Platinum Credit Limited & another v Njoroge & another (Civil Appeal E002 of 2024) [2025] KEHC 11817 (KLR) (6 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11817 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

CIVIL APPEAL E002 OF 2024

HI ONG'UDI, J

AUGUST 6, 2025

BETWEEN

PLATINUM CREDIT LIMITED ..... 1ST APPELLANT

GILLETTE AUCTIONEERS ..... 2ND APPELLANT

AND

PETER MBURU NJOROGE ..... 1ST RESPONDENT

PATRICIAH AUMA OTENGO ..... 2ND RESPONDENT

(Being an appeal from the Judgment and decree of Hon. J. Ndeng'eri (Principal Magistrate) in Naivasha CMCC No. 147 of 2020, delivered on 28th November 2023)

JUDGMENT

1. The appellants herein were the 2nd and 3rd defendants respectively in the lower court while the 1st respondent was the plaintiff and the 2nd respondent the 1st defendant. The 1st respondent vide the plaint dated 6th May 2020 sued the appellants and the 2nd respondent for an order for specific performance of the agreement of sale over the motor vehicle registration number KCE 650S, a refund of the purchase price for the said motor vehicle plus repair costs all totaling to kshs. 964,000/=, loss of user in the sum of kshs. 27,000/= and costs of the suit plus interest at court rates.

2. The claim was based on the sale agreement that the 1st respondent entered into with the 2nd respondent on 29th January 2020 over motor vehicle registration number KCE 650S to which he was the beneficial owner. At that time the said motor vehicle had been repossessed by the 1st appellant since the 2nd respondent had failed to service the loan advanced to her. The 1st respondent in compliance to terms of the said agreement paid the full purchase price kshs. 660,000/= for the subject motor vehicle. The amount was credited into account number 01136081619501 in the name of the 1st appellant. Thereafter, in total contravention of the sale agreement the 1st appellant and the 2nd respondent failed

to facilitate the transfer of the said motor to the 1st respondent. Eventually, the subject motor vehicle was repossessed by the 2nd appellant under the instructions of the 1st appellant on the ground that there was an outstanding loan amount of kshs. 411, 899/=. The appellants and the 2nd respondent denied the claim.

3. The matter was fully heard with the parties adducing evidence. In its judgment delivered on 28th November, 2023 the trial court exonerated the 2nd appellant and entered judgment against the 1st appellant and the 2nd respondent as follows;

   i. That the 1st and 2nd defendant refund the plaintiff kshs. 660,000/= being the purchase price received for the suit motor vehicle.

   ii. That the plaintiff has pleaded and proved the costs of repairs amounting to kshs. 304,000/=. The same is awarded as special damages.

   iii. The claim for loss of user is unsubstantiated and the same fails.

   iv. The plaintiff is granted the costs of the suit.

4. The appellants being aggrieved by the whole judgment lodged this appeal dated 15th February, 2024 setting out the following grounds: -

   i. The learned magistrate erred in law and fact in her failure to hold that the 1st respondent's case against the 1st appellant disclosed no or no reasonable cause of action and by so doing, failing to dismiss the same with costs.

   ii. The learned magistrate erred in law and fact by finding that the 1st respondent proved his case against the 1st appellant on a balance of probabilities notwithstanding the lack of evidence to that effect and despite the weight of evidence adduced against such a finding.

   iii. The learned magistrate erred in law and fact by failing to find that the 1st respondent did not discharge his onus of proof to the required standard or at all and/or by shifting the 1st respondent's burden of proof to the 1st appellant.

   iv. The learned magistrate erred in law and fact by holding the 1st appellant liable alongside the 2nd respondent against the weight of evidence and in complete disregard of the fact that the 1st appellant's case against the 2nd respondent as per the Notice of Indemnity and/or contribution against co-defendant filed was wholly uncontroverted.

   v. The learned magistrate erred in law and fact by failing to find that, given the want of privity of contract between the 1st appellant and the 1st Respondent, the funds remitted by the 1st respondent on behalf of and/or on account of the 2nd respondent did not constitute a purchase price for the suit vehicle but amounted to payment towards discharge of the 2nd respondent's loan obligation to the 1st appellant and, as such, the 1st appellant was not liable to refund the same to the 1st respondent or at all.

