



**Onyango v Kinda Joinery Self-Help Group & 3 others (Civil Appeal
E028 of 2024) [2025] KEHC 11390 (KLR) (1 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL APPEAL E028 OF 2024**

**DK KEMEL, J
AUGUST 1, 2025**

BETWEEN

JOHN OTUORO ONYANGO APPELLANT

AND

KINDA JOINERY SELF-HELP GROUP 1ST RESPONDENT

MILICENT OMWONYO 2ND RESPONDENT

DAVID ODHIAMBO 3RD RESPONDENT

RUTH OLOO 4TH RESPONDENT

*(Being an appeal from the judgment and decree of Hon. Chepchirchir Christabel
Maiyo (R.M) in Siaya SCC NO. E026 of 2024 delivered on 14th June 2024)*

JUDGMENT

1. John Otuoro Onyango, the Appellant herein, sued the Respondents herein in the small claims court seeking payment of Ksh 743, 160/= allegedly owed to him by the Respondents.
2. The Respondents denied the said claim and put up a counterclaim averring that it is the Claimant (Appellant) who owes them Ksh 1 000, 000/= due from a loan the group took in 2021 when the Claimant was the chairman and signatory of the 1st Respondent.
3. Both the claim and the counter claim were considered by the trial magistrate/adjudicator who in the end dismissed both claims and that each party was ordered to bear their own costs.
4. Aggrieved, the Appellant filed his Memorandum of Appeal dated 21/6/2024 wherein he raised the following grounds of appeal:



- i. That the learned adjudicator erred in law and in fact in dismissing the Claimant's case without analysis of the evidence placed before her in favor of the Claimant's case.
- ii. The learned Adjudicator erred in law and fact in ignoring all the exhibits, including bank statements produced in court to demonstrate that the money was advanced to the Respondents.
- iii. The learned Adjudicator erred in law and fact in misapplying and interpreting the law and facts to dismiss the Claimant's case.
- iv. The learned Adjudicator erred in law and fact in ignoring and disregarding the testimony of four witnesses who testified in favor of the Claimant's case.
- v. The learned Adjudicator erred in law and fact in misapprehending, misconstruing, misinterpreting and misapplying the law on capacity to sue.
- vi. The learned Adjudicator erred in law and fact in having arrived at a decision that is devoid of analysis of law and facts.
- vii. The learned Adjudicator erred in law and fact in copy-pasting the submissions of the Respondents verbatim and purporting to be her analysis.
- viii. The learned Adjudicator erred in law and fact in having relied on the wrong principles of law by contravening the provision of Article 159 of *the Constitution*.
- ix. The learned Adjudicator erred in law and fact in having turned the court into a party that prosecuted the Respondents case.
- x. The learned Adjudicator erred in law and fact in having arrived at the wrong decision in law.
- xi. That the decision of the court is against the weight of the evidence provided by the Claimant.

The Appellant therefore prays that the appeal be allowed and that the trial court's order be set aside and that judgement be and is hereby entered in favour of the Appellant and that the costs of this appeal and in the lower court be awarded to the Appellant.

5. Being a first appeal, this court has a duty to evaluate the entire evidence by subjecting it to a fresh exhaustive scrutiny and arrive at its own independent conclusion. This court has to bear in mind that it did not have the opportunity to hear or see the witnesses during their testimonies and must therefore give due allowance for that. (See *Selle & Another vs Associated Motor Boat Company Ltd & others* [1968] 1EA 123; *Peters v. Sunday Post Ltd* (1958) EA 424; *Mary Wanjiku Gachigi v Ruth Muthoni Kamau* (Civil Appeal No. 172 of 2000. (Tunoi, Bosire & Owuor JJA); *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* Civil Appeal No. 345 of 2000. (Okubasi, Githinji & Waki JJA).
6. The Claimant called four witnesses in support of his case which was as follows:
7. John Otuoro Onyango (PW1) testified that he is a resident of Bondo County and an employee of Siaya County as a driver. That he has been a member of the 1st Respondent since the year 2016 and that between 2018 and 2023 he served as the Chairperson of the group. That the 2nd to 4th Respondents have been sued in their capacity as the current chairperson, secretary and the treasurer of the 1st Respondent (the group) respectively. That he entered into an agreement with the 1st Respondent under which he advanced it monies on various dates totaling to Ksh 675, 600/= to settle loan facility owed to Equity Bank. That it was an express term of the agreement that the group would repay back the money before disposing off the motor vehicle registration No. KCH 864, but as at the time of filling this claim, the



