



**Momentum Credit Limited v Keiwua (Appeal E015 of 2024)
[2025] KEHC 388 (KLR) (Commercial & Admiralty) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 388 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
APPEAL E015 OF 2024
PM MULWA, J
JANUARY 23, 2025**

BETWEEN

MOMENTUM CREDIT LIMITED APPELLANT

AND

JUDDY CHEPNGENO KEIWUA RESPONDENT

*(Being an appeal from the judgment and decree of Hon Magistrate Khanali
Ogolla issued in the small claims court at Nairobi in SCCCOM E6129 of 2023)*

JUDGMENT

1. This is an appeal from the Small Claims Court given in SCCCOM No. E6129 of 2023. By a Statement of Claim dated 16th August 2023, the Claimant (now Appellant) moved the Court seeking judgment against the Respondent for the sum of Kshs 519,008.00, general damages, costs, and interest arising from a default in loan repayment.
2. On 30th August 2023 the Respondent filed a response together with a third-party notice. On 4th September 2023 the Respondent filed an amended response together with a counterclaim cancelling the claim against the third party. The Respondent sought to dismiss the Appellant's claim and also a judgment against the Appellant on the counterclaim in the sum of Kshs 681,045.00 together with interest and costs.

Background of the dispute

3. The Respondent obtained financial assistance from the Appellant on 6th July 2022, comprising a logbook loan of Kshs. 653,000.00 and insurance premium financing of Kshs. 93,961.00, totaling Kshs. 746,961.00. This was secured by motor vehicle KCP 837X. The respondent defaulted after paying only three installments, despite reminders and a demand letter issued on 21st September 2022.



Consequently, the vehicle was repossessed, auctioned for Kshs. 600,000.00, and the proceeds were insufficient to cover the then outstanding debt of Kshs. 1,065,438.00 leaving a balance of Kshs. 519,008.00. The Appellant seeks to recover this balance, along with general damages, costs, and interest.

4. The trial magistrate in her judgment allowed the counterclaim and entered judgment in favour in favour of the Respondent as against the Appellant for the sum of Kshs 600,000.00 with costs and interest therein from the date of the judgment until payment in full.
5. Dissatisfied with the court's decision the Appellant lodged this appeal raising the following 7 grounds:
 - i. The learned trial magistrate erred in allowing the Respondent's counterclaim in the sum of Kshs 600,000.00 costs and interest when the amount of the counterclaim was not particularized, pleaded nor proved.
 - ii. The learned trial magistrate erred in law and in fact in wholly disregarding the evidence and the submissions the Appellant adduced herein.
 - iii. The learned magistrate erred in law and in fact in finding that the claimant did not exercise the statutory power of sale as required by law and that this was evidence of fraud.
 - iv. That the learned magistrate erred in his finding of unjust enrichment on the part of the claimant as this determination appears to lack a basis in the established legal principles that govern cases of unjust enrichment.
 - v. That the learned magistrate erred in their interpretation and application of section 67 of the *Movable Property Security Rights Act* 2017 concerning the procedural requisite for securing the best possible price for the reposed assets.
 - vi. The learned magistrate failed to adequately consider and appropriately weigh the evidence presented by the Claimant which detailed the condition of the motor vehicle at the time of the sale, the difficulties faced and the efforts expended in obtaining the best possible price.
 - vii. The learned magistrate did not sufficiently consider the market dynamics and other relevant factors that influenced the sale price which oversight led to a failure to recognize the discrepancy between the reserve price and the actual sale price, and how external market conditions may have affected the discrepancy.
6. The Appellant sought that the appeal be allowed with costs and the judgment of the small claims be set aside.
7. Parties put in written submissions to dispose the appeal.

Appellant's submissions

8. The appellant argued on compliance with Section 67 of the Movable Security Rights Act, asserting that the repossession notice was properly issued and outlined the Respondent's default and consequences of non-compliance. According to the Appellant, they invoked the principles of unjust enrichment, asserting that the Respondent benefited from the loan and insurance without meeting repayment obligations.
9. The Appellant defended the sale of the repossessed vehicle for Kshs. 600,000.00, highlighting that its poor condition (missing engine and other damages) significantly reduced its market value. Legal precedents were cited, supporting a creditor's right to recover their debt provided reasonable precautions were taken.



10. The Appellant maintained that the Respondent's failure to make further payments after the initial three instalments constituted a breach of the loan agreement and that the magistrate failed to adequately apply the principles of unjust enrichment or consider market dynamics affecting the sale.

Respondent's submissions

11. The respondent contended that the appeal did not meet the criteria under Section 38(1) of the *Small Claims Court Act*, as it failed to demonstrate issues of law. They argued that the appeal sought to reexamine factual findings, which are beyond this court's jurisdiction, and urged the same be dismissed.

Analysis and determination

12. I have carefully considered the memorandum of appeal, the record of appeal, and the submissions presented by both parties.
13. As this case originates from the Small Claims Court, the provisions of Section 38 of the *Small Claims Court Act* apply. Appeals to this court are confined to matters of law only. The court cannot substitute the lower court's findings unless they are so unreasonable that no rational tribunal would have arrived at them (*John Munuve Mati v Returning Officer Mwingi North Constituency & 2 Others* (2018) eKLR).
14. It is trite law that appeals of this nature are on points of law. This appeal is akin to a second appeal to the Court of Appeal, being a final appeal. Thus, a second appellate court must determine matters of law only unless it is shown that the courts below considered matters they should not have considered, failed to consider matters they should have regarded, or that the entire decision is perverse. (See *Stanley N. Muriithi & another v Bernard Munene Ithiga* (2016) eKLR).
15. The Appellant argued that the trial court failed to properly consider the evidence and submissions they provided. By this ground, the appellant is inviting the court to consider re-evaluating the trial court's evidence, contrary to the provisions of Section 38 of the *Small Claims Court Act*. This court is at liberty to strike out the grounds raising the factual issues in line with Section 38 of the *Small Claims Court Act*.
16. The primary issue for determination will then be whether the trial court erred in its interpretation of Section 67 of the Movable Security Act. Specifically, whether the trial court's interpretation led to the dismissal of the Claimant's claim and the allowance of the Respondent's counterclaim.
17. The trial adjudicator considered all pertinent matters, including whether the repossession and sale of the collateral complied with Section 67 of the Movable Security Act, whether the notices were properly issued, and the calculation of the outstanding debt.
18. A court of appeal will not normally interfere with a finding of fact by the trial court unless it is shown the finding is based on no evidence or on a misapprehension of the evidence.
19. The trial magistrate, after evaluating the evidence adduced, opined that the Claimant had proved on a balance of probability that there existed a loan agreement and insurance premium which was signed by the Respondent. The court also emphasized that the Respondent signed the IPF loan application form while Raymond Rono was named as the next of kin.
20. Section 67 of the *Movable Property Security Rights Act* pertains to the remedies available to a secured creditor in the event of default by the debtor. This provision sets out the process and conditions under which a creditor can enforce their security rights over movable property.



21. The *Movable Property Security Rights Act* emphasizes fairness and transparency in the enforcement of security rights. Section 67 thereof ensures that secured creditors act responsibly, balancing their right to recover debts with the obligation to protect the interests of debtors and other stakeholders. This includes obtaining a reasonable price for repossessed collateral.
22. The valuation report dated 18th October 2022 established a principal forced sale value of Kshs. 1,000,000.00 and a principal market value of Kshs. 1,180,000.00 for the motor vehicle. However, the vehicle was sold at Kshs 600,000.00, significantly below its forced sale value. This discrepancy suggests a failure to comply with the statutory obligation to secure the best possible price, as mandated under the *Movable Property Security Rights Act*. Selling the vehicle below its forced sale value potentially contravenes the principles of fairness and transparency, prejudicing the debtor by exacerbating their financial burden.
23. The Appellant argued that the vehicle's condition contributed to its low resale value, yet provided no supporting evidence. The valuation report, which was presented in the lower court, had already accounted for the vehicle's condition in determining both the forced sale and market values. This undermines the Appellant's justification for the reduced sale price.
24. Furthermore, the Appellant's appeal primarily challenges the factual findings of the lower court, rather than raising substantive legal issues. I am not persuaded that the magistrate's decision, including the handling of the repossession notice, the application of principles of unjust enrichment, and the evaluation of the vehicle sale process, was unreasonable. Consequently, I find no compelling reason to interfere with the lower court's judgment.
25. I find no evidence that the Appellant raised purely legal issues within the appeal. Instead, the submissions appeared to challenge the factual findings of the lower court.
26. Based on the foregoing, it is clear that this appeal lacks merit. It is therefore dismissed with costs to the respondent assessed at Kshs. 30,000.00.

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

P.M. MULWA

JUDGE

In the presence of:

Mr. Maranga for Appellant

Mr. Musyoka for Respondent

Court Assistant: Carlos

