An appeal from the judgment and decree of the Small Claims Court at Milimani (K.O. Gweno, RM/Adjudicator.) delivered on 17th January 2022 in SCCC No. 481 of 2021)

JUDGMENT

1. By statement of claim dated 14th July 2021, the appellant averred that through a partly oral and partly written contract, the defendant was engaged to partition her house situated in LR. No. 209/138/28 located on River Road, Nairobi. The parties agreed that the partition works would be completed on or before 31st August 2015. As part payment for the services, the appellant paid a sum of Kshs. 650,000.00 on 17th August 2015 and 1st September 2015. However, the respondent failed to honour its obligations. The appellant thus claimed Kshs. 650,000.00 along with costs and interest.
2. The respondent appeared and filed its response and amended counterclaim on 20th September 2021. Denying the averments in the statement of claim, the respondent claimed that it was actually the appellant who owed it Kshs. 70,000.00 for unpaid work on design, labour, and forfeited and/or lost tools of trade. It confirmed that, by oral agreement, the respondent was contracted to carry out partition works in an office space at Delfim Hotel costing Kshs. 1,430,000.00. As per the agreement, the appellant was to pay Kshs. 400,000.00 to commence the works. Despite the appellant not settling this amount, the respondent began work in July and was paid the said sum on 17th August 2015.
3. The appellant sought indulgence from the respondent to continue with the works as she sourced for further funds. On 1st September 2015, the appellant paid Kshs. 250,000.00. After completing



- a portion of the partition works, the appellant approached the respondent to install glass on the partitions to attract new tenants and raise money to settle the sums owed. However, before installing the glass, the premises were locked along with the glass and the respondent's tools of trade.
4. The respondent stated that the appellant had only paid for work that had been completed. It was also agreed between the parties that the appellant would pay Kshs. 50,000.00 for the design work. The appellant would then modify the design because she did not like what was presented by the respondent. Attempts to have the appellant unlock the premises have been futile.
 5. It lamented that its goods worth Kshs. 20,000.00 remained on the appellant's premises, who remained silent. The respondent was thus surprised to have been sued by the appellant. In its counterclaim, the respondent sought Kshs. 70,000.00.
 6. In a judgment dated 17th January 2022, the trial court determined that the appellant had not proved her case on a balance of probabilities. Consequently, the suit was dismissed with costs awarded to the respondent. The respondent's counterclaim was also dismissed.
 7. The appellant is aggrieved by those findings, filed her memorandum of appeal dated 7th February 2022, raising nine grounds disputing the findings of the learned magistrate. In summary, she argued that the learned magistrate relied on extraneous issues to dismiss her suit despite the uncontroverted evidence presented. The trial court failed to recognise that she lost a substantial amount of money because of the respondent's failure to honour its obligations. Lastly, the court did not consider the video recording evidence of the respondent abandoning the works despite being contracted to complete them. For these reasons, the appellant requested that the appeal be allowed, the judgment of the trial court be set aside, and replaced with an order in her favor, including costs of the suit, the trial, and this appeal.
 8. The appeal was canvassed by way of written submissions. In her written submissions dated 25th March 2024, the appellant stated that the parties had an oral agreement to partition the 6th floor of Sandylis Plaza on the entire parcel of land known as LR. No. 209/138/28 along River Road. According to the appellant, the respondent breached the contract by failing to complete the works within three weeks. She explained that she reluctantly agreed to pay Kshs. 1,430,000.00 due to pressure from her landlord and paid a deposit of Kshs. 400,000.00 in August of that year.
 9. The appellant argued that, despite the clear evidence, the learned magistrate wrongly dismissed her suit. In her view, the trial court did not recognise the difficulties and frustrations she faced in obtaining the demised property. She submitted that although the respondent was paid a total of Kshs. 650,000.00, the respondent, based on the video evidence presented, failed to fulfil its obligations.
 10. The appellant argued that the respondent's failure to fulfil its part of the agreement adversely affected her finances. This was because she was unable to attract tenants to the premises. She demonstrated that she was compelled, under undue influence, to deal solely with the respondent as instructed by her landlord. She lamented that the respondent offered only several excuses rather than fulfilling its obligations. In her view, the respondent did not complete the works and overcharged her. She requested that her appeal be upheld.
 11. The respondent opposed the appeal and filed its written submissions dated 11th April 2024. It confirmed that the parties had an oral agreement under which the appellant paid Kshs. 650,000.00 out of the Kshs. 1,430,000.00 that was agreed upon. It argued that the appellant failed to prove she was entitled to the amount claimed, since the respondent had already begun partition works by the time she made her first installment. It also contended that she was not entitled to a refund because the payment was for services rendered at that time.



12. The respondent explained that the landlord locked the suit premises because the appellant failed to obtain a renovation licence from the City Council. As a result, the respondent was unable to continue the work. In its view, the claim for a refund was therefore unfounded. The respondent also expressed the opinion that the appellant did not come to this court with clean hands because she did not obtain a licence for renovation works. She was therefore responsible for her own misfortune. It prayed that the appeal be dismissed with costs.