said amount had not been repaid to him. It was his testimony that the said motor vehicle (lorry) was to be in his custody as security for the monies he had given the group but that the said vehicle was sold off before he was fully repaid of his debts. He produced the following documents as his exhibits- copy of his national Identity card (exhibit 1), copy of bank statement of John Otuoro – (exhibit 2). That on page 3 of the statement shows an advancement sent to John Otuoro of Ksh 313, 000/= and also Ksh 68,000/= and that there was a day he gave a debit card for withdrawal of Ksh 29000/= and also sent the money to David Odhiambo(3rd Respondent). He produced a copy of minutes dated 11/09/2022 as exhibit 3, in which they had agreed to settle the amounts owing to him as they were willing but again they indicated Ksh 100,000/= and not the whole amount which made the claimant not to sign the said minutes. He produced the minutes dated 19/01/2023 as exhibit 4, in which they decided that there be a written document allowing him to take the vehicle for 20 months and settle the amount at Equity; but later sold the vehicle. That the Mpesa statement was produced as exhibit 5(a) –Money to George Mwika who was a cyber man and lost 13000/= to David Otieno. Exhibit 5(b) –was ksh 20,000/= sent to Millicent Omwonyo (2nd Respondent) who was receiving money for hiring out tents and chairs. Several photographs were produced as exhibit 6(a). That exhibit 6(b) is the vehicle not working on several occasions and would stall and that he would purchase new tyres and thne took pictures as he was not in custody of the record. It was the secretary. That exhibit 6(c, d, and e) are body works of vehicle while exhibit 6(g) shows the vehicle in good condition and received by group members. That exhibit 6 (h, i and j) shows pictures of damages while exhibit 6 (l) shows cash money received for the maintenance as spares. That he urges the Court to assist him to get a refund of his money.

On cross examination, he stated inter alia; that he is claiming ksh 7 643 160/= even though the statement of claim indicates ksh 675 600/=; that the cash amount he used on the tyres as shown in the pictures (exhibits) seem not to have been included; that the second, third and fourth Respondents are the people in charge of the group; that the said amount of ksh 743,160/= is for repair, loan offset, issues of cyber and pictures; that costs of repairs was ksh 741,000/=; that he did not produce receipts in court but just pictures; that he did not produce any valuation but M-pesa statement and pictures of cash; that the ksh 313, 000/= and ksh 68,000/= were pumped into the Kinda joinery account to offset the loan and that the same was not refunded to him; that it was not the only amount the group owed him; that he never received any monies from the sale of the lorry.

8. Martin Awuor Omollo (PW2) testified that he is a resident of Bondo. His witness statement dated 24/04/2024 was adopted as his evidence in chief. He stated that they elected John Otuoro as chairman of the group. That the group did not have money and that the claimant gave the group money and that he was to be refunded but that the same was not refunded.

On cross examination, he stated that he is a member of Kinda joinery group and was once a director of the group upto the year 2024. That the group borrowed money from the claimant. That in total, the money borrowed was around 500,000/=. That he was present at the meetings when the claimant gave money to the group. That the proceeds from the motor vehicle, a blue canter, were received by one David Otieno.

9. Oliver Aketch Jahami (PW3) testified that he is a resident of Siaya. His witness statement dated 24/4/2024 adopted as his evidence in chief. He stated further that the proceeds of the motor vehicle were received by David Odhiambo. That the claimant gave some money to the group as the group was financially low.

On cross examination, he stated that he is the organizing secretary at Kinda Joinery group. That he is still a member of the group and that the Claimant was rightfully seeking for his refund of ksh 675 600/=. That he witnesses money being given to the group. That there is evidence of disbursements in form of documentation on book statement showing that money was sent to David Odhiambo as



per Exhibit 5(a, b). Exhibit 5a) show Ksh 13000/= sent to David Otieno. That some other monies were given in cash. That ksh 313.000/= and a further ksh 68,000/= was through the account totaling to Ksh 371,000/=. He testified further that he witnessed ksh 200,000/= cash given to George Mikwa meant to do KRA returns for the group. That the said monies were given in the presence of Christabel Amondi, the treasurer and Elizabeth Apondi, the secretary. That the vehicle which was in the custody of the group had broken down and needed repair of about ksh 400,000/= while the group was still offsetting a loan of ksh 68,000/= as monthly instalments. That the group had taken a loan of about ksh 2 million paid on monthly instalments.

