



**Premier Credit Limited v Sielei (Commercial Appeal E206 of 2020)
[2024] KEHC 10275 (KLR) (Commercial and Tax) (15 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10275 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E206 OF 2020**

PM MULWA, J

AUGUST 15, 2024

BETWEEN

PREMIER CREDIT LIMITED APPELLANT

AND

BRIGID CHEMUTAI SIELEI RESPONDENT

JUDGMENT

1. The appellant herein being dissatisfied with the decision of the Honourable Adjudicator at the Small Claims Court at Nairobi delivered on 21st November 2022 in SCCCOMM E5599 of 2022 appealed to this court against the whole judgment on the following grounds;

- “ 1. 1. That the Learned Senior Resident Magistrate/Adjudicator erred in law and fact by holding that the interest charged by the appellant was exorbitant and unconscionable.
2. That the Learned Senior Resident Magistrate/Adjudicator exceeded her mandate and erred in law and fact by holding that the loan amount be subjected to a 13% interest rate based on current bank prevailing interest, despite the Appellant not being a bank.
3. That the Learned Senior Resident Magistrate/Adjudicator erred in law and fact by not giving weight and consideration to the Appellant’s evidence, submissions and case laws cited.
4. That the Learned Senior Resident Magistrate/Adjudicator wrongly applied the applicable principles of law in arriving at the judgment.”



2. Based on the following, the appellant prayed that the judgment dated 21st November 2022 be set aside and the counterclaim therein dated 25th October 2022 be allowed as prayed.

Analysis and determination

3. The appellant filed a record of appeal dated 2nd June 2023 and written submissions in support of its appeal while the respondent filed written submissions dated 27th November 2023 in opposition to the appeal.
4. The court has considered and analysed the entire record of appeal and the pleadings filed and the cited authorities in either case.
5. In her judgment dated 21st November 2022, the Learned Adjudicator found that the interest charged by the appellant was unconscionable and ordered the loan amount to be subjected to a 13% interest rate based on the bank interest rates. The Learned Adjudicator further ordered the respondent to pay a balance of Kshs. 30,501/- to the appellant.
6. The grounds of appeal may be condensed to the following issue for determination; whether the adjudicator erred in law and in fact by holding that the interest charged by the appellant was exorbitant and unconscionable.
7. The appellant submitted that the respondent willingly entered into the loan agreement and was bound by its terms and that the adjudicator erred in interfering with the legally binding contract between the parties.
8. On the other hand, the respondent submitted that the adjudicator rightfully concluded that the interest charged by the appellant was exorbitant and was fair in applying the prevailing bank interest rates.
9. In the present case, it is not disputed that the respondent obtained a loan of Kshs.250,000/- from the appellant and that the respondent had paid a total sum of Kshs. 256,224/=.
10. The area of contention between the parties is whether the interest charged by the appellant was exorbitant and unconscionable.
11. Under the loan agreement signed by both parties, the respondent was to repay the loan in 84 months at a total sum of Kshs. 896,784/- at an interest rate of 2.53% per month which amounted to an annual interest rate of 30.36%.
12. In the Court of Appeal case of Margaret Njeri Muiruri v Bank of Baroda (Kenya) Limited [2014] eKLR it was held:

“It is not for the Court to rewrite a contract for the parties. As this Court held in National Bank of Kenya Ltd vs Pipeplastic Sankolit (K) Ltd. Civil Appeal No. 95 of 1999 ... ‘a Court of law cannot rewrite a contract with regard to interest as the parties are bound by the terms of their contract.’ Nevertheless, courts have never been shy to interfere with or refuse to enforce contracts which are unconscionable, unfair or oppressive due to the a procedural abuse during formation of the contract, or due to contract terms that are unreasonably favourable to one party and would preclude meaningful choice for the other party. An unconscionable contract is one that is extremely unfair. Substantive unconscionability is that which results from actual contract terms that are unduly harsh, commercially unreasonable, and grossly



unfair given the existing circumstances of the case (See Black’s Law Dictionary, 9th Edition, Gardner, Ed.)”

13. In this case, the loan agreement attracted an annual interest rate of 30.36% and the loan of Kshs. 250,000/- would be repaid to a total amount of Kshs. 896,784/- within a period of 84 months. This amount is over three times the principal amount that was borrowed by the respondent. I do not hesitate to find the same as grossly unfair and disturbingly punitive. Guided by the authority above on unconscionability of contracts, I am of the view that it is grossly unfair for the appellant to levy such a punitive interest rate.
14. The loan agreement is thus unconscionable and on this basis, its enforcement calls for interference by the court.
15. I therefore agree with the finding of the lower court that the interest charged by the respondent was exorbitant and unconscionable. The Learned Adjudicator was right to subject the loan amount to 13% interest rate based on the prevailing bank interest rate at the time.
16. Consequently, I find no reason to set aside the decision of the lower court and I confirm the same. This appeal is therefore dismissed with costs.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF AUGUST 2024.

P. MULWA

JUDGE

In the presence of:

Ms Gathoni h/b for Mr. Mbaabu for Appellant

N/A for Respondent

Court Assistant: Lilian

