Keragia v Ndati (Civil Appeal E225 of 2024)
[2025] KEHC 11194 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11194 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CIVIL APPEAL E225 OF 2024

A MABEYA, J

JULY 30, 2025

BETWEEN

GEORGINA KERAGIA ..... APPELLANT

AND

HYRINE NDATI ..... RESPONDENT

(Being an appeal from the judgment and decree of Hon. J.P. Mkala RM delivered on the 4/10/2024 in the Ksm SCCCase No. E689 of 2024, Georgina Keragia v Hyrine Ndati)

JUDGMENT

1. The appellant filed a claim through her statement of claim dated 2/8/2024 in which she claimed for Kshs. 140,000/- from the respondent for assorted items she alleged to have supplied to the respondent.

2. The respondent entered appearance and filed her response to statement of claim dated 25/8/2024 in which she denied that she owed the appellant the amount claimed but acknowledged that she owed the appellant a portion of the amount.

3. In his judgement, the trial adjudicator held that the appellant partially proved her claim against the respondent to the tune of Kshs. 44,000/- which had been admitted and proceeded to award her the same together with interest at court rates and costs of the claim assessed at Kshs. 15,000/-.

4. Being dissatisfied with the said Judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated 28/10/2024 and raised four (4) grounds of appeal as follows: -

    a. The learned magistrate completely misunderstood the evidence before him, wrongly analysed the evidence thus partially allowing the claimant's claim.

    b. The learned magistrate erred in law and fact by failing to appreciate the totality of the evidence before him and the submissions made on behalf of the appellant thus reaching a conclusion that was contrary to the evidence before him.

c. The learned magistrate erred in law in failing to follow the law as established through judicial precedent.

d. The learned magistrate totally misunderstood and wrongly evaluated the evidence before her and therefore arrived at a wrong conclusion.

5. The appeal was disposed of by way of written submissions. The appellant submitted that the trial court ignored her evidence in the form of trial ledger, messages and demand correspondence that were uncontroverted and instead placed undue weight on the absence of formal receipts.

6. That the respondent made admissions as evidenced in the WhatsApp chats and response to demand in which she did not raise a side issue of expired goods without quantification or proof of rejection.

7. The respondent submitted that the Ledger the appellant sought to rely on before the trial court was deemed not to be a contract with the court noting that for such claims, the parties must and ought to prove that it was binding. That there was nowhere that she conceded to the appellant's claim and the notion of such admission as advanced by the respondent was misleading. That the appellant failed to prove her case to the required standard.

8. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See Selles & Anor v Associated Motor Boat Co Ltd & Others [1968] EA 123.

9. Before the trial court, the appellant adopted her statement dated 2/8/2024 as her evidence in chief and her list of documents dated 16/9/2024 as her Exhibits 1 – 4. It was her testimony that she did not have receipts but had documented the transactions in her WhatsApp. That the respondent sought to return some of the items she had bought after a month and 3 weeks after using them which she refused as she did not sell expired goods. That prior to selling the goods, the respondent had looked at them and was satisfied.

10. On her part, the respondent admitted that she had paid for some of the goods and that she owed the appellant Kshs. 44,000/-. That some of the goods were expired and not functional a fact she realized on the same day. That she was supplied with goods worth Kshs. 51,000/- for which she had paid Kshs. 13,000/-.

11. I have considered the evidence tendered before the trial court and the submissions made before me. The standard of proof in civil cases is on a balance of probability. The burden of proof is on the party alleging the existence of a fact which he wants the Court to believe.

12. Section 107 (1) and (2) of the *Evidence Act* provides as follows: -

1) 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

2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person"

13. It is trite that a contract need not be in writing. The Court of Appeal in Ali Abid Mohammed v Kenya Shell & Company Limited (2017) eKLR, stated that a contract between parties can exist where no words have been used but where it can be inferred from the conduct of the parties that a contract has been concluded.

14. In the present case, it is undisputed that the appellant supplied some goods to the respondent. The evidence on record which was uncontroverted was in the form of a handwritten document dated

19/5/2024 titled Hyrine Ndati that indicated that the respondent had taken items worth Kshs. 57,000 but paid Kshs. 13,000/-. Therefore, there was a balance of Kshs. 44,000/-.

15. The appellant sought to rely on another undated handwritten document indicating a final balance of Kshs. 140,000/-. However, that document was refuted by the respondent. Being undated and unsigned, it is difficult to tell who made it, when was it made, in what circumstances was it made,

16. There is also unrefuted evidence that the respondent accepted some goods that ended up being faulty that she ended up returning to the appellant. There is no evidence by either of the parties as to the value of the said goods or whether they formed part of those considered in the document dated 19/5/2024.

17. Based on the above evidence that was presented to the trial court, I find that the appellant managed to partially prove her claim. The court cannot make inferences where there is lack of evidence to back the same.

18. I thus uphold the trial adjudicator's finding that the respondent partially proved her case against the appellant on monies owed of Kshs. 44,000/- and nothing more.

19. Accordingly, I find that the appeal lacks merit and I dismiss the same with costs to the respondent.

    It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE