



REPUBLIC OF KENYA



**Munoru v Equity Bank Ltd & another (Civil Appeal 59 of 2020)  
[2023] KEHC 25786 (KLR) (28 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25786 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL 59 OF 2020  
EM MURIITHI, J  
NOVEMBER 28, 2023**

**BETWEEN**

**STEPHEN KIREMA MUNORU ..... APPELLANT**

**AND**

**EQUITY BANK LTD ..... 1<sup>ST</sup> RESPONDENT**

**CREDIT REFERENCE BUREAU AFRICA LTD T/A TRANSUNION .... 2<sup>ND</sup>  
RESPONDENT**

*(Being an appeal from the Judgment and decree of the Hon. Tito  
Gesora (SPM) delivered on 2/7/2020 in Maua CMCC No. 117 of 2016)*

**JUDGMENT**

1. By an amended plaint dated 13/3/2019, the appellant (the plaintiff in the trial court) sued the respondents (the 1<sup>st</sup> and 2<sup>nd</sup> defendants in the trial court) seeking:
  - a. A declaration that the plaintiff is not indebted to the 1<sup>st</sup> defendant and therefore the reference to the 2<sup>nd</sup> defendant as a loan defaulter was malicious and without cause and an order do issue that the plaintiff's name be delisted from the 2<sup>nd</sup> defendant as a defaulter forthwith.
  - b. General Damages for maliciously listing the plaintiff as a loan defaulter and causing him loss and for defamation.
  - c. A refund of all monies unlawfully and illegally held by the 1<sup>st</sup> defendant from the plaintiff's accounts.
  - d. Costs of this suit.



2. The appellant's claim was that on 26/10/2009, the 1<sup>st</sup> respondent gave him a loan of Ksh. 1,000,000 through check off system from his TSC salary through his Equity Bank Account No. 04005xxxxxxx. The said loan was to be repaid in 60 monthly installments of Ksh. 24,853. When the first installment fell due in November 2009, it was deducted from his savings account also held at Equity Bank. Thereafter, the loan repayments continued smoothly from the appellant's pay slip until the loan was fully paid up in October 2014. However, the 1<sup>st</sup> respondent erroneously made another deduction in November 2014 and June 2015. The 1<sup>st</sup> respondent withheld proceeds from the tea bonus payment for the year 2016 and 2017 which were channeled through it yet the appellant owed the 1<sup>st</sup> respondent no money. The 1<sup>st</sup> respondent, without any prior notice or plausible grounds whatsoever, forwarded the appellant's name to the 2<sup>nd</sup> respondent, which listed him as a credit defaulter and therefore not eligible to any financial borrowing. As a consequence of the 1<sup>st</sup> respondent's action, which were malicious, malafides, malevolent and actuated by ill will, his borrowing capacity was hampered and he suffered substantial loss.
3. The respondents denied the case vide their separate defences dated 7/12/2016 and 3/11/2016.
4. Upon full hearing, the trial court rendered thus, "I am satisfied that a case against the 1<sup>st</sup> defendant is well proved. A declaration is issued in terms of prayer 1 of the amended plaint. The 1<sup>st</sup> defendant shall cause notice to issue to the 2<sup>nd</sup> defendant to delist the plaintiff as a defaulter so that there's orderliness of process so that 2<sup>nd</sup> defendant's record shall not have plaintiff as a defaulter. The 1<sup>st</sup> defendant shall refund to the plaintiff the sum of Kshs. 150,000/- with interest from the date of filing suit at court rates, until payment in full. Costs of the suit as against the 1<sup>st</sup> defendant are awarded to the plaintiff. In the claim against the 2<sup>nd</sup> defendant is dismissed with costs."

### **The Appeal**

5. On appeal, the appellant by his Memorandum of Appeal filed on 30/7/2022 set out 8 grounds of appeal as follows:
  - a. The magistrate erred in law in holding that the appellant did not qualify for award of general damages for malicious listing as a defaulter and for defamation.
  - b. The learned trial magistrate erred in law and fact in not assessing and awarding damages for malicious listing as a defaulter and for defamation despite finding that the appellant was not in default of any loan with the 1<sup>st</sup> respondent.
  - c. The learned trial magistrate erred in law and fact in disregarding the evidence of the plaintiff.
  - d. The learned trial magistrate erred in law and fact in failing to hold that the plaintiff had proved his case on a balance of probabilities as is required by law for award of damages for malicious listing as a defaulter and for defamation.
  - e. The learned trial magistrate erred in law and fact in not analyzing the evidence on record exhaustively to reach a just conclusion.
  - f. The learned trial magistrate erred in law and fact in writing an incomplete judgement because he did not consider the prayer for general damages for malicious listing as a defaulter and for defamation.



