



Odhiambo v Momentum Credit Limited & another (Civil Appeal E111 of 2023) [2025] KEHC 8010 (KLR) (22 May 2025) (Judgment)

Neutral citation: [2025] KEHC 8010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E111 OF 2023**

OA SEWE, J

MAY 22, 2025

BETWEEN

OLIVER OKOTH ODHIAMBO APPELLANT

AND

MOMENTUM CREDIT LIMITED 1ST RESPONDENT

ANTIQUA AUCTIONS AGENCIES 2ND RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. Celesa Okore, Principal Magistrate, delivered on the 30th November 2023 in Oyugis Senior Principal Magistrate's Civil Case No. 175 of 2021)

JUDGMENT

1. This appeal was filed by Oliver Okoth Odhiambo (hereinafter, “the appellant”) on 15th December 2023 against the two respondents, Momentum Credit Limited (the 1st respondent) and Antique Auctions Agencies (the 2nd respondent). The appeal arises from Oyugis Senior Principal Magistrate’s Civil Case No. 175 of 2021: Oliver Okoth Odhiambo v Momentum Credit Limited and Antique Auctions Agencies, in which the appellant had sued the respondents seeking the following reliefs:
 - (a) A permanent injunction to restrain the respondents whether by themselves, agents, servants and/or those under them from repossessing, auctioning, dispossessing and/or selling the appellant’s car, Registration No. KBU 2X6K.
 - (b) An injunction directing the 1st defendant to harmonize the loan statement of accounts and provide workings of the 4% interest rates that was applied.
 - (c) Costs of the suit.
 - (d) Any other relief the court may deem fit to grant.



2. A perusal of the Record of Appeal as well as the record of the lower court shows that the appellant borrowed Kshs. 200,000/= from the 1st respondent for the purpose of buying a car, Motor Vehicle Registration No. KBU 2X6K. The motor vehicle was to be treated as the security for the loan. The parties agreed that the loan was to be repaid with interest over a period of 18 months with effect from 20th December 2020.
3. At paragraph 6 of his plaint, the appellant averred that in the month of March 2021, he requested the 1st respondent to change the date of repayment from 20th to 5th day of every succeeding month to conform with his pay day. He further stated that the 1st respondent was agreeable and that it forwarded a USSD code to him for purposes of implementing the change; but upon following the instructions, the outcome was that he had in effect applied for a top-up loan. He was required to sign a Deed of Variation of Security and when he asked for details for the changes as well as particulars of his account, his requests were ignored by the 1st respondent.
4. The appellant had also averred before the lower court that his employment contract ended in the month of April 2021; which occurrence led to his inability to pay the May 2021 instalment on time as he had anticipated. In spite of paying the 1st and 2nd respondents some Kshs. 30,655/= to regularize his account with the 1st respondent, the subject motor vehicle was repossessed by the 2nd respondent on the instructions of the 1st respondent. It was in the light of the foregoing that the appellant filed the lower court suit.
5. The record of the lower court further shows that the respondents filed a Statement of Defence & Counterclaim dated 25th November 2022. They confirmed the averments of the appellant that he approached the 1st respondent for a facility to purchase the subject chattel; and that the loan was approved and the motor vehicle handed over to the appellant upon a written agreement being signed for the repayment of the loan by instalments of Kshs. 23,152/= over a period of 18 months. The respondents further confirmed that, along