



REPUBLIC OF KENYA



Rop v Langat (Civil Appeal E013 of 2024) [2025] KEHC 11799 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E013 OF 2024
CM KARIUKI, J
JULY 31, 2025**

BETWEEN

GEOFFREY ROP APPELLANT

AND

STEPHEN LANGAT RESPONDENT

(Being an appeal against the Judgment of the Small Claims Court at Narok delivered by Hon. Esther M. Mutuku on 7th May, 2024, in Claim No. E044 of 2023)

JUDGMENT

Introduction

1. In Claim No. E044 of 2023, the Respondent, Stephen Langat, alleged that he paid money to Lolwa Self Help Group in 1985 for the purchase of land. Subsequently, during the subdivision of the land, the Self-help Group Committee conducted a survey and discovered that the Respondent had occupied an additional 0.5 acres beyond his allocated share. To reconcile this, and to address claims by other members who had also paid for land, the Committee allowed the Respondent to regularize his occupation by paying for the excess land. He consented to this arrangement and submitted payments through intermediaries, which were then distributed to members with smaller parcels.
2. The dispute was thought to have been settled, and title deeds were processed accordingly. However, the Respondent later claimed to have found receipts dated 1985 and 1992, which he asserted proved he had already paid for the land in question. By then, the Committee had already completed the land transaction process and was unable to verify the receipts against the land shares purchased. Several meetings were held by the self-help Group, during which the Respondent reportedly abandoned his claim in writing to facilitate the titling process.
3. The Appellant responded to the claim, raising several substantial issues. Nonetheless, the Small Claims Court ruled in favour of the Respondent on 7th May 2024, leading to the filing of the present appeal.



4. Dissatisfied with the Judgment of the Small Claims Court at Narok delivered by Hon. Esther M. Mutuku on 7th May, 2024, in Claim No. E044 of 2023, the Appellant appealed against the entire Judgment vide Memorandum of Appeal dated 6th June, 2024, on the following grounds;
 1. That the learned Adjudicator erred in law in finding that the Court had jurisdiction to hear and determine the claim; yet the substratum of the claim was land that the Claimant retained and which payment he was seeking a refund for.
 2. That the learned Adjudicator erred in law in finding that the Claimant had locus standi to institute the suit yet the money allegedly paid to the Appellant was not paid by the Respondent but by a third party.
 3. That the learned Adjudicator erred in law in finding in favour of the Respondent when there was no written or oral contract or agreement between the Appellant and the Respondent for lending of money or debt.
 4. That the learned Adjudicator erred in law in failing to consider that the payments to the Appellant were not given in his personal capacity but in his official capacity and was not meant for personal use but to compensate other parties who had lesser land as a result of the Respondent irregularly annexing more land.
 5. That the learned Adjudicator disregarded and failed to consider the written minutes signed by the Respondent and which was not disputed; that stipulated that the Respondent shall not make any claims for the money paid to the Self Help Group.
 6. That the learned Adjudicator erred in law in failing to allow the examination in Chief of the Appellant's witness, hence causing a miscarriage of justice.
 7. That the learned Adjudicator disregarded and contravened rule 32 of the *Small Claims Court Act*, Cap 10A in failing to consider the minutes of the Self Help Group tendered as evidence by the Appellant and which minutes were not disputed and had been endorsed on the front page, thereby resulting in an unjust outcome that could not have been reasonably arrived at in the circumstances.
 8. That the learned Adjudicator erred in failing to consider that the Appellant proved his case on a balance of probabilities, considering that the Respondent did not dispute the allegation of being in possession of more land than paid for.
 9. That the learned Adjudicator gave limited time to file submissions as the hearing conducted on 2nd of May, 2024, ended at 1:00 PM and expected submissions to be concluded within 24 hours.
 10. That the learned Adjudicator twisted the proceedings in her judgment against the actual proceedings, hence causing great prejudice to the Appellant.
5. The Appellant made the following prayers;
 - a) That the Appeal be allowed.
 - b) That the Judgment of the lower court delivered on 7th May, 2024, be set aside.
 - c) That the Appellant be awarded costs of this Appeal.
3. Directions of the court



6. The appeal was canvassed by way of written submissions.

The Appellant's submissions.