Analysis and Determination

13. I have considered the written submissions, examined the record of appeal and analyzed the law. My duty as a first appellate court is to re-assess, re-evaluate the evidence on the record afresh and draw my own conclusions, bearing in mind that I did not have the advantage of seeing or hearing the witnesses. [See *Postal Corporation of Kenya vs. Andrew K. Tanui* [2019] KECA 489 (KLR)].
14. According to the facts established in the record, the appellant called PW1 Dedan Wangombe, owner of Vineyard Media Services, to give evidence. His testimony was that on 2nd November 2015, he was instructed by the appellant to record a video of the suit premises, focusing on the abandoned building. The unedited and untampered video was then converted into a DVD format, which was submitted as evidence.
15. PW2 was the appellant. She adopted her statement of claim, response to the amended claim, witness statement, and list of documents, which were marked Exh.1–4 and Exh.6–7. The summary of her evidence was that the parties had entered into an oral agreement for the partition of the 6th floor of Samdylis Plaza. The property is situated on all that parcel of land known as LR. No. 209/138/28 along River Road. The amount agreed upon to be paid to the respondent was Kshs. 1,430,000.00.
16. Parties agreed that the partition works would start on 1st July 2015 and be completed on or before 31st August 2015. In part payment for the services, the appellant paid Kshs. 400,000.00 on 17th August 2015 and Kshs. 250,000.00 on 1st September 2015. She confirmed that although she paid the initial deposit of Kshs. 400,000.00 in August, the partition works had already begun by that time.
17. PW2 testified that although the renovation works had begun, she did not possess the permit for the renovation but had the designs showing how the partitions would be constructed. According to the video recording, PW2 clarified that some partition works had indeed been carried out. Her evidence was that she was unable to occupy and pay rent for the premises because the partition works had not been completed. She complained that the landlord forced her to work only with the respondent and not to contract anyone else.
18. PW2 explained that she was never given a copy of the lease agreement because she had proposed amendments to its draft. She added that she was not given the drawings and contract from Mr. Jackson Wachira, the respondent's director. She stated that she didn't pay for the balance of the contractual sum because she was frustrated. PW2 sought for Kshs. 650,000.00, being the refund of the monies paid to the respondent, on the allegation that the respondent did not honor its obligations.
19. The respondent called RW1 Jackson Wachira, its Director, to testify. He adopted the respondent's amended statement of response and his witness statement. His testimony was that the appellant contracted the company to carry out office partition works within the premises for a sum of Kshs. 1,430,000.00. The amount covered costs of aluminum profiles at Kshs. 325,550.00, accessories and glass at Kshs. 215,155.00, and labour charges at Kshs. 225,025.00.
20. Although half of the contractual amount was supposed to be paid as a deposit, the parties agreed on a compromise sum of Kshs. 400,000.00 to enable the start of the works. The respondent began the works



in mid-July 2015 without any deposit. Subsequently, on 17th August 2015, the appellant paid for the work that had already started. An additional sum of Kshs. 250,000.00 was paid on 1st September 2015.

21. According to RW1, the appellant urged the respondent to install glass panels on the partitions to attract potential tenants and raise funds for the partition works. The respondent later purchased the glass panels, but they were locked inside the premises by the landlord before they could be installed. In his understanding, the appellant did not obtain the necessary permits from the county council.
22. RW1 was clear that the appellant did not have the plans for the proposed partition works. The respondent therefore produced designs costing Kshs. 50,000.00 that were not paid for. The respondent also claimed Kshs. 20,000.00 for his tools of trade, which were locked in the premises. RW1 maintained that the respondent partitioned 32 stalls, costing Kshs. 700,000.00. Finally, he stated that the video recording evidence presented by the appellant showed that the works had been carried out by the respondent.
23. It is undisputed that the parties entered into an oral agreement sometime in July 2015. In this agreement, the respondent was contracted to partition the sixth floor of Samdylis Plaza. The total sum agreed for the entire work was Kshs. 1,430,000.00. The parties also agreed that the respondent commenced work in July 2015. The appellant paid the respondent a total of Kshs. 650,000.00 on 17th August 2015 and 1st September 2015.
24. In my view, the primary reason why parties find themselves in this predicament is their understanding of the oral contract. I say this because the terms of the contract were not clear. For example, what was the duration of the contract? What service level agreements were agreed upon by the parties? When was the appellant required to settle the contractual sum? What permits, if any, were necessary and who was responsible for obtaining them? What remedies were available to either party if a dispute arose?
25. From the scanty evidence before the trial court and set out in the record of appeal, it is also apparent that the appellant failed to obtain the necessary permits to begin renovation works on the suit premises. It is also clear from the witnesses' testimonies that the video recordings showed some work had been carried out but was not finished because the landlord had locked the premises.
26. RW1 testified that the works carried out had cost Kshs. 700,000.00. This court notes that the works commenced before the respondent received any facilitation fee to start them. I am therefore of the opinion that, on a balance of probabilities, the money paid by the appellant was utilised in partitioning the suit premises, as both parties testified. It is thus unreasonable for the appellant to request a refund when the works had already been completed, especially given that the appellant failed to pay the agreed sum within the specified timelines.
27. This court therefore agrees with the Trial Magistrate that the claim raised by the appellant was unsubstantiated and lacked any basis. Needless to say, the evidence before the trial court was too scanty to support any other conclusion. The trial court correctly dismissed both the claim and the counterclaim, and I see no reason to disturb those findings. Accordingly, I arrive at the unavoidable conclusion that the present appeal lacks merit. It is hereby dismissed with costs to the respondent. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JULY 2025.

R. E. OUGO

JUDGE

In the presence of:

Mr. Mushindi - for the Appellant



Respondent - Absent

Wilkister C/A

