

Verbal Contracts in Kenya

In Kenya, everyday businesses and personal dealings are sealed with a handshake, or a simple conversation. For convenience, these verbal agreements remain more common than written contracts. The critical question is whether they hold any legal weight.

Validity and Enforceability

Under Kenyan law, the answer is generally yes. The **Law of Contract Act (Cap 23)** does not require every contract to be in writing. An oral agreement is valid and enforceable provided it satisfies the classic elements of a binding contract: a clear offer, unqualified acceptance (unequivocal agreement to the terms by the other party), valuable consideration (something of value exchanged by each party), capacity of the parties, and legality. Kenyan courts routinely uphold such agreements when their existence and terms can be proved through evidence such as witness testimony, subsequent conduct, payments, text messages, or emails. This position was upheld by the Court of Appeal in **Pride Inn Limited vs Thatchmaanz Limited [2026]**.

The Exceptions

Section 3 of the **Law of Contract Act** requires that contracts for the sale or other disposition of land, or any interest in land, must be in writing and signed by the parties. An oral agreement to sell land is therefore unenforceable as a contract.

Other categories that require written contracts include guarantees, insurance contracts, and hire-purchase agreements.

Risks and Practical Drawbacks

While the law recognizes oral contracts, reliance on them introduces unnecessary commercial and evidentiary risk.

- a. Even when an oral contract is legally binding, enforcing it is often difficult. Without a written record, parties may genuinely, or conveniently disagree about the precise terms agreed.
- b. Difficult to prove. Proving the existence of the contract, the exact obligations, and any breach becomes a matter of competing recollections and circumstantial evidence- “he said-she said”.
- c. Non-performance is harder to establish. There may be inconsistencies between what was said and what was later done thus undermining a claim. A Court of law may find the terms too uncertain to enforce.
- d. Invalid and unenforceable in some contexts. For instance, in sale of land transactions.

Conclusion and Recommendation.

Verbal agreements remain valid and frequently used in Kenyan commercial life. They are binding when the essential elements are present. However, due to the risks associated, they should never be your first choice, more so in a high-stake transaction. If you enter into an oral agreement, follow it promptly with a written contract. Moving from a verbal to a written contract is not a sign of distrust, it is a safeguard of the contractual relationship of the parties.