7. The Appellant submits that the claim before the Small Claims Court fundamentally revolved around the purchase and ownership of land—specifically, a disputed 0.5 acres allegedly paid for by the Respondent. As such, the matter directly touched on rights and interests in land, which are outside the jurisdiction of the Small Claims Court as provided under Section 12 of the *Small Claims Court Act*. That section expressly limits the court's jurisdiction to certain civil claims and is subject to other applicable laws, including the *Land Registration Act* and the *Land Act*, which govern land-related disputes. The Appellant relies on *Maworks Investment Co. Ltd v Mwilita* [2024] KEHC 10525 (KLR), where the court held that the Small Claims Court is not designed to adjudicate land disputes. Similarly, in *Palms Resort Ltd v Qureshi & 2 Others* [2023] KEHC 23644 (KLR), it was held that matters involving leases, land contracts, or enforceable land interests fall outside the jurisdiction of the Small Claims Court. The Appellant further cites *Adero Adero v Ulinzi Sacco Ltd* [2002] eKLR and *Joseph Njuguna Mwaura v Republic* [2013] eKLR, which underscore the foundational nature of jurisdiction. In *Samuel Kamau Macharia v Kenya Commercial Bank Ltd* [2012] eKLR, the Supreme Court affirmed that jurisdiction is conferred solely by *the Constitution* or statute, and not by consent of the parties or judicial innovation. Finally, in *Kenya Ports Authority v Modern Holdings (EA) Ltd* [2017] eKLR, the Court of Appeal emphasized that jurisdictional issues can be raised at any stage of the proceedings, including on appeal. It is therefore the Appellant's submission that the trial court lacked jurisdiction *ratione materiae*, and its decision was rendered in error.
8. The Appellant further contends that the Respondent lacked the necessary legal standing to institute the suit. It is undisputed that the sum of Kshs. 80,000/- in question was not paid by the Respondent himself, but rather by a third party, Joyce Chepngeno, purportedly on behalf of the Self-Help Group. Despite this, the Respondent instituted proceedings in his own name without producing any written authority from the actual payor, thereby contravening the provisions of Section 16(1) of the *Small Claims Court Act*, which expressly requires written authority where one person brings a representative claim on behalf of others. In the absence of such authority, the Respondent had no capacity to claim a refund of monies not personally paid. The Appellant relies on *Palms Resort Ltd v Qureshi & Others* [2023] KEHC 23644 (KLR), where the court held that a party cannot sue to enforce an agreement to which they were not privy. Additionally, the Appellant invokes the principle affirmed in *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR, that parties are bound by their pleadings and cannot adduce evidence inconsistent with those pleadings. In this case, the Respondent pleaded as though the funds were his own, while the evidence demonstrated otherwise. It is therefore the Appellant's submission that the Respondent lacked *locus standi*, and the claim ought to have been dismissed on that basis alone.
9. The Appellant further argues that no enforceable contract existed between him and the Respondent in his personal capacity. The evidence adduced indicated that any agreement relating to the alleged Kshs. 80,000/- payment was between the Respondent (or the actual payor) and the Lolwa Tuyobei Self-Help Group—not with the Appellant individually. At all material times, the Appellant acted merely in a representative or committee role, and the proper contracting entity, if any, was the Self-Help Group through its leadership. The Appellant, therefore, submits that he cannot be held personally liable for obligations allegedly arising from a group undertaking. This position is anchored in the well-established doctrine of privity of contract, which holds that only parties to a contract can sue or be sued on it. In *City Council of Nairobi & Wilfred Kamau v Nairobi City Water & Sewerage Co. Ltd* (Civil Appeal No. 206 of 2008), the Court of Appeal affirmed that a party who is not privy to



a contract cannot derive benefit from, nor be bound by, its terms. Moreover, the Appellant invokes *Malawi Railways Ltd v Nyasulu* [1998] MWSC 3, which underscores that both litigants and courts are bound by the pleadings; a party cannot make a claim or mount a defence outside the scope of their pleaded case without first seeking and obtaining leave to amend. In this case, the Respondent framed the claim as one against the Appellant personally, yet the facts point to a group arrangement, thereby rendering the claim legally untenable.

