



REPUBLIC OF KENYA



**Endeavour Credit Limited v Kiarie (Civil Suit E490 of 2023)
[2025] KEHC 5442 (KLR) (Commercial and Tax) (2 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5442 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E490 OF 2023**

H NAMISI, J

MAY 2, 2025

BETWEEN

ENDEAVOUR CREDIT LIMITED PLAINTIFF

AND

ANTHONY ALBERT KAGIA KIARIE DEFENDANT

JUDGMENT

1. The dispute herein arises from three hire purchase facilities advanced by the Plaintiff to the Defendant.
2. In its Plaintiff, the Plaintiff averred that on 3 June 2021, the Defendant applied for the first facility worth Kshs 37,050,000/=. The same was to be repaid within 48 months, in monthly instalments of Kshs 1,235,000/=: with interest thereon at 15% per annum. Parties executed a Hire Purchase Agreement dated 30 June 2021 and the facility commenced on 6 July 2021. To secure the facility, the Defendant provided motor vehicles registration numbers KCP 333T, ZF 5850, KBU 009Y, KBU 090Y, KBT 990A, KCQ 707B, ZG 5345, KAX 132P as well as a personal guarantee.
3. On 16 August 2021, the Defendant applied for a second facility worth Kshs 4,000,000/=: The monthly repayment was Kshs 164,445/= and the interest rate was 16% per annum. A Hire Purchase Agreement dated 18 August 2021 was executed by the parties and commenced on 19 September 2021. The same motor vehicles were provided as security, as well as a personal guarantee by the Defendant.
4. On 3rd January 2023, the Defendant applied for rescheduling of the two facilities. The restructured facility was for Kshs 61,623,979/=: being the two loans, charges, interest and penalties thereon and the same was payable within 60 months. The monthly instalments were Kshs 1,797,367/= and interest at 15% per annum. Parties executed an Agreement dated 30 January 2023 which commenced earlier on 5 January 2023. The security for the facility was motor vehicles registration number KHMA 698F, ZF



- 5850, KBU 009Y, KBU 090Y, KBT 990A, KBT 009B, KBX 071W, ZG 5345 AND KAX 132P as well as the Defendant's personal guarantee.
5. The Defendant defaulted in the repayment. On 10 July 2023, the Plaintiff instructed M/s Mayfair Auctioneers to repossess the motor vehicles, but the Auctioneers were unsuccessful in their pursuit. A demand letter dated 8 August 2023 was sent to the Defendant. On 14 August 2023, the Defendant replied to the demand letter admitting that he owed the sum of Kshs 107,841,963.25 and proposing that he resume the agreed monthly instalments of Kshs 1,797,366/= from 1 September 2023.
 6. It was the Plaintiff's case that by 3 October 2023, the Defendant owed the Plaintiff an amount of Kshs 111,635,570.25, which was a total of accrued interest and late payment charges.
 7. The Plaintiff seeks the following reliefs:
 - i. Mandatory injunction to issue commanding the Defendant to avail and/or produce motor vehicles KHMA 698F, ZF 5850, KBU 009Y, KBU 090Y, KBT 990A, KBT 009B, KBX 071W, ZG 5345 AND KAX 132P to the Plaintiff's preferred storage facility;
 - ii. Mandatory injunction to issue against the Defendant to immediately replace any motor vehicle namely KHMA 698F, ZF 5850, KBU 009Y, KBU 090Y, KBT 990A, KBT 009B, KBX 071W, ZG 5345 AND KAX 132P wherein any of them has been destroyed, damaged or otherwise rendered inoperable;
 - iii. Special damages for Kshs 111,635,570.25;
 - iv. Interest at 15% on the special damages from the date of filing the suit; and
 - v. Costs of the suit
 8. The Defendant entered appearance but did not file any Defence. On 18 July 2024, interlocutory judgement was entered against the Defendant for the liquidated sum of Kshs 111,635,570.25. The matter then proceeded for formal proof.
 9. At the hearing, the Plaintiff called one witness. PW1, Kenneth Mbithi, is the Finance Manager at the Plaintiff company. He adopted his witness statement dated 4 October 2023, whose contents were similar to the Plaint. It was his testimony that the Plaintiff and Defendant had enjoyed cordial business relations since 2019. The Defendant had been a well-paying client until 2021 when he began defaulting. PW1 testified that the Defendant's cheques would bounce. The Defendant also made promises but failed to honor them. In January 2023, the Defendant approached the Plaintiff for a loan restructure. However, by June 2023, he had only paid Kshs 100,000/=.
 10. PW1 stated that the Plaintiff needs the motor vehicles listed as security because, upon default by the Defendant, the Hire Purchase Act allows the Defendant to proceed to auction and sell assets. In this instance, none of the units were traceable.
 11. In support of the claim, PW1 produced a bundle of documents dated 4 October 2023 containing the following: Approval of loan letter dated 5 June 2021; Hire Purchase Agreement dated 6 July 2021; Personal Guarantee and Indemnity dated 30 June 2021; Loan Application letter dated 3 Juen 2021; Approval of the loan letter dated 18 August 2021; Loan Application letter dated 16 August 2021; Hire Purchase Agreement dated 19 September 2021; Personal Guarantee and Indemnity dated 18 August 2021; Approval of the loan letter dated 5 January 2023; Loan Application letter date 3 January 2021; Hire Purchase Agreement dated 5 January 2023; Personal Guarantee and Indemnity dated 30 Jan 2023; Ledger Account dated 3 October 2023; copies of Log Books; Instruction letter to Mayfair Auctioneers



dated 10 July 2023; Letter from AGO Advocates LLP dated 18 August 2023 and Letter from Kimani Wakimaa Advocates dated 14 August 2023 admitting the debt.

12. The Plaintiff chose not to file any submissions.

Analysis and Determination

13. I have considered the testimony and evidence adduced. Interlocutory judgement having been entered for special damages claimed, I find that the following issues arise for determination:

- i. Whether the Plaintiff is entitled to the orders of mandatory injunction;
- ii. Whether the Plaintiff is entitled to interest.

14. On first issue, from the documents produced by the Plaintiff, there are three Hire Purchase Agreements dated 6 July 2021, 19 September 2021 and 5 January 2023, respectively. Each of them is accompanied by a Personal Guarantee and Indemnity. The said Agreements provide the terms and conditions that govern, inter alia, the Hirer's obligations in relation to payments, interest payable, late payments and termination of the agreements.

15. Hire Purchase Agreements are agreements whereby, an owner of goods allows a hirer to hire goods from him or her for a period of time by paying instalments. The hirer has an option to buy the goods at the end of the Agreement if all instalments are being paid. However, it is not a contract of sale but contract of bailment as the hirer merely has an option to buy the goods and although the hirer has the right of using the goods, he is not the legal owner during the term of the agreement, the ownership of the goods remain with the owner.

16. Regarding the Defendant's obligations herein, the Agreements executed on divers dates provide as follows:

2 Hirer's Obligations

The Hirer shall:

- 2.1 Make Payments

.....

- 2.1.3 Punctual payment of any sums due under this Agreement shall be of the essence in this Agreement and the Hirer's failure to pay any sum within 7 days of the same becoming due shall be deemed a repudiation of this Agreement by the Hirer

17. Whereas the agreements provide for termination by either party, they do not provide for instances of default in payment by the Hirer. Clause 8 provides for the liability of the Hirer on termination as follows:

If the hiring of the assets is terminated pursuant to Clause 5.6 or above, the Hirer shall be indebted to the Owner:

- 8.1 any overdue instalments with interest thereon as herein provided;
- 8.2 any other sum due under this Agreement with interest thereon as herein provided;
- 8.3 any expenses and costs incurred by the Owner in tracing, securing, insuring and/or recovering possession of the assets;



