

KENYA / JUDGMENT

Wambui v Shiranda [2026] SCC 240 (KLR)

[2026] SCC 240 (KLR)**COURT**

Small Claims Court

BEFORE

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CASE / FILE NUMBER

Commercial Case E090 of 2026

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REPUBLIC OF KENYA**IN THE SMALL CLAIMS COURT AT MALABA****SCCCOMM NO. E090 OF 2026****LUCY WAMBUI.....CLAIMANT****-VERSUS-****JOSEPH SHIRANDA.....RESPONDENT****JUDGMENT****Introduction and Evidence**

1. Vide a statement of claim dated 20th July 2026 and filed in court on even date the Claimant prays for judgment in the sum of Kshs. 84,000/= together with costs and interest of the suit.
1. The circumstances leading to the filing of this claim are that the Claimant gave her son money and who in turn remitted it to the Respondent totaling to Kshs. 84,000/=. That the money was disbursed on diverse dates to the Respondent for a business undertaking by the Respondent for the Claimant and her son. That the Respondent did not Honor that undertaking and agreed to refund a total of Kshs. 84,000/= which is now claimed in this suit.
2. The suit is opposed vide a Statement of Response dated 2nd September 2026 and filed on even date wherein it is averred that the Claimant contributed a total of Kshs. 24,000/= only and was paid a total of Kshs. 37,000/=. The Respondent vide a counterclaim filed alongside the Statement of Respondent seeks a refund of Kshs. 13,000/=.

3. The Claimant has filed a Reply to Statement of Response and Counterclaim dated 9th September 2026 stating that her son John Njoroge was acting under her instructions when he sent a total of Kshs. 49,800/= to the Respondent. That she sent a total of Kshs. 34,200/= vide Mpesa transfers and in cash. She further acknowledged receipt of Kshs. 30,000/= paid to her by the Respondent
4. This matter was set down for hearing on 9th September 2026 when both the Claimant and the Respondent testified in support of their respective cases. At the close of the Respondent's case, the matter was reserved for judgment with leave to parties to file and serve written submissions.

Analysis and Determination

1. The Court has considered the pleadings, the evidence tendered by the parties and the submissions of the Claimant and the Respondent. The issues for determination are ***whether the Claimant has proved her claim for Kshs.84,000*** and, secondly, ***whether the Respondent has proved his counterclaim.***

2. The governing principle is that the burden of proving a claim rests upon the party who asserts it. Section 107(1) of the Evidence Act, Cap. 80 provides that:

“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.”

1. Sections 108 and 109 further place the evidential burden upon the person who would fail if no evidence at all were given on either side, and upon the person seeking to prove a particular fact respectively.
2. The standard applicable in civil proceedings and as rightly submitted by parties is proof on a balance of probabilities.
3. The Claimant seeks Kshs.84,000. Her evidence, however, establishes an M-Pesa payment of only Kshs.24,000. A fact that the Claimant also admitted during trial. She further alleges that part of the money was advanced in cash, but no independent evidence was called to corroborate the alleged cash payments. There is neither an acknowledgement of receipt nor other documentary evidence demonstrating that the alleged cash payments were in fact made to the Respondent.
4. The Claimant further relies upon a sum of Kshs.49,800 allegedly paid to the Respondent by her son, John Mburu Njoroge, on her instructions. It is not disputed that John is the Claimant's son, and M-Pesa statements relating to the alleged payments were produced in evidence. The Court is therefore mindful that proceedings before the Small Claims Court are intended to be informal and expeditious and that the Court is not required to apply the strict rules of evidence applicable in ordinary civil proceedings.

5. However, informality of procedure does not relieve a claimant of the obligation to establish the essential elements of her claim. Section 32 of the Small Claims Court Act, 2016 provides that the Court is not bound by strict rules of evidence but may receive such evidence as it considers appropriate for the determination of the dispute. This provision facilitates access to justice; it does not authorize the Court to presume facts which have not been established.
6. The M-Pesa statements attributed to John establish, at most, that the identified transactions occurred. They do not conclusively establish the purpose for which the money was transmitted, that the money was transmitted on behalf of the Claimant, or that the Respondent received it pursuant to the transaction forming the subject of the present claim. The person who allegedly made the payments was a material witness on these matters. The Claimant did not call him to explain the transactions or connect them to the alleged indebtedness.
7. The Court cannot speculate as to the purpose of a financial transaction merely because the recipient and the Claimant have a familial relationship with the sender. The evidential burden remained upon the Claimant to establish the nexus between the payments and the debt pleaded in the claim.
8. Further, to the extent that the Claimant's claim constitutes a claim for a specific monetary sum arising from particular payments allegedly made to the Respondent, the amount must be specifically pleaded and proved. The Court of Appeal in **Hahn v Singh [1985] KLR 716** stated that special damages must not only be specifically pleaded but must also be strictly proved. The fact that the proceedings are before the Small Claims Court does not transform an unproved monetary assertion into evidence of liability.
9. Accordingly, the Court finds that the Claimant has proved only that Kshs.24,000 was transmitted to the Respondent by her. The alleged cash component and the alleged Kshs.49,800 said to have been paid by John Njoroge have not been sufficiently connected to the contractual obligation alleged by the Claimant. The claim for Kshs.84,000 is therefore not proved to the required standard.
10. The Respondent, on the other hand, contends that he has settled the amount due and has in fact paid an excess of Kshs.13,000.
11. The Respondent's computation includes Kshs.6,000 arising from the difference between the Kshs.24,000 allegedly advanced to him and the Kshs.30,000 which the Claimant herself acknowledges having received from him.
12. The Court finds merit in this aspect of the counterclaim. The Claimant cannot simultaneously maintain that the Respondent owes her Kshs.84,000 while acknowledging receipt of Kshs.30,000, when the amount she establishes as having been advanced to the Respondent is only Kshs.24,000, unless she establishes some additional enforceable liability. No such liability has been satisfactorily proved.

13. The Respondent further claims Kshs.7,000 allegedly withdrawn at the Directorate of Criminal Investigations via Mpesa Agent and allegedly remitted to the Claimant to secure his release. On this aspect, the evidential position is different. The Claimant denies receiving or benefiting from the money and contends that the Respondent ought to pursue the DCI in respect thereof. The Respondent did not produce evidence establishing that the Kshs.7,000 was paid to the Claimant, at her request, or for her benefit. There is therefore no sufficient evidential basis upon which the Court can find that this sum constitutes a recoverable amount against the Claimant.
14. The Claimant's contention that the Respondent's payment of Kshs. 30,000/= being more than the Kshs. 24,000/= she has proved was advanced, demonstrates a greater indebtedness is not persuasive. The burden remained upon the Claimant prove the underlying transaction and the amount outstanding; it cannot be reversed by requiring the Respondent to explain an alleged excess payment before the Claimant has established the debt claimed.
15. The Court consequently finds that the Respondent has proved the Kshs.6,000 component of his counterclaim, but has not proved the additional Kshs.7,000. The counterclaim therefore succeeds in part in the sum of Kshs.6,000.

Conclusion

1. The upshot of my findings therefore is that: -
2. ***The Claimant's claim for Kshs.84,000 has not been proved and is dismissed.***
3. ***The Respondent's counterclaim succeeds in part in the sum of Kshs.6,000.***
4. ***The Respondent shall have costs of the suit and of the counterclaim assessed at Kshs. 3,000/= on the main suit and Kshs. 3,000/= on the counterclaim.***

JUDGMENT DATED, SIGNED AND DELIVERED VIA CTS AT MALABA SMALL CLAIMS COURT
THIS 17TH DAY OF SEPTEMBER 2026.

A.Z. OGANGE

R.M/ADJUDICATOR

17.09.2026

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Prepared on 28 October 2026 · Esheria