



**Dohashe Enterprises Limited v Speed Capital Limited & another (Civil Case 488 of 2014)
[2025] KEHC 370 (KLR) (Commercial & Admiralty) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL CASE 488 OF 2014
PM MULWA, J
JANUARY 23, 2025**

BETWEEN

DOHASHE ENTERPRISES LIMITED PLAINTIFF

AND

SPEED CAPITAL LIMITED 1ST DEFENDANT

CAREBASE INVESTMENT AUCTIONEERS 2ND DEFENDANT

JUDGMENT

1. By the plaint dated 28th October 2014 the plaintiff sued the defendants seeking the following reliefs:
 - i. A permanent injunction against the defendant/respondents and or their agents or servants from any future selling, disposing and or in any other way interfering with the parcel known as LR. No. 12506/224 (IR 40153) Juja area Kiambu County and Mavoko Town Block 3/28536 & 28537 Machakos County.
 - ii. Costs of the suit.
 - iii. Interests
 - iv. Any other relief.
2. In summary the Plaintiff's case is that on 20th June 2014 it approached the 1st Defendant for a loan facility of Kshs 3,000,000.00 payable within 6 months. The loan was secured by charges registered over the properties known as LR. No. 12506/224 (IR 40153) Juja area Kiambu county and Mavoko Town Block 3/28536 & 28537 Machakos County and a charge registered. The Plaintiff avers that the full loan amount was not disbursed by the 1st Defendant as agreed under the terms of the loan facility. Without



issuing the requisite notices, the 1st Defendant through the 2nd Defendant advertised the suit properties for sale, which the Plaintiff contends was premature, unlawful and in breach of the agreement.

3. The Defendants on 13th November 2019 filed the undated defence and counterclaim, denying the averments in the plaint. In the counterclaim the 1st Defendant alleged that the Plaintiff defaulted in repayment of the loan. It sought judgment against the Plaintiff for Kshs. 18,312,621.80 being the sum outstanding as at 25th October 2019 and other accrued interest at the rate of 10% per month, plus costs and interest.
4. Before the matter proceeded for hearing the Plaintiff paid the principal amount on 27th October 2015. As a result, the only issue remaining for consideration before the Court is the amount of interest due.
5. The matter proceeded for a hearing on 31st May 2021 before my brother Justice Mativo.
6. Dominic Gicheru Karanja – Pw1, the director of Dohasee Enterprises told the Court that he had borrowed a loan of Kshs 3,000,000.00 from the 1st Defendant, which was to be repaid within six months.
7. He stated that the principal amount of the loan was fully repaid. However, a dispute arose regarding the interest charged on the loan, which he contends was unjustified or irregular.
8. James Karege - Dw1, stated that he is the Receiving Manager of the 1st Defendant. He acknowledged that the principal loan amount had been fully repaid by the Plaintiff. He confirmed that there was no fixed term stipulated for the loan repayment. He informed the Court that the charge agreement provided for an interest rate of 10% per month. Dw1 stated that he was unaware whether interest continued to accrue after the principal amount was repaid.

Analysis and determination

9. At the close of the trial, the court directed the parties to file written submissions summarizing their respective cases and arguments. I have considered the submissions filed. The only issue for determination herein is whether interest is due, and if so to which party and at what rate and for what duration.
10. The Plaintiff submits that on 4th March 2016, this court ruled that the charge document was defective, null and void. Consequently, the charge could not confer upon the 1st Defendant the powers reserved for a chargee under the *Land Act*, including the statutory power of sale. The Plaintiff further contends that the ruling was not appealed against and is therefore binding on the parties to the suit.
11. Both parties agree that the money lending agreement dated 19th June 2014 provided an interest rate of 10% per month. The terms of the contract bind the parties. A Court of law cannot re-write a contract between the parties. The terms of the agreement bind the parties unless coercion, fraud or undue influence are pleaded and proved (See *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] eKLR).
12. The rationale for awarding interest on the principal sum is to compensate the lender for the deprivation of any money that is rightfully due to it, caused by the wrongful act or omission of the plaintiff. This position is supported by the decision in *Highway Furniture Mart Ltd v Permanent Secretary Office of the President & Another* [2006] eKLR.
13. According to the Defendant, the Plaintiff's failure to meet the repayment terms as agreed justified the accrual of interest to address the financial deprivation caused to the lender. As a result, the Defendant



demands Kshs 18,312,621.80 being outstanding interest as at 25th October 2019. This is despite evidence showing that the Plaintiff was loaned Kshs. 3,000,000.00.

14. In my view, the amount demanded as interest far exceeds the original loan amount, raising a concern of excessiveness and oppressiveness. It is disproportionate and arguably violates the principles of fairness and reasonableness in contractual obligations.
15. The court draws guidance in the Court of Appeal case in *Margaret Njeri Muiruri v Bank of Baroda (Kenya) Limited* (2014) eKLR:

“...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 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.”
16. In this case, the interest charged, being substantially higher than the original loan amount, may render the contract oppressive and unconscionable, justifying judicial intervention. Courts have consistently recognized the principle that terms within a contract, while binding, must not result in outcomes that are oppressive or unfair to one party. In this case, demanding interest over six times the original loan amount undermines fairness and equity in contractual dealings.
17. Both parties agree that the loan amount of Kshs 3,000,000.00 was fully repaid on 27th November 2015. I find that the Plaintiff defaulted for a period of 15 months. Interest, being a derivative obligation, arises from the existence of an outstanding principal. Once the principal is fully repaid, the basis for charging interest ceases unless explicitly provided for in the contract. In this case, there is no evidence suggesting that the loan agreement permitted the accrual of interest beyond full repayment of the principal.
18. It is my finding that the interest due ought to be calculated at 10% per month as per the terms of the contract. However, this calculation must be limited to the period during which the principal amount remained unpaid. Interest charged beyond the repayment of the principal sum would amount to unjust enrichment on the part of the lender and would violate the principles of equity and fairness.
19. The court acknowledges that the Plaintiff is liable for interest accrued on the loan amount only up to the date the principal sum was fully repaid on 27th October 2015. This conclusion aligns with both the contractual terms and the rationale underpinning interest obligations. Once the borrower fulfils their primary repayment obligation, the lender cannot claim further compensation through interest.
20. In *Kenya Hotels Limited v Oriental Commercial Bank Limited*, the court intervened to adjust excessive interest rates to align with equitable principles. Judicial intervention in such cases prevents outcomes that may unfairly burden borrowers and ensures contractual terms do not result in disproportionate enrichment for the lender.
21. While I respect the parties’ freedom to contract, equity necessitates intervention when the enforcement of contractual terms leads to grossly unfair or oppressive outcomes. In this spirit, I direct that the total interest charged should not exceed 100% of the principal sum.
22. The upshot is that, I allow the counterclaim insofar as it seeks interest on the loan amount up to the date the loan was fully repaid. In addition, the total interest recoverable is capped at 100% of the principal sum, which will accrue interest at commercial rates until full payment is made.



JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF JANUARY 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Onyancha for Plaintiff

Ms. Tuwei h/b for Mr. Kirimi for Defendants

Court Assistant: Carlos