   vi. The learned magistrate erred in law and fact by finding that there was collusion between the 1st appellant and the 2nd respondent or at all despite utter lack of pleadings and/or evidence in that regard.

   vii. The learned magistrate erred in law and fact by upholding the allegation that the 1st respondent contracted with and/or engaged the 1st appellant and/or its agent despite the unsubstantiated

and contradictory nature of that allegation and despite the adduction of uncontroverted evidence in rebuttal thereof.

viii. The learned magistrate erred in law and fact by apportioning liability to the 1st appellant on the basis of unsubstantiated parol and/or extrinsic evidence notwithstanding the subsistence of clear and express terms of the agreement between the 1st respondent and the 2nd respondent to which the 1st appellant was not privy.

ix. The learned magistrate erred in law and fact by invoking the doctrine of equitable estoppel despite the fact that the same was not applicable in the circumstances or at all.

x. The learned magistrate erred in law and fact by awarding the 1st respondent special damages notwithstanding the fact that special damages were not specifically pleaded and specifically proved as by law required or at all.

xi. The learned magistrate erred in law and fact by misapprehending the evidence adduced and plunging into the realm of speculation and as a result attaching an undue cogency value to the 1st respondent's evidence and completely ignoring the evidence adduced on behalf of the Appellants.

xii. The learned magistrate erred in law by rendering an inchoate judgment in which the extent of the liability apportioned between the 1st appellant and the 2nd respondent was not specified.

xiii. The learned magistrate erred in law and fact by failing to award the 2nd appellant costs of the suit against him upon its dismissal.

5. The Appeal was canvassed through written submissions.

Appellants' submissions

6. These were filed by Gatonye & Gatonye advocates and are dated 4th November, 2024. Counsel gave a brief summary of the case and identified three issues for determination. He urged the court to consider the submissions filed by the appellant in the lower court case. He submitted that in light of the terms of the sale agreement, it was clear that the 1st respondent entered into the agreement with the 2nd respondent without having conducted any due diligence. That it was only after realizing he had been duped by the 2nd respondent that he coined the allegation that John Ndegwa was involved in a bid to drag the 1st appellant into the dispute.

7. He further submitted that the 1st appellant was never involved or dealt with John Ndegwa or the 1st respondent in his engagement with the 2nd respondent. He stated that the 1st respondent never complained about John Ndegwa or the 1st appellant to the police or write a demand letter to them. He further stated that the 1st respondent's parol evidence in light of clear and express provisions of his contract with the 2nd respondent ought to be rejected. He placed reliance on section 97 of the *Evidence Act*, Cap. 80 Laws of Kenya which provides that:

> "When the terms of a contract or of a grant or of any other disposition have been reduced to the form of a document and in all cases in which an matter is required by law to be reduced to the form of a document no evidence shall be given in proof of the terms of such contract grant or other disposition of property, or such matter except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act."

8. He submitted that the proviso to the said section was not applicable herein. He also placed reliance on the decision in Urbanus Kyalo Wambua v Briggitta Ndila Musau [2019] eKLR where the court held as follows:

> " Where the intention of the parties has been reduced to writing it is in general not permissible to adduce extrinsic evidence whether oral or contained in writings such as instructions drafts, articles, conditions of sale or preliminary agreements either to show that intention or to contradict, vary or add to the terms of the document. It is often said to be a rule of law that if there is a contract which has been reduced to writing, verbal evidence was not to be given so as to add or subtract from, or in any manner to vary or qualify the written agreement... The rule is usually known as "parol evidence" rule. Its operation is not confined to oral evidence. It has been taken to exclude extrinsic matter in writing such as drafts, preliminary agreements and letters of negotiation."

9. Counsel asserted that the finding by the trial court shifting the evidentiary burden, on the alleged involvement of the 1st appellant in the agreement between the 1st respondent and the 2ndrespondent was erroneous. Further, that the sworn evidence of John Ndegwa ably rebutted the 1st respondent's allegation of his involvement and the said affidavit evidence was unshaken throughout the hearing.