On re-examination, he stated that the receipts of the group were kept by the secretary and so there is no way the Claimant would have them.

10. Boaz Oketch Oloo (PW4) had his statement dated 24/4/2024 adopted as his evidence in chief. He stated that he was the driver of the motor vehicle and not the Claimant. That the money he would get from the lorry business he would give to David Otieno and at no point did John Otuoro receive any money.

On cross examination, he stated that the claimant is seeking money he gave the group which was not refunded. That he was the driver from the year 2018 to 2022.

11. That marked the close of the Claimants case.

12. The Respondents called 3 witnesses in support of their case which was as follows:

13. Millicent Anyango Omwonyo testified that she is the 2nd Respondent. Her witness statement dated 22/4/2024 was adopted as her evidence in chief. Her list of documents dated 30/3/2024 also produced as Respondents' exhibit 1-6. In her testimony, the witness claimed that she was the current acting Chairperson. That the claimant did not give the group any monies and that she did not know why the Claimant gave Ksh 313,000/= and Ksh 68,000/= to the group. That she is not aware of the minutes produced by the claimant as exhibits. That her names are on the minutes but that the signature is not hers. That the lorry was sold to offset the bank loan. That the group seeks for the sum of about Kshs 1000,000/ from the Claimant.

14. David Odhiambo Otieno sought to have his statement dated 22/4/2024 be adopted as evidence in chief. He stated that no money was borrowed from the Claimant.

On cross –examination, he testified inter alia; that exhibit 3 bears his name but that the signature is not his; that he cannot confirm if the Claimant was owed money by the group; that Exhibit 2 showed bank statement where the claimant sent Ksh 313 000/= to the group and another Ksh 68 000/= also sent to the group account; that on 19/1/2023, the Claimant was given the vehicle for 20 months to enable him pay off the loan; that he is not aware of any arrears; that on claimants exhibit 5a) he confirmed seeing Ksh 13000/=; that on minutes of 19/1/2023, he confirmed being present and did sign; that the driver would send money from the motor vehicle to him since 2018 upto 2020; that John who is the Claimant did not sign the minutes of 19/1/2023.

15. Ruth Atieno Oloo stated that she has been the acting treasurer of the group and that she does not know if the group is claiming money from the Claimant. That she did not borrow money from the claimant.

On cross examination, she denied being aware of any money owed to the claimant by the group.

16. That marked the close of the Respondents' case.

17. The appeal was canvassed by way of written submissions. Both parties complied.



18. The Appellant submitted that the trial adjudicator erred by misapprehending the law on capacity to sue and be sued. Reliance was placed on several authorities including Daniel Nzioki Kiangi & 2 others vs Priscilla Musili Mulwa, Mutuku Kimanathi, Mueni Kikuswi (suing on their own behalf and on behalf of 47 members of Meka Self-help Group) [2021] Eklr where it was held as follows:

“I have no doubt in my mind that officials of unincorporated group may sue and be sued through their officials in a matter concerning joint interest pursuant to the above provisions.”

The Appellant concluded that the Respondents were properly sued.

19. The Appellant likewise submitted that the burden of proof was on the Appellant to adduce evidence to the effect that he advanced monies to the Respondents to the tune of ksh 675 600/= (exclusive of interest). He submitted that he indeed discharged the burden to prove his case by adducing evidence through the exhibits he produced and the testimonies of witnesses who confirmed that the group owed him money. He concluded that the adjudicator erred in law and fact in dismissing his claim. It was his prayer that the appeal be allowed with costs to the Appellant.

20. On the other hand, the Respondents submitted that the copies of minutes dated 19th January 2023 and 11th September 2023, do not have the claimant as one of the attendants of the meeting. He therefore was not present. Ultimately, they cannot be purported to be legally binding agreements as they fell short of the requirements of section 3 of the *Law of Contract Act*.