- g. The learned trial magistrate erred in law and fact in dismissing the claim against the 2<sup>nd</sup> respondent with costs yet there was ample evidence of their culpability.
- h. The learned trial magistrate erred in law and fact in awarding costs of the suit to the 2<sup>nd</sup> respondent against the appellant yet the problem was caused by the respondents jointly.

### **The Cross Appeal**

6. The 1<sup>st</sup> respondent filed a Cross-Appeal on 26/4/2023 on grounds that:

- a. The learned trial magistrate erred in law and fact in holding that the appellant had proved his case to the required standard when he failed and thereby arrived at a wrong decision.
- b. The learned trial magistrate erred in law and fact in declaring the appellant was not indebted to the 1<sup>st</sup> respondent when the evidence produced demonstrated an outstanding balance prior to the filing of the suit.
- c. The learned trial magistrate erred in law and fact in holding the credit information passed on to the 2<sup>nd</sup> respondent regarding the appellant credit standing was misleading or unreliable and thereby arrived at a wrong decision.
- d. The learned trial magistrate erred in law and fact in holding that the 1<sup>st</sup> respondent sharing of credit information with the 2<sup>nd</sup> respondent on the appellant's standing negatively affected his credit rating and thereby arrived at a wrong decision.
- e. The learned trial magistrate erred in law and fact in holding and declaring the 1<sup>st</sup> respondent owed to the appellant a sum of Ksh. 150,000/= when there was no such claim which had been specifically pleaded, court fees paid for and proved by the appellant to the required standard and thereby arrived at a wrong decision.
- f. The learned trial magistrate erred in law and fact in holding the 1<sup>st</sup> respondent acted in breach of contract in affording the appellant more time to repay the loan and thereby arrived at a wrong decision.
- g. The learned trial magistrate erred in law and fact in failing to appreciate that the bank statement was the only prove of the appellant outstanding loan amount and not the appellant pay slip and thereby arrived at a wrong decision.
- h. The learned trial magistrate erred in law and fact in shifting the burden of proof to the 1<sup>st</sup> respondent when it had no obligation and thereby arrived at a wrong decision.
  - i. The learned trial magistrate erred in law and fact in failing to evaluate the evidence by the 1<sup>st</sup> respondent nor take cognizance of the 1<sup>st</sup> respondent's submissions and the case laws put to him and thereby arrived at a wrong decision.



## Duty of the Court

7. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower court and satisfy itself that the decision was well-founded. In *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus: "...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."

## Evidence

8. PW1 Stephen Kirema Munoru, the appellant herein and a retired teacher testified that, "I am a customer at Equity Bank. I have an account No. 040019xxxxxxx. I opened the account around 2019. I took a loan twice with Equity Bank. I applied for a loan in October, 2009 and it was approved on 26/10/2009. The loan was for 1 million. It was to be repaid for 5 years. The loan was to be repaid by check off system. Equity bank informed my employer and they could deduct my salary to repay the loan. Witness refers to application for the loan – P. exhibit 1. Before the bank started deducting the loan – Equity Bank Maua deducted the loan manually from my account for the salary of November, 2009. From December, my employer started deducting the salary from my pay slip. I have pay slips confirming that my employer used to deduct the loan until they stopped. Bundle of pay slips – P. exhibit 2. I was to clear the loan in November, 2014. I was informed that I had not completed the loan. I got the information that interest rates had been altered after I retired. This information was not relayed to me while I was servicing the loan. I usually deposit other monies from my tea farming go through the Equity Bank. After I retired the bank wrote to me and informed me I had not cleared the loan but I knew my loan had been fully settled by the time I retired as per the terms of the agreement. The bank started collecting money in my account that came from my tea pay out. The bank did not inform me how much was outstanding. The TSC had deducted all my money by December, 2017 but in June 2015, while I was going on retire the bank had written a letter to my employer to deduct my salary purporting I had a loan with the bank. That was my last salary the amount was 24,853. The deductions stopped but the bank started deducting my tea pay out money. 150,752 was deducted between 25/1/2016 to November, 2017. I have a statement highlighting all the deductions. Statement for 2016 - 2017 – P. exhibit 3. I paid all my loan but further sums deducted from my account. I have not been cleared by the bank and I have been listed as a defaulter by CRB and I was listed while they were deducting money from my account. I have my CRB status which I received from my current bank when I applied for a loan. Status from CRB – P. exhibit 4. I have been blacklisted hence I was not able to obtain a loan from Co-op Bank. I have suffered because of my blacklisting. I am seeking refund of all my monies erroneously deducted from November, 2009 to date with interests. I am also seeking for the period I have suffered for erroneous blacklisting. Compensation for my works that have stalled since the bank blacklisted my name. Case expenses. After I took the loan I went to ask statement from the bank. I was told to apply for the statement. It took me a whole day to obtain the statement and I was told to come after 2 days. After the 2 days the statement wasn't available. I went to another branch of Equity Bank and applied for the statement and was given the statement on the same day. What surprised me was that I couldn't get transaction from 2009. It started from 2013 that's when I realized there was something fishy. I went to my former lawyer and they wrote to the bank to request for a full statement. I took the letter to Equity Bank Maua and the Operations Manager told me they do not take orders from Advocates and refused to take the letter. In 2017 my ATM card was expired. I went to the bank but they told me my account was in red hence they couldn't give me an ATM card. I was told to pay



600 to get an ATM card. After that I was told the money was not enough. My account had a debt I had to add an additional 200/ to get the card. Only to be told machines didn't produce my card and i had to go without the card. I asked Equity Bank to give me a letter. I had signed requesting for another credit but they refused. I was told to go to Nairobi Headquarters wherever I was referred to refused to give me the letter. I had no alternative but to come to court. Demand letter dated 08/07/2016 – P. exhibit 5.”

9. On cross examination by counsel for the 1<sup>st</sup> respondent, he stated that, “No. 0721213075 belongs to me and it's indicated in P. exhibit 1. Each and every page in P. exhibit 1 is signed and that's my signature. I understood the contents of the document and I signed. Paragraph 3 of P. exhibit 1 – The lender reserves the right to amend interest charges without prior notice to borrower. I was aware of the provision. Paragraph 10 of P. exhibit 1. The bank can merge any of my accounts to clear my liability. I was denied a loan by Co-op Bank. I have a document to confirm I applied for a loan from Co-op Bank. I have the CRB letter which showed I do not qualify for any loan. I got the CRB from Co-op Bank that I do not qualify for any loan. I do not know that the law requires that I complain to CRB when listed. I enquired from Equity Bank why I was referred to CRB. I do not have any document in court. I was notified of the listing in CRB. I received an SMS. 1<sup>st</sup> deduction in 2009 came from my salary directly. It is not shown in the statement because it begins at 2013. I did not ask for my loan statement. I did not make a follow up with the bank to confirm the loan had been settled. P. exhibit 1 permitted examination of interest rate.”
10. On cross examination by counsel for the 2<sup>nd</sup> respondent, he stated that, “It is stated that interest rate can be changed by the bank without me being notified. I didn't follow up with the bank to confirm clearance with loan. I was notified that I will be listed for an outstanding after I had retired. P. exhibit 4 is from Co-op Bank. P. exhibit 4 indicates CRB. I have not received any letter from 2<sup>nd</sup> defendant or any report from 2<sup>nd</sup> defendant. I did not visit the Officer of CRB. I knew I was listed. I was not interested to know why I was listed. I did not have any transaction with CRB. I sued CRB. I am not aware there is a procedure for making complaints to CRB. I was not aware of the procedure for making complaints against any listing by CRB. I did not follow any procedure. I have a claim against CRB because they blacklisted me. I do not have other report apart from P. exhibit 4. I do not know my current status. I am aware it is the bank that forwards names to CRB. The bank has an obligation to submit accurate data to CRB. I suffered substantial loss economically since I couldn't obtain loan from Co-op Bank.”
11. On re-examination, he stated that, “P. exhibit 4 was generated by Co-op Bank. The bank denied me loan on the strength of P. exhibit 4. I had requested Equity bank to remove my name from CRB by letter dated 08/07/2016 (P. exhibit 5). I was not able to obtain statements from the year 2009. Equity Bank Maua are custodians of the statements. The offer letter implied that interest could be varied. The repayment period was fixed at 60 months and deductions are 24853 per month. The deductions were made for 60 months by TSC. I do not know whether the bank informed TSC of any variation on interest.”
12. DW1 Johnson Rithaa adopted his statement recorded on 15/3/2018 together with the list of documents dated 7/12/2016 and the supplementary list of documents dated 15/2/2018 as his evidence in chief. He went on to testify that, “D. exhibit 8 – Customer credit report by CRB African Ltd. There was a variation in interest rate and the same was reflected in plaintiff account on 15/11/2011. The plaintiff had 2 options in case of variation of interest. That is follow the bank guidelines or pay the loan. The bank had options 1<sup>st</sup> is for the client to enlarge installment or extend the period. In this case the bank expanded the period the plaintiff was employed and he must have some money left from his salary. P. exhibit 3 is the Operations Account and not the loan account. I do not know the exact date by TSC remitted money to TSC in November, 2016. By this time the plaintiff had not completed paying the loan. P. exhibit 4 – the plaintiff was listed June, 2014. The bank submitted the plaintiff's