10. He placed reliance on the decision Daniel Kibet Mutai v A.G [2019] eKLR where court held as follows;

> " The position before us is that the appellants averred to certain acts under oath in an affidavit. These acts were not controverted by the respondents either through an affidavit in response or through cross examination. An affidavit is sworn evidence. [par. 34]
>
> It is evident that the learned Judge treated oral evidence which in this case was not available as superior to affidavit evidence and thereby dismissed he appellants' affidavits as bare allegations. With due respect the learned Judge failed to appreciate that what is sworn under oath is not a simple matter but serious issue or which a deponent can be charged with perjury if it turns out that the deponent has lied under oath. In other words, the consequences are the same as that for a witness who testifies orally and perjures himself by lying on oath. In our view affidavit evidence is legally admissible evidence in a court of law. It occupies the same place as an other evidence that is admissible in a court of law. [par. 36]"

11. Counsel further submitted that it was improper for the trial court to invoke estoppel when pleading in the regard was made. Furthermore, that it was erroneous for the trial court to completely disregard sworn evidence in favour of an unsubstantiated allegation in order to justify invocation of estoppel. He placed reliance on the decision in First Assurance Co. Ltd v Seascapes Ltd [2008] eKLR where the court held as follows;

> [F] or there to be an estoppel there has to be a representation which is acted upon by the opposite side to its detriment. It does not give rise to a cause of action.

12. On what are the orders appropriate to issue, counsel submitted that the 1st respondent did not discharge his burden of proof against the 1st appellant or prove his case on a balance of probabilities. Thus, the appropriate orders to issue are that the appeal succeeds and that the judgment of the trial court is set aside and replaced with judgment dismissing the 1st respondent's suit against the 1st appellant with costs.

13. Lastly, on who should bear the costs counsel urged the court to be guided by Section 27 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya and award costs of the appeal to the appellants.

1st Respondent's submissions

14. These were filed by Kimani & Muchiri advocates LLP and are dated 29th October, 2024. Counsel gave a brief summary of the case and identified nine (9) issues for determination.

15. The first issue is whether the learned magistrate erred in law and fact by failing to hold that the 1st respondent's case against the 1st appellant disclosed no reasonable cause of action. Counsel submitted that the 1st respondent proved that Kshs. 660,000/= was disbursed to the 1st appellant account and the said proof was not controverted by the 1st appellant's witness. Further, that the burden of proof shifted to the 1st appellant to show that John Ndegwa was not privy to the motor vehicle purchase agreement between the 1st respondent and the 2nd respondent.

16. Counsel further submitted that the trial court properly evaluated and weighed the evidence adduced by both the 1st appellant and the 1st respondent. That he applied the right legal principles in finding that the 1st respondent had proved his case on a balance of probabilities hence that ground of appeal lacked merit. He placed reliance on section 109 of the *Evidence Act* and the decision in Palace Investment Ltd v. Geoffrey Kariuki Mwenda & Another [2015] eKLR, it was held as follows:

> " Denning J. in Miller v Minister of Pensions (1947) 2 ALL ER 372 discussing the burden of proof had this to say;
>
> > "That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability is equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough, so in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained."

17. The second issue is whether the learned magistrate erred in law and fact by holding the 1st appellant liable alongside the 2nd respondent against the weight of evidence in complete disregard of the adduced indemnity agreement which was wholly uncontroverted. Counsel submitted that the trial court was correct in holding the 1st appellant liable alongside the 2nd respondent since its decision was based on the evidence that linked both parties to the actions that led to the 1st respondent's claim. He relied on the decision in Mahendra M Malde v George M Angira in Civil Appeal No. 12 of 1981 cited with approval in the case of Canon Motors Limited v Bifatu Hayani & another [2021] eKLR where the court held as follows;

> " 12. A finding and apportionment of liability by a trial court call calls for the exercise of judicial discretion based on evaluation of the evidence adduced and an appellate court can only interfere if the finding is not supported by the evidence on record. In the cases of Isabella Wanjira Karangu v Washington Malele, Civil Appeal No50 of 1981 I1983/KLR 142.and Mahendra M Malde v George M Angira Civil Appeal No.1 of 1981, it was held that apportionment of blame is an exercise of a discretion with which the appellate court will interfere only when it is clearly wrong, or based on no evidence or on the application of a wrong principle."