- 8.4 the cost of all repairs required to be done to the assets to put them in a condition consistent with performance of the Hire's obligations under this Agreement;
 - 8.5 as agreed compensation for the Owner's loss the balance of the Hire Purchase price of the assets specified in the Schedule less the aggregate of:
 - 8.5.1 the instalments previously paid under the Agreement;
 - 8.5.2 the overdue instalments due under the agreement up to the date of termination, and as certified by the person (acting as expert) nominated by the Owner and who habitually deals with Goods of a similar nature of the assets;
 - 8.6 interest at the Late Payment Rate on the amount of the agreed compensation payable under Clause 8.5 above from the date of termination until the date of payment;
 - 8.7 damages (if any) for any breach of this Agreement
18. Section 15 of the Hire Purchase Act provides that if the hirer has paid a sum equal to or in excess of two-thirds of the hire purchase price, the owner must not take possession of the goods in the event of default, except through the Courts or unless the hirer has terminated the Agreement. In this instance, the Plaintiff produced a Ledger account for the period January to October 2023. The closing debit balance was Kshs 111,635,570.25. The Defendant had only paid Kshs 100,000/= within that period. This does not amount to two-thirds of the hire purchase, not even if the same were compared against the third facility amount.
19. Section 16 makes provision for where suits are instituted. Section 16 (4) provides as follows:
- On the hearing of the suit the court may, without prejudice to any other power—
- a. make an order for the delivery of all the goods to the owner; or
 - b. make an order for the delivery of all the goods to the owner, and postpone the operation of the order on condition that the hirer or any guarantor pays the unpaid balance of the hire-purchase price at such times and in such amounts and fulfils such other conditions as the court thinks just; or
 - c. make an order for the delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods:
- Provided that—
- i. an order shall not be made under paragraph (b), unless the hirer satisfies the court that the goods are in his possession or control at the time when the order is made;
 - ii. an order shall not be made under paragraph (c) transferring to the hirer the owner's title to a part of the goods, unless the court is satisfied that the amount which the hirer has paid towards the hire-purchase price exceeds the price of that part of the goods by at least one-third of the unpaid balance of the hire-purchase price.
20. Section 16 (6) provides that:
- Where damages are awarded against the owner in the suit, the court may treat the hirer as having paid towards the hire-purchase price, in addition to the actual amount paid, the



amount of the damages or such part thereof as the Court thinks fit, and remit the damages accordingly.

21. Section 16 (9) provides that:

In this section, "order for delivery" in relation to goods means an order for the delivery of the goods to the owner without giving the hirer an option to pay their value, and "the price" in relation to goods means such part of the hire-purchase price as is assigned to those goods in the agreement, or if no such assignment is made such part of the hire-purchase price as the court may determine.

22. In view of the provisions of the Hire Purchase Agreements, specifically Clause 8, as well as the provisions of section 16 of the Act, it is my considered view that the Plaintiff cannot seek both remedies, that is (i) mandatory injunction for repossession of the motor vehicles herein and (ii) special damages for the sums owing under the Hire Purchase Agreements. Granting the two remedies would amount to double compensation since the Plaintiff would repossess the motor vehicles and also gain the monies owed as if the Defendant had paid all instalments.

23. On the second issue of interest, the various agreements provide for payment of interest as follows:

3.3 Interest

3.3.1 the Hire Purchase charges specified in the Schedule have been calculated by charging interest at the specified rate shown in Schedule (called "the specified rate") upon the cash price of the Goods specified in the Schedule on a flat rate basis (called "the method of calculation").

24. The specified rate of interest in the Schedule is 15%. It does not indicate the period chargeable, that is whether the interest is charged annually or monthly. Similarly, the prayer in the Plaint is for interest at 15%, without any indication as to the period.

25. Section 26 of the [Civil Procedure Act](#) states as follows:-

1. Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
2. Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

26. This being a liquidated claim, I award interest at 15% per annum on the special damages from the date of filing the suit until payment in full.

27. In the premise, judgement is hereby entered in favour of the Plaintiff against the Defendant as follows:

- i. Special Damages for Kshs 111,635,570/25
- ii. Interest on (i) at the rate of 15% per annum from the date of filing suit until payment in full;
- iii. Costs of the suit

DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MAY 2025.



HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

Mr. Kaaya..... for the Plaintiff

Ms. Akinyi for the Defendant

Libertine AchiengCourt Assistant