21. The Respondents submitted further that the 2nd, 3rd and 4th Respondents were never signatories to the account of the 1st Respondent. They referred to the Respondent’s exhibit marked AAM-01 a bank statement to account number 0750198873576 dated 2021-2023 that the signatories to that account were John Otuoro-the Appellant, Elizabeth Apome and Christabel Amollo. That the 2nd 3rd and 4th Respondents never operated that account on behalf of the 1st Respondent. They averred that at the time of taking the alleged bank loan at Equity bank, the Respondents were not officials of the 1st Respondent. That the then chair was the Appellant while Elizabeth Apome was secretary and Christabel Amollo as the Treasurer.

22. They relied on the case of Branco Arab eEspaño vs. Bank of Uganda (1999)2 EA 22, where it was stated that:

“The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits...”

23. I have considered the evidence on record plus the rival submissions and find the issue for determination is whether the Appellant had proved his case against the Respondents on a balance of probability.

24. Section 107 of the *Evidence Act* is to the effect that whoever alleges the existence of a fact must prove that those facts indeed exist. In this case, the burden of proof was on the Appellant to prove his case on a balance of probability.

25. It is noted that the Appellant described himself as a former Chairman of the 1st Respondent herein and that while in that capacity, he incurred some debts wherein he paid off some of the 1st Respondent’s debt owed to Equity Bank and also used his monies to repair the 1st Respondent’s lorry. The Appellant was faced with challenge as to whether he had sued the 1st Respondent in its capacity as an unincorporated entity. Indeed, the issue of capacity regarding the 1st Respondent was raised in the



lower court. Hence, it is prudent to resolve that issue. Under Order 1 Rule 8 (1) of the Civil Procedure Rules, the same provides as follows:

“Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.”

From the foregoing provision, the Appellant and the Respondents who were members of the 1st Respondent had legitimate rights to maintain suits as and when they deemed in order to ventilate the issues/grievances. Even though the Appellant admitted that the 1st Respondent is not an incorporated entity, I find that the suit was properly lodged as it was necessary for the entity to be brought on board together with other officials so that the issues in controversy would be resolved by the trial court. In any event, the dictates of Article 159 (2) (d) of *the Constitution* allows the courts to consider disputes on merit rather than on technicalities. It is instructive that self-help groups in the country are many as they are a forum in which community members pool resources for their economic well being and that they are recognized as useful systems in the society. Indeed, the common practice is that whenever such entities are sued, such suits are brought through its officials. The position of the law is that this self-help groups (unincorporated) which are spread across the country are not permitted to sue in their own names but they can do so through their elected representatives. In the case of Daniel Nzioki Kiangi & 2 others v Priscila Musili Mulwa, Mutuku Kimathi, Mueeni Kikuswi (Suing on their behalf and on behalf of 47 Members of Meka Self Help Group [2021] eKLR, Odunga J(as he then was) held that:

“I have no doubt in my mind that officials of unincorporated group may sue and be sued through their officials in a matter concerning their joint interest pursuant to the above provision.”

1. Again in Phares Omondi Okech & 3 others (Suing for and on behalf of Kasgan Community-wadhari Clan) v Victory Constructions Co. Ltd & 2 others (2015) eKLR, the Court observed as follows; -

“Self Help group, or community-based organizations were created by the government to address poverty eradication and other noble causes, but were not clothed with the capacity to sue but can do so through its elected officials whose description should be given to show who they are and who they represent.”

26. In the case of Daniel Nzioki Kiangi & 2 others vs Priscilla Musili Mulwa, Mutuku Kimanathi, Mueeni Kikuswi (suing on their own behalf and on behalf of 47 members of Meka Self-help group) [2021] eKLR where it was held as follows:

“I have no doubt in my mind that officials of unincorporated group may sue and be sued through their officials in a matter concerning joint interest pursuant to the above provisions.”

27. In the case of *Simiyu v. Wavyova & Another (Civil Appeal No. 10 of 2023)* [2023] KEHC24966 (KLR) the Court held that while a self-help group (unincorporated) may not sue in its own name, it can be sued through its elected representatives/officials. In the instant appeal, the Respondents were sued in their capacities as the current officials of the group, a fact which has been confirmed in their evidence in chief. Even though the self-help group has been sued as the 1st Respondent, I find that the same though a misnomer, the other three Respondents are officials of the said self-help group. In the premises, I find that the Respondents were properly sued by the Appellant.



28. Coming to the nitty-gritties of the claim, the Appellant's claim was for Ksh 675 600/= in respect of amounts utilized to settle bank loans (Equity Bank) (which were owed by the 1st Respondent, Repair of the 1st Respondent's lorry registration KCH864N, payment for KRA taxes given to the self-help group in agreement that the same would be paid back. On the basis of the said agreement, the Appellant produced group minutes dated 19th January 2023 and 11th September 2023. A scrutiny of the said minutes however shows that the Appellant did not sign the minutes which may be interpreted to imply that he was not present at the said meeting. The presence of the Appellant, who was then the chairman of the group, was crucial in order to validate the minutes taken. Further, it is claimed that the money the Appellant lent to the group was purposed to offset a loan to Equity Bank which loan the Appellant took during his tenure as the chairman of the Self-help group.
29. The Respondents have denied the existence of such money owing to the Appellant and claimed that the Appellant and two others were the signatories to the group during the acquisition of the loan from Equity Bank and did not account for an amount of about one million shillings out of the two million shillings that was disbursed by the said bank. The Respondents counter claimed for the sum of Kshs1,000,000/= against the Appellant and maintained that the Appellant who was then their chairman did not account for the said amount before his exit. However, the Respondents failed to pin him down as he failed to avail evidence and that whatever documents they presented together with their oral evidence did not pass muster. The Respondents, despite denying the Appellant's claim, admitted through the 2nd, 3rd and 4th Respondents that the sum of Kshs381,000/= had been paid by the Appellant through his Account No. 0750196731953 into the 1st Respondent's account No. 07500101038. It is therefore clear that the said sums of Kshs381,000/= having been paid by the Appellant and confirmed by the Respondents, ought to be reimbursed to the Appellant. Despite the Claim by the Respondents that the said monies were proceeds from the lorry, I find the same was not proved since the driver of the lorry who testified for the Appellant as PW4 refuted the claim. The said PW4 told the court that his duty was to hand over all proceeds from the lorry to the 3rd Respondent and not the Appellant. Further, the Respondents confirmed that the minutes of 11/9/2023 that the group owed the Appellant a sum of Ksh100,000/=. It is instructive that the Appellant did not sign the said minutes and that his explanation was that he felt that he was being cheated of his money since he was owed more than the Kshs100,000/=. It is therefore clear that the Appellant could not come out of the trial court empty handed despite such evidence. As regards the Respondents' counter claim, the Respondents failed to present the requisite documentation to prove the same and hence, the same was rightly rejected by the trial court.
30. The Appellant produced exhibit 2 and 3 which is a bank statement showing Ksh 68,000/= and Ksh 313,000/= paid from his account to the group's account in the year 2023. This amount was duly admitted by the 2nd, 3rd and 4th Respondents. There is therefore no dispute about the sum of Kshs381,000/= owed to the Appellant. As regards the other sums, the Appellant claimed that he paid money to one George Nikwa who was working at a Cybercafe in the sum of Kshs200,000/= which was to be used for settling tax related issues. The evidence of PW2 and PW3 corroborated this fact. The Respondents on their part admitted that indeed they had sought help from the said individual to help out in their tax related issues and in which the Appellant cleared the same. The Appellant also claimed that he had used money for repair of the vehicle and that he produced Mpesa transactions as well as photographs showing the damaged lorry and the spares as well as an unknown individual holding some bank notes. I have carefully looked at those Mpesa documents, photographs but find that the Appellant did not convince the court about the expenses regarding the vehicle. It was rather unusual for the Appellant to post a photo showing somebody holding bank notes yet his face was deliberately omitted and further the giver of the money is not shown. I am therefore not convinced



about the Appellant's claim regarding that particular payment. On the whole, the Appellant managed to prove a sum of kshs581,000/= only and that the said sum was specifically pleaded and proved and that the trial court ought to have entered judgment therefor in favour of the Appellant. The trial court's finding was therefore in error and must be interfered with.

31. In view of the foregoing observation, it is my finding that the Appellants appeal has merit. The same is allowed. The judgment of the trial court dated 24/6/2024 is hereby set aside and substituted with an order entering judgment in favour of the Appellant against the Respondents jointly and severally in the sum of Kshs581,000/= plus costs and interest. The costs of this appeal are awarded to the Appellant.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 1ST DAY OF AUGUST 2025.

D. KEMEI

JUDGE

In the presence of:

N/A for Osala.....for the Appellant

N/A Mulinge.....for the Respondent

Kevin/Kimaiyo.....Court Assistant