10. The Appellant avers that the proceedings before the trial court were marred by procedural irregularities that undermined his right to a fair hearing as guaranteed under Article 50 of *the Constitution*. Notably, although the Court summoned the Chairman of the Self-Help Group as a witness, it failed to afford the Appellant an opportunity to re-examine him. This omission denied the Appellant the chance to clarify or challenge critical aspects of the testimony, contrary to the principles of natural justice. Furthermore, the Appellant submits that key pieces of evidence—including minutes of the committee meetings and documentation relating to title allocations—were either overlooked or insufficiently analyzed by the trial court. The resulting findings were inconsistent with the recorded proceedings and the totality of the material facts, leading to a miscarriage of justice. The Appellant emphasizes that while the Small Claims Court is designed to operate with speed and efficiency, such expediency must not come at the expense of substantive fairness and due process. The overriding objective of the court must remain the delivery of just outcomes, even within a simplified procedural framework.
11. The Appellant urges this Honourable Court to award costs of the appeal and of the proceedings before the trial court in his favour, in accordance with the principle that costs follow the event. This principle is codified under Section 27 of the *Civil Procedure Act*, which grants the court discretion to award costs, but ordinarily requires that the successful party be compensated for the expenses incurred in pursuing or defending a claim. In support of this position, the Appellant relies on the decision in *Republic v Rosemary Wairimu Munene, Ex Parte Ihururu Dairy Farmers Co-operative Society Ltd*, where the court emphasized that costs are not intended to be punitive but are instead a means of compensating a party for the burden of litigation. Given the flaws in the lower court's decision and the merits of this appeal, the Appellant submits that he should be awarded costs.

The respondent's submissions.

12. The Respondent strongly opposed the Appellant's appeal against the decision of the Small Claims Court delivered on 7th May 2024, in Narok SCCCOMM No. E044 of 2023. The original claim concerned Kshs. 80,000, which the Respondent alleged was paid to the Appellant under a contract. The Respondent argued that the trial court correctly found in his favour and that the appeal lacked merit.
13. On the first ground of appeal—jurisdiction—the Respondent contended that the Small Claims Court had jurisdiction since the case was based on a monetary claim arising from a contract, not a dispute over land ownership. He relied on Section 12(1)(b) of the *Small Claims Court Act* and the authority of *Christofferson v Kavneet Kaur Sehmi* [2022] KESC 14035 (KLR), which confirms the court's jurisdiction over money held and received.
14. Addressing the second ground regarding locus standi, the Respondent submitted that the money was paid on his behalf by a third party, Joy Chepng'eno Bii, and that both the Appellant and Ms. Bii acknowledged it was for the Respondent's benefit. Thus, the Respondent had standing to bring the suit.
15. In response to the third ground, challenging the existence of a contract, the Respondent pointed out that the Appellant admitted to receiving the funds but failed to explain their purpose. The trial court



rightly found that there was an oral contract, and the burden of disproving it lay with the Appellant, who failed to do so.

16. Concerning the fourth ground, which claimed that the money was paid to the Appellant in his official capacity on behalf of a Self-Help Group, the Respondent noted that the Appellant presented no documentation or acknowledgment showing the money was received in such capacity. The court was correct in holding the Appellant personally accountable.
17. The fifth and seventh grounds were dismissed together, as they both concerned the minutes allegedly showing the Respondent waived his claim. The Respondent highlighted that the minutes were unsigned, unauthenticated, and lacked probative value. The trial court was justified in rejecting them.
18. On the sixth ground, about witness examination, the Respondent emphasized that the Appellant never objected to the process and failed to carry out cross-examination. The court had properly exercised its discretion under Section 19 of the *Small Claims Court Act* to allow the witness.
19. Regarding the eighth ground—that the trial court failed to recognize that the Appellant had proved his case—the Respondent reiterated that the case was purely contractual. Any reference to excess land was irrelevant and a distraction from the real issue: repayment of the money.
20. The ninth ground, alleging inadequate time to file submissions, was termed meritless. The Respondent stated that both parties had equal time, and the Appellant never requested more time. Thus, he could not raise the issue at the appellate stage.
21. Lastly, in addressing the tenth ground, the Respondent strongly denied any bias or twisting of proceedings. He argued that the Appellant had failed to point to any specific prejudice or irregularity in the judgment.
22. In conclusion, the Respondent submitted that the appeal was frivolous and unsubstantiated. He asked the Court to dismiss it with costs under Section 27 of the *Civil Procedure Act*, Cap 21.