name since customer payment was not being done. CRB is just a guideline when offering a loan to a customer. It is up to the institution to grant loan even when customer is listed in CRB. It is the bank that gives the CRB institution information. The information was submitted to CRB in good faith and in compliance with law. We notified the plaintiff of the notice to be listed by CRB. Bank normally issues statements subsistence of the loan. Statement was issued upon request.”

13. On cross examination by counsel for the appellant, he stated that, “Bank could alter interest without notice. We issued a notice through the Daily Nation i.e through a Public newspaper. We have customer’s details including phone numbers. This is the address given at the time of opening the account. The notification was done through newspaper. No notice as sent to customer’s postal address or phone number. The client was educated and a teacher and he had signed the contract and was aware of the change of interest. He didn’t have an option of redeeming the loan once he saw the notice increasing the interest. The options are not contained in the offer letter. Another option is to increase installments but it’s not indicated in the offer letter. The other options are indicated in the notice by Kenya Banker’s Association. If the client is interested he can be made aware of the options. The options are captured in the letter of offer. The letter rate was reviewed from 1.4% to 2%. I can’t state the exact figure of the interest increased. In 2013 interests rates went down and I have not done the calculations. The client does not owe the bank currently but the same can be gotten from the statement. The amount of April, 2016 90,717 and 68,000 runs separately from the loan outstanding. The outstanding is 90,717 but the arrears was 68,000/- if the client would have paid 68,000/- then he would have continued with the repayment. A total of 150,000/ had been recovered from tea proceeds. There is no way for me to confirm the amount and calculations in the statement. Check off system is whereby employer deducts money and remits it to the bank. The agreement we have is with the customer and from the document supplied we approach the employer who is not bound. November, 2009 sum 24853 was debited from plaintiff’s account directly. If at all this happened then the employer had not effected the check off. There was deviation by the bank from the contents of the letter of offer. I cannot confirm whether the notice of interest was sent to plaintiff’s address. Send information to CRB for employer or any other institution. In case of negative listing of CRB I could find out the underlying factors before I can determine whether they give credit. We normally use CRB listing. CRB status report is a guideline for the lender to make a decision. I do not know whether the re-listing denied the plaintiff an opportunity to obtain loan.”
14. On cross examination by counsel for the 2<sup>nd</sup> respondent, he stated that, “The bank contacts CRB for re-listing. We notify customers when we intend to list the customer. The customer was notified a month before the listing. The amount indicated in CRB listing is the exact amount outstanding. I am aware of the CRB regulations and the bank has an obligation to provide accurate information and monthly updates to CRB regarding customers. This was done by the bank. The loan was settled in 2017 and CRB was updated. CRB usually updates its database. CRB and bank are governed by a contract and regulations. We also have terms of reference between CRB and Equity Bank. I am aware there is an indemnity clause in which the bank will indemnify CRB.”
15. On re-examination, he stated that, “The bank was not obligated to confirm client change of interest. The client was informed of change of interest rate through daily nation newspaper. The interest rate changed after loan was given. The options were at the preserve of Kenya Bankers Association. The plaintiff did not inquire as to any of the options. CRB Listing is not the only document a bank looks at to determine whether to grant a loan. P. exhibit 3 is not the loan account. I have not been shown anything to confirm the amount of 24853 was done directly.”
16. DW2 Rosemary Gathino Mbugua, the legal officer at Credit Reference Bureau Africa Ltd adopted her statement recorded on 11/10/2018 as her evidence in chief. She testified that, “There are regulations –



Regulations 35 of CRB regulation 2013. They provide that where a customer believes that information is inaccurate erroneous or outdated. They should notify the bureau and within 5 working days the bureau will attach a note warning that information is incorrect and investigations should be done. The bureau refers to the listing institution informing it of the notice of dispute. We did not get a complaint in our institution over this matter. As at 10/11/2016 the plaintiff had three accounts listed with us. One was no performing and two were performing. I have a report on page 31-32 in our bundle of documents. I wish to produce it – credit report as at 10/11/2016 – D2 Exhibit 1. The listing institution is tasked with responsibility of ensuring accuracy of information as per CRB regulations – Regulations 5. The listing institution are required to submit customer information on a monthly basis. They are supposed to send us information in form of amendments to delete or remove a customer. We received information after the suit was instituted where the non-performing account was updated to performing account with a default history. That was on 31/10/2017. The status of the plaintiff's account is a performing account with default history. It means at some point he was not servicing the loan and it went into arrears. It is longer non performing. It reads the plaintiff has declined the balance. The relationship between 1<sup>st</sup> defendant and Bureau is a contract an agreement for submission of information. It is a terms and conditions business pg 23-30 in our bundle of documents. I produce it as evidence – D2 – Exhibit 2. There is an indemnity clause between the Bureau and the bank. It is in clause 6 in terms and conditions. The bank indemnifies CRB for any liability. We attached a notice of claim against the first defendant. The listing institution is to blame for any information we have which may be incorrect.”

17. On cross examination by counsel for the appellant, she stated that, “The 2<sup>nd</sup> defendant is not a party to the loan agreement between the plaintiff and the 1<sup>st</sup> defendant. There is a procedure for removal of an aggrieved party. The regulations provide for a timeline within which a removal can be removed. if a party suffers prejudice and damage the proper forum would be the court. The regulations do not provide for compensation for damages for negative listing. We received information from the bank and we are not obligated to verify the account. We received updated to performing zero balance. It was subsequent to the filing of this suit. There were two other performing accounts. He had three loan accounts. We hold accounts only. The one updated was 04005xxxxxx. That was the non-performing. Performing ones – 04001xxxxxx, 04005xxxxxx. The last two accounts never went to arrears. The first defendant issued a notice of default. The notice is not copied to our institution. I am not aware if such notice was issued. Whatever information we get from the first defendant we act on it until the point of dispute.”
18. On cross examination by counsel for the 1<sup>st</sup> respondent, she stated that, “Once a customer is dissatisfied with being listed they should notify us. We did not receive such notice from the plaintiff. We received an amendment from 1<sup>st</sup> defendant. At some point one account was non-performing. We have an agreement with the 1<sup>st</sup> defendant – Terms and conditions. There is nowhere Equity Bank is mentioned. We do not do any investigations once we receive information from the bank.”
19. On re-examination, she stated that, “Under Regulation 35(5) if a customer believes the information is inaccurate they inform the bureau then within 5 days the Bureau gives notice of dispute to listing institution requesting for accuracy. The listing institution then gives information within 14 days for a listing to be amended or deleted. The customer has a remedy to approach us before going to court. We do not do investigation as we have no capacity. The customer information held by the bank is confidential. We cannot tell whether a listing institution has issued a notice of default. We check online and verify that the non performing account was amended to performing account with default history. It is only banks who investigate and verify information of customers. The agreement – terms and conditions is signed by James Mwangi who is the CEO of Equity Bank.”



