



REPUBLIC OF KENYA



KENYA LAW
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**Morjaria v Patel (Civil Case 153 of 2018) [2025] KEHC 2930 (KLR)
(Commercial & Admiralty) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL CASE 153 OF 2018
JWW MONG'ARE, J
MARCH 6, 2025**

BETWEEN

VIJAY MORJARIA PLAINTIFF

AND

SUNDIP JAGDISHROY PATEL DEFENDANT

JUDGMENT

1. The Plaintiff filed a suit vide a plaint dated 4th April 2018, seeking judgments against the defendant as follows:-
 - i. Payment of the principal sum of Kshs. 14,750,000/=.
 - ii. Payment for the Proceeds from the investments amounting to Kshs.4,750,000/=.
 - iii. Kshs.3,768,000/=, being money advanced to a third party, along with interest.
 - iv. Kshs.29,000,000/=, representing proceeds from the investment at a rate of Kshs.660,000/= per month for 44 months until full payment.
 - v. The balance of penalties agreed upon by the defendants, less amounts already paid.
 - vi. Damages suffered by the plaintiff.
 - vii. Costs of the suit.
 - viii. Any other relief deemed appropriate by the court.
2. The Plaintiff claims that they had a long-standing business relationship with Defendant, during which the Plaintiff provided capital to support the Defendant's business upon request. On 30th September, 2013, the Defendant proposed an investment of Kshs.6,250,000/= from the Plaintiff, with a promise



to repay Kshs.8,400,000/= by August of the following year. However, by 16th October, 2013, the Defendant had failed to honor this obligation and instead persuaded the Plaintiff to invest an additional Kshs.4,000,000/=, promising a return of Kshs.6,600,000/=.

3. The Plaintiff further asserts that the Defendant is fully aware of the outstanding dispute and has acknowledged the debt by issuing a cheque for Kshs.52,385,500/=. However, the cheque was dishonored by the bank upon presentation. Despite repeated demands and efforts to recover the funds, the Defendant has refused and/or neglected to repay the amounts owed to the Plaintiff.
4. In his statement of defense dated 28th May, 2018, the Defendant denies the Plaintiff's claims. He rejects the allegation that he promised the Plaintiff any interest on the invested sum and denies any discussions about bank accruals or penalties. The Defendant asserts that the Plaintiff's allegations are baseless and that the amounts mentioned are false. Furthermore, he denies acknowledging the debt and claims that the agreement was made under duress and coercion.
5. The matter proceeded to a hearing, and thereafter, the parties filed written submissions supporting their respective arguments.
6. The Plaintiff's case is that the Defendant owes a total of Kshs.14,750,000/=. This amount consists of:-Kshs.4,500,000/=, being the balance of a loan granted in 2013,-Kshs.6,250,000/=, provided on September 30, 2013, and-Kshs.4,000,000/=, advanced as a loan on October 16, 2013.
7. The Plaintiff argues that the total loan amount of Kshs.10,250,000/= was agreed to be repaid with a profit of Kshs.4,750,000/=, as promised by the Defendant.
8. The Plaintiff further contends that the Defendant's actions of issuing post-dated cheques for Kshs.660,000/= and Kshs.52,385,500/= serve as evidence of the agreement and acknowledgement of the debt.
9. The Defendant's case is that the sum of Kshs.52,385,500/= is excessive, arising from unreasonable interest and penalties. He claims that his admission to pay this amount was made under duress, following his arrest, and denies the validity of the calculations leading to the stated amount. The Defendant avers that the amount advanced to him was Kshs.10,250,000/=, out of which he has repaid Kshs.5,293,000/=.
10. The Defendant, citing the case of Nancy Muthoni Nyaruai vs Grace Wanjiku Mugure (2021) eKLR, submits that the court has the discretion to intervene in agreements where it can be demonstrated that the interest charged is illegal, unreasonable, oppressive, or fraudulent.

Analysis And Determination:-

11. I have carefully considered the pleadings; the documents and the parties' evidence and submissions made before the court and I acknowledge the conflict between the Plaintiff's claim of a debt owed and the Defendant's denial of such an obligation. I find therefore that the primary issues for determination are as follows:-
 - i. Whether there was a valid contract between the Plaintiff and the defendant that resulted in an investment loan.
 - ii. Whether the invested amount was subject to interest and penalties as alleged by the Plaintiff.
 - iii. Whether the Plaintiff is entitled to the amount claimed?



Whether there was an agreement between the Plaintiff and the Defendant that resulted in an investment loan.

12. In the absence of a written agreement, the court is guided by established principles of contract law to determine whether a valid contract exists. A contract is constituted when there is an offer, acceptance, consideration, and an intention to create legal relations.
13. Although no formal contract was executed, the Defendant has acknowledged receipt of Kshs.10,250,000/=. The Plaintiff contends that the agreement constituted an investment loan, with the Defendant agreeing to repay the principal amount along with a profit of Kshs.4,750,000/=. According to contract law principles, verbal agreements may be binding provided the essential elements of a contract, namely, offer, acceptance, consideration, and an intention to create legal relations are present. In my view, the partial repayments may serve as evidence of mutual assent and consideration, thus suggesting the existence of an implied contract.
14. It is important to emphasize that the lack of a formal document, does not preclude the possibility of a binding agreement, provided the conduct of the parties aligns with contractual principles. The court of appeal in the case of William Muthee Muthamia vs Bank of Baroda (2014) eKLR observed that:-

“in the law of contract, the aggrieved party to an agreement must, in addition, prove that there was offer, acceptance and consideration. it is not only when those three elements are available that an innocent party can bring a claim against the party in breach.”
15. In this instance, the Defendant’s acceptance of the funds and subsequent acknowledgment of the loan, evidenced by the issuance of cheques, suggests that both parties intended to formalize their arrangement as a legally binding contract. The issuance of cheques, despite the Defendant’s dispute, provides evidence of the Defendant’s intention to comply with the agreement’s terms, including repayment. The Defendant’s claim of duress will be considered separately, as it may impact the enforceability of the contract; however, it does not negate the presence of the foundational elements offer, acceptance, and consideration—necessary to form a legally binding agreement.
16. In light of the foregoing, I conclude that a binding contract existed between the Plaintiff and the Defendant. The exchange of funds, together with the Defendant’s acknowledgment, clearly demonstrates that an offer was made and accepted with the intention to create legal relations.
17. The second issue in contention is whether the loan was subject to interest and penalties, as asserted by the Plaintiff. The Plaintiff claims that the Defendant agreed to repay Kshs.10,250,000/= with an additional profit of Kshs.4,750,000/=. making the total repayment Kshs.14,750,000/=. The Defendant, however, denies the existence of any interest or penalties, maintaining that the loan was simply a friendly arrangement without any terms for additional charges.
18. In this matter, the burden of proof lies with the Plaintiff to establish that the loan was subject to interest or penalties. The Plaintiff relies on the post-dated cheques issued by the Defendant as evidence of the debt and the repayment terms. However, upon reviewing the evidence presented by both parties, including the Agreement dated 3rd March 2018 and the dishonored cheques, it is clear that there is no unequivocal documentary evidence to substantiate the Plaintiff’s claim of an agreed-upon interest rate. While the cheques may demonstrate the Defendant’s acknowledgment of the debt, they do not conclusively prove the terms of the loan, particularly regarding the presence of interest.
19. It is well-established in contract law that for terms such as interest to be enforceable, there must be clear evidence of their agreement at the outset. In the absence of such explicit terms regarding interest and