18. The third issue is whether the learned magistrate erred in law and fact by failing to make a finding that the funds remitted by the 1st appellant on behalf of the respondent did not constitute a purchase price of the motor vehicle due to the principle of privity of contract. Counsel submitted that the 1st respondent's case at the trial court fell under the exception to the privity rule. That the trial court established that the 1st appellant intended to benefit from the 1st respondent through its agent, John Ndegwa who engaged him regarding the outstanding loan amount owed by the 2nd respondent. He further submitted that the 1st appellant's agent informed the 1st respondent that kshs, 660,000/= which was to be paid as the purchase price of the motor vehicle would be sufficient to offset the loan. Furthermore, he shared the 1st appellant's bank account details with the 1st respondent where the said money was deposited.

19. He relied on the decision in Mark Otanga Otiende v Dennis Oduor Aduol 2021 eKLR in Civil Appeal No. 013 of 2021, where the court held that courts may find liability without strict privity where the circumstances warrant. The court thus held as follows; -

> " [67.] An exception to the Privity Rule suffices where the contracting parties clearly intended to benefit a third party from their agreement and the third party would be able to rely on and or enforce the agreement if it is not carried out properly,"

20. The fourth issue is whether the learned magistrate erred in law and fact by finding that there was collusion between the 1st appellant and the 2nd respondent despite lack of pleadings and evidence. Counsel submitted that the 1st appellant's witness confirmed receiving Kshs. 660,000/= from the 1st respondent and utilizing the same towards offsetting the 2nd respondent's loan. He further submitted that the trial court's decision was based on the analysis of the evidence. That the same inferred the existence of collusion by the 1st appellant and the 2nd respondent to defraud and or hoodwink the 1st respondent into disbursing the funds under a misrepresentation that the said funds were the purchase price of the vehicle.

21. The fifth issue is whether the learned magistrate erred in law and fact by apportioning liability to the 1st appellant based on unsubstantiated or extrinsic evidence and failing to establish the extent of the 1st respondent's liability. Counsel submitted that the funds were utilized to the benefit of both the 1st appellant and the 2nd respondent to the detriment of the 1st respondent. Further, the motor vehicle was ultimately repossessed by the 2nd appellant acting on instructions of the 1st appellant. Thus, the trial court's finding was grounded on clear and convincing evidence that was properly weighed and assessed.

22. The sixth issue is whether the learned magistrate erred in law and fact by invoking the doctrine of equitable estoppel. Counsel submitted that in invoking the said doctrine, the court established during the trial that the 1st appellant indeed received the 1st respondent's money. He placed reliance on the decision in Peninah Wathoya Wachira v Kenya Methodist University [2018] eKLR where the court underscored the doctrine of equitable estoppel. It held as follows;

> The whole doctrine of equitable estoppel is a creature of equity and is governed by equitable = principles." [14] Equity in its turn denotes fairness and justice. This parallel between justice and equitable estoppel is very important. This concept evolved as a tool to prevent fraud and injustice and must serve this purpose. When claiming that the doctrine of equitable estoppel should be applicable to the facts and circumstances of a particular situation, no matter whether in private or administrative law, the following elements of the doctrine must be proved:

(a) conduct that amounts to a false representation er concealment of material facts and

(b) the person knows or should know the real facts and

(c) intends or expects-the other party to act upon such representation,

(d) there must be another party who does not know the truth and who in fact acts in good faith in reliance upon such representation,

(e) results in bis detriment, All these elements must be present and proved to establish the applicability of the doctrine of equitable estoppel. If any of these elements is missing the equitable estoppel cannot be asserted,"

23. The seventh issue is whether the learned magistrate erred in law and fact by awarding the 1st respondent special damages yet the same was not specifically pleaded and proved. Counsel submitted that the 1st respondent produced a bundle of receipts amounting to Kshs. 304,000/= vide his list of documents dated 6th May 2020 which were admitted as exhibits before the trial court.