## Submissions

20. The appellant accuses the 1<sup>st</sup> respondent of failing to exercise reasonable care over the entire relationship with him when it forwarded incorrect information to the 2<sup>nd</sup> respondent, and cites *Nicholas Ombija v Kenya Commercial Bank Limited (2009) eKLR*. He urges that he suffered defamation and humiliation in the hands of the respondents by the inaccurate credit information which was published maliciously, deliberately, recklessly, negligently. He urges that the publication negatively affected his integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, and he was therefore entitled to damages for malicious listing as a defaulter and for defamation, as held in *Joseph Maina Mwaura v Equity Bank of Kenya Limited (2019) eKLR*. He urges the court to set aside the trial court's judgment and substitute it with an award of general damages for malicious listing and defamation of Ksh.2,000,000. He urges that the 2<sup>nd</sup> respondent was equally negligent and therefore liable because it failed to verify the information forwarded to it by the 1<sup>st</sup> respondent, as required by regulation 27(1)(h) of the Credit Reference Bureau Regulations, 2013.
21. The 1<sup>st</sup> respondent urges that the appellant's listing was done with just cause, with prior notice and his information was only released to authorized persons as per Regulation 26(1) of the CRB Regulations, and cites *Alice Njeri Maina v Kenya Commercial Bank Limited (2018) eKLR*. It urges that since the appellant disregarded the procedure set out under Regulation 35 of the Credit Reference Bureau Regulations 2013, this suit is prematurely brought and no action for damages can lie, and cites *Jamlick Gichuhi Mwangi v Kenya Commercial Bank Ltd & another (2016) eKLR*. It faults the appellant for failing to prove the elements of defamation as required by law, and cites *J Kudwoli & another v Eureka Educational and Training Consultants & 2 Others (1993) eKLR*, *Ouma v Nairobi City Council (1976) KLR 304* and *Swaleh C. Kariuki and another v Violet Omiso Okuyu (2021) eKLR*. It urges the court to dismiss the appeal but to allow the cross appeal with costs.
22. The 2<sup>nd</sup> respondent urges that the evidence produced by the appellant did not prove defamation or any malice in the listing and/or publication made to the 2<sup>nd</sup> respondent, and cites *Harrison Kariuki Muru v National Bank of Kenya Limited & another (2019) eKLR*. It urges that the statutory obligation and wherewithal to ascertain the accuracy of a customer's credit information is limited to the listing institution, and relies on *Intercom Services Ltd & 4 Others v Standard Chartered Bank (2002) eKLR*. It urges that since the appellant sidestepped the available statutory mechanism for the handling of disputed information, the suit against it is premature and its joinder to this suit was unnecessary and far-fetched. It urges that it is a disclosed agent of the 1<sup>st</sup> respondent and therefore entitled to full indemnity and costs.

## Analysis and determination

23. The issues for determination are whether the appellant proved his case against the respondents on a balance of probabilities and whether he was entitled to an award of general damages for malicious listing and defamation.
24. In October, 2009, the appellant took a loan of Ksh.1,000,000 from the 1<sup>st</sup> respondent which he was expected to repay within 60 months through check off system. The monthly deductions continued smoothly until 15/11/2011, when the 1<sup>st</sup> respondent, unilaterally altered the interest rate, which ultimately increased the loan amount due. That is when the woes of the appellant began. The resultant effect of the increased interest rate without the knowledge of the appellant was the eventual forwarding of his name to CRB for negative blacklisting as a defaulter.



25. DW1 acknowledged that the appellant's name was forwarded to the 2<sup>nd</sup> respondent for listing by the 1<sup>st</sup> respondent. On cross examination by counsel for the appellant, he stated that, "Bank could alter interest without notice. We issued a notice through the Daily Nation i.e through a Public newspaper. We have customer's details including phone numbers. This is the address given at the time of opening the account. The notification was done through newspaper. No notice as sent to customer's postal address or phone number...November, 2009 sum 24853 was debited from plaintiff's account directly. If at all this happened then the employer had not effected the check off. There was deviation by the bank from the contents of the letter of offer."
26. This court finds that the 1<sup>st</sup> respondent was obligated by law to personally notify the appellant of the alteration of the interest rates, and having failed to do so the appellant was entitled to refund, and the Court cannot fault the trial court in this regard.

#### *Listing as Defaulter*

27. The appellant testified that he had been erroneously listed as a defaulter by CRB yet he had fully repaid his loan. He stated that he was to clear his loan in October 2014. DW2 testified that, "...As at 10/11/2016 the plaintiff had three accounts listed with us. One was no performing and two were performing...The listing institution is tasked with responsibility of ensuring accuracy of information as per CRB regulations – Regulations 5...The listing institution is to blame for any information we have which may be incorrect." Her testimony is buttressed by P. exh. 4 which shows that the appellant had 3 accounts which were listed with CRB. The first and second listings were done on 15/6/2014 and 16/6/2014 for account Nos. 04005xxxxxxx and 04005xxxxxxx, while the third listing was done on 16/2/2016 for account No. 04001xxxxxxx
28. Consequently, the appellant's claim for damages for erroneous listing is unjustified, because he was in arrears when his loan account was listed with CRB on 15<sup>th</sup> June 2014.
29. This court finds that the information furnished by the 1<sup>st</sup> respondent to the 2<sup>nd</sup> respondent regarding the appellant's defaulting loan account was accurate.
30. Having successfully defended itself, the 2<sup>nd</sup> respondent was entitled to costs. There was evidently no wrong doing on the part of the 2<sup>nd</sup> respondent as it was unjustifiably joined to this case for acts of omissions on the part of the 1<sup>st</sup> respondent.

#### **Orders**

31. Accordingly for the reasons set out above, this court finds the appeal is without merit and it is dismissed.
32. The cross appeal is also dismissed.
33. File Closed.

Order accordingly.

**DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