ANALYSIS AND DETERMINATION.

23. From the pleadings, evidence, and submissions, this Court has distilled the following issues for determination:
 - a. Whether the Small Claims Court had jurisdiction to hear the dispute.
 - b. Whether the Respondent had locus standi to institute the claim.
 - c. Whether there was a valid and enforceable contract between the parties.
 - d. Whether the Appellant was personally liable or acted in a representative capacity.
 - e. Whether the proceedings were procedurally fair.
 - f. Whether the judgment of the Small Claims Court should be upheld.

Jurisdiction of the Small Claims Court

24. The Appellant argued that the claim related to ownership and occupation of land, which is outside the jurisdiction of the Small Claims Court under Section 12 of the *Small Claims Court Act*. He relied on *Maworks Investment Co. Ltd v Mwilitsa* [2024] eKLR and *Palms Resort Ltd v Qureshi & Others* [2023] eKLR.



25. The Respondent, however, maintained that the claim was solely for a monetary refund, based on a transaction, and not a claim to land per se.
26. Upon reviewing the claim, this Court is satisfied that the suit was framed as a monetary claim for Kshs. 80,000, and no orders were sought regarding ownership, possession, or title to land. In *Christofferson v Kavneet Kaur Sehmi* [2022] KESC 14035 (KLR), the Supreme Court emphasized that where the primary claim is monetary in nature, the Small Claims Court retains jurisdiction even if it incidentally relates to land.
27. The Court finds that the Small Claims Court did not exceed its jurisdiction.

Locus Standi of the Respondent

28. The Appellant contended that the claim was not maintainable since payment was made by Joy Chepng'eno Bii and not by the Respondent himself.
29. The trial court accepted the explanation that the funds were paid on behalf of the Respondent and for his benefit. The Appellant did not deny receipt of the funds.
30. In *Peter Okeyo Obwa v Municipal Council of Kisumu* [2010] eKLR, the Court held that a beneficiary may validly sue where the consideration was made for their benefit.
31. This Court concurs with the trial court that the Respondent had proper locus standi.

Existence of a Valid Contract

32. The Appellant denied the existence of a binding contract, asserting he was merely a conduit or committee member without personal responsibility.
33. The Respondent relied on oral agreements and the conduct of the Appellant in receiving the money and issuing acknowledgments.
34. Oral contracts are recognized under Kenyan law. The Appellant offered no rebuttal to the Respondent's claims or evidence to show he acted under the express authority of the Self-Help Group.
35. The Small Claims Court was correct in holding that there existed a binding agreement between the parties.

Personal Liability of the Appellant

36. The Appellant's attempt to shield himself under the name of the Self-Help Group was not supported by any group minutes, authorizations, or resolutions.
37. The trial court correctly held that the Appellant bore personal liability, having received the money and offered no evidence of official delegation. In *Kenya Ports Authority v Modern Holdings (EA) Ltd* [2017] eKLR, the Court emphasized the need for proof of official capacity and mandate.
38. The appeal on this ground also fails.

Procedural Fairness

39. The Appellant alleged that he was denied the opportunity to re-examine witnesses and that timelines were unreasonable.



40. However, the record shows both parties were given equal time to file submissions, and no request for extension or complaint on re-examination was recorded during the trial.
41. The Small Claims Court adhered to the principles of fairness, natural justice, and procedural propriety.

Conclusion and Disposition

42. Having considered the record of appeal, submissions of counsel, and applicable law, the Court makes the following findings:
- a. The Small Claims Court had jurisdiction.
 - b. The Respondent had proper locus standi.
 - c. A valid oral contract existed.
 - d. The Appellant is personally liable.
 - e. There was no procedural unfairness or violation of rights.
 - i. The appeal is without merit and is hereby dismissed.
 - ii. The judgment of the Small Claims Court delivered on 7th May 2024 is affirmed.
 - iii. The Appellant shall bear the costs of the appeal.
 - iv. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATIONT HIS
31ST DAY OF JULY 2025**

CHARLES KARIUKI

JUSTICE