24. Lastly, on whether the learned magistrate erred in law and fact by failing to award the 2nd appellant the costs of the suit. Counsel submitted that costs follow events and the successful party in a suit was entitled to the costs of the suit. To buttress this position, he referred to the decision in Supermarine Handling Services Lid v Kenya Revenue Authority [2010] eKLR in Civil Appeal No. 85 of 2006.

25. In conclusion, he urged the court to dismiss the appeal with costs to the 1st respondent.

Analysis and determination

26. I have considered the record of appeal, grounds of appeal as well as the submissions and the authorities relied on by the parties. The main issue that arises for determination is whether the 1st respondent's claim against the 1st appellant was proved on a balance of probabilities.

27. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. In Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR, the court stated as follows-

> " This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way."

28. The law is clear that this court as an appellate court will only interfere with the decision of the lower court, if the said decision is founded on wrong legal principles. That was the holding of the Court of Appeal in Mkube v Nyamuro [1983] LLR at 403, where Kneller JA & Hancox Ag JJA held that as follows;

> " A Court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion."

29. It is the appellants' case that the 1st respondent did not discharge his burden of proof against the 1st appellant or prove his case on a balance of probabilities. Further, that 1st respondent was never involved

or dealt with John Ndegwa or the 1st appellant in his engagement with the 2nd respondent. therefore, the finding by the trial court shifting the evidentiary burden, on the alleged involvement of the 1st appellant in the agreement between the 1st respondent and the 2ndrespondent was erroneous.

30. On his part, the 1st respondent argued that the trial court properly evaluated and weighed the evidence adduced by both the 1st appellant and the 1st respondent. Further, that he applied the right legal principles in finding that the 1st respondent had proved his case on a balance of probabilities hence the appeal had no merit.

31. The trial magistrate in his judgment held that the 1st appellant knew that the 2nd respondent was incapable of transferring the suit motor vehicle yet it received the money paid by the 1st respondent without question. He proceeded to rule in favour of the 1st respondent's case

32. Upon perusal of the evidence tendered before the trial court, this court notes that it is not disputed that the 1st respondent on 29th January 2020 entered into a sale agreement with the 2nd respondent for the purchase of motor vehicle registration number KCE 650S. It is also not disputed that the said motor vehicle was registered as security for a loan facility advanced to the 2nd respondent by 1st appellant. In his statement dated 6th May, 2020 he stated that at the time of entering into agreement the subject motor vehicle had been repossessed by the 1st appellant since the 2nd respondent had failed to service her loan.

33. He further stated that it was the 1st appellant's employee Mr. John Ndegwa who provided him with account number 01136081619501 in the name of the 1st appellant and he deposited kshs. 660,000/=. Thereafter, the motor vehicle was released to him awaiting the transfer to his name and in the meantime, he did various repairs on the motor vehicle. Eventually, the said motor vehicle was not transfer to him and he reported the matter to the police under O.B No. 71/1/4/2020.

34. Additionally, on 9th April 2020 the motor vehicle was repossessed by the 2nd appellant under the instruction of the 1st appellant on the ground that there was as outstanding loan amount of kshs. 411, 899/=. He made various attempts to resolve the issue including writing a demand letter to the 2nd respondent and setting up a meeting with the her but it bore no fruits prompting him to file this suit seeking damages.

35. On cross-examination, he confirmed that the agreement was between him and the 2nd respondent only. Further, that the subject motor vehicle was a security on a loan which was outstanding and the 2nd respondent was in arrears. He stated that PEXB 2 showed that the 1st appellant was a co-owner but it did not confirm the payment he made and the receipts did not indicate the recipient's name. He further stated that the DCI investigations recommended that the 2nd respondent be arrested.

36. Upon re-examination, he stated that the 2nd respondent informed him that the subject motor vehicle belonged to the 1st appellant. Further, that it the 1st appellant's employee who gave him the account number where he deposited money. He added that the 2nd respondent was charged and that he took the motor vehicle from the 1st respondent's car yard.