- penalties, it would be unjust to impose such terms retroactively, especially when the Defendant denies such an agreement. Therefore, in the absence of sufficient evidence, I find that the loan must be treated as a principal sum of Kshs.10,250,000/=, with no interest or penalties unless proven otherwise.
20. Section 107(1) of the *Evidence Act* that "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist." Consequently, the Plaintiff bears the burden of proving that the loan was subject to interest. Given the lack of documentary evidence or credible testimony to support this claim, the court cannot infer that the loan was subject to any interest charges.
 21. It is a well-established principle that courts cannot rewrite the terms of a contract between parties. The parties are bound by the terms they have agreed upon, unless it is demonstrated that coercion, fraud, or undue influence occurred, as established in *National Bank of Kenya Ltd v. Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR. In this case, the absence of evidence supporting the agreed-upon interest terms prevents the court from imposing such terms retroactively.
 22. Therefore, I find that there is no sufficient evidence to support the Plaintiff's claim that the loan was subject to an agreement for interest or profit. The amount advanced must be treated as a principal sum of Kshs.10,250,000/=, without any implied or express interest, unless proven otherwise.
 23. The final issue for consideration is whether the Plaintiff is entitled to the reliefs sought. The Defendant asserts that the acknowledgment of the debt and the issuance of the cheque were made under duress, which raises significant questions regarding the enforceability of the debt. It is well-established in law that contracts entered into under duress are voidable. While duress is a valid defense, there is insufficient evidence to conclusively establish that the Defendant's acknowledgment of the debt was coerced or made under duress.
 24. In the absence of compelling evidence of duress, I must consider the Defendant's acknowledgement of debt, as evidenced by the issuance of the cheque, as a critical factor in determining the Defendant's liability. Although the Defendant denies having validly acknowledged the debt, the issuance of a cheque for Kshs.52,385,500/= and subsequent actions suggest an intent to honor the obligation, thereby rendering the Defendant liable for repayment.
 25. The Plaintiff seeks a total of Kshs.14,750,000/=, which includes the principal amount, profit, penalties, and damages. However, the Defendant contends that he has repaid Kshs.5,293,000/=, leaving a balance of Kshs.4,957,000/=. According to the principles of evidence law, the Plaintiff bears the burden of proving that the Defendant remains liable for the full amount of Kshs.14,750,000/=: while the Defendant must prove the partial payments he claims to have made.
 26. The evidence demonstrates that the Defendant made partial repayments. However, there is insufficient evidence to support the Plaintiff's claim for profit, interest, or penalties. As noted above, the Plaintiff's reliance on the post-dated cheques alone is not enough to justify the excess amounts claimed.
 27. I also note that the dishonored cheque, for Kshs.52,385,500/=, issued by the Defendant, suggests an acknowledgment of a debt greater than the principal amount. Courts have consistently ruled that agreements imposing exorbitant, oppressive, or illegal interest rates are unenforceable. In *Abdi Mohamed v. Priscillah Njeri Gathoni* [2021] eKLR, the court held that when the interest charged is excessive and unconscionable, judicial intervention is required to uphold the principles of equity and fairness.
 28. The principle of equity prohibits unjust enrichment, which occurs when one party benefits at the expense of another in a manner deemed unfair or unreasonable.



29. Based on the above analysis, it is reasonable to conclude that the Plaintiff has successfully demonstrated the existence of a valid contract, and the Defendant remains liable for the principal sum of Kshs.10,250,000/=, minus any repayments made amounting to Kshs.5,293,000/=. Accordingly, I find that the Defendant should be ordered to repay the outstanding balance.
30. In the circumstances, I enter judgment in favor of the Plaintiff against the Defendant for the sum of Kshs.4,957,000/=: with interest thereon at court rates from the date of the judgment herein until payment in full. The remainder of the Plaintiff's claim is dismissed. As the Plaintiff's suit has partially succeeded, I award costs of the suit to the Plaintiff. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF MARCH 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Ms. Mwachoni holding brief for Ms. Joy Anami for the Plaintiff.

Ms. Omondi holding brief for Mr. Omollo for the Defendants.

Amos - Court Assistant