37. On the defence case, Richard Simbala (DW1) an employee of the 1st respondent also adopted as his evidence in chief his witness statement of 13th October 2022. He also produced a list of documents dated 17th October 2022 as Exhibit 1-16 and a further list of documents Exhibit 17-22. He testified that the 1st appellant advanced a loan to the 2nd respondent and that it did not deal with the 1st respondent. He stated that they were not aware of the sale of the subject motor vehicle to a 2nd party and that the loan was still running when the said motor vehicle was sold. He further stated that there was no agreement between the 1st appellant and the 1st respondent and they were not in a position to refund the purchase price.

38. In cross-examination, he confirmed that John Ndegwa was employed as a customer care person and that the 1st appellant received kshs. 660,000/=. Thus, the full loan amount was recovered. He further confirmed that the said money had been utilized and could not be refunded.

39. In re-examination, he stated that he had produced an affidavit sworn by John Ndegwa denying engaging with the 1st respondent.

40. It is trite that he who alleges must prove. This stems from the provisions of Section 107 of the *Evidence Act* (Cap 80 of the Laws of Kenya) which provides that:

> "(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 existence of any fact it is said that the burden of proof lies on that person."

41. Further under Section 109 of the *Evidence Act*, it is provided that:

> " The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person."

42. The evidential burden of proof of admissibility is provided for under Section 110 of the *Evidence Act* which provides as follows:

> " The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence."

43. These provisions lay down the burden and standard of proof in the civil cases. That is the legal as well as evidential burden of proof in civil cases. The legal basis for the issue of legal burden of proof is provided under Section 107 of the *Evidence Act*. The section lays the burden on the person who asserts or alleges the existence of facts which forms this claim. It is a burden on the party who would lose if the burden is not discharged.

44. The second limb of the burden of proof is the evidential burden. The party who bears the legal burden of proof adduces evidence to proof certain allegations in his claim. If the party fails to adduce sufficient evidence to the required standard, allegations must fail. If on the other hand sufficient evidence is adduced the other party bears the burden to adduce evidence to rebut the allegations. The evidential burden shifts to the opposing party. Thus, the legal burden remains on the party who alleges but evidential burden shifts depending on the evidence adduced.

45. In Raila Amolo Ondinga & Another v IEBC & 2 Others [2017] eKLR, Supreme Court, while dealing with the issue of legal and evidential burden of proof stated as follows:-"Though the legal and evidential burden of establishing the facts and contentions which will support a party's case is static and "remains constant throughout a trial with the plaintiff however, depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence was introduced.It follows that once the court is satisfied that the petitioner has adduced sufficient evidence to warrant impugning an election, if not controverted, then the evidential burden shifts to the respondent..... To adduce evidence rebutting that assertion....." See paragraph 132 & 133.What this analysis determines is that

the legal burden of proof in all cases is always static and never shifts. However evidential burden of proof may shift to the defendant depending on the evidence laid down before the court by the plaintiff. Burden of proof is defined as – "the degree or level of proof demanded in a specific case in order for a party to succeed." See Black's Law Dictionary (9th Edition 2009).When it comes to civil cases, the burden of proof is on a balance of probabilities unlike in criminal cases it is beyond any reasonable doubts."

46. Applying the above provisions, it follows that before the trial court, the 1st respondent had the burden to lay the basis for his claim by proving on a balance of probabilities that the purchase price for motor vehicle KCE 650S was paid to the 1st appellant and it had to refund the same after it repossessed the motor vehicle. From the evidence adduced herein above there is no doubt that even though the 1st appellant was not a party to the sale agreement between the 1st respondent and 2nd respondent, it admitted through its witness to having received and utilized and the money paid by the 1st respondent. It also admitted that the said money cleared the outstanding loan under which the said motor vehicle was being held as security. The evidential burden shifted to the 1st appellant to adduce evidence rebutting that assertion by the 1st respondent which it did not.

47. For the said reasons, the trial magistrate judgment delivered on 28th March, 2023 is hereby upheld.

48. The upshot is the appeal herein lacks merit and the same is dismissed with no orders as to costs.

49. Orders accordingly.

DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 6TH DAY OF AUGUST, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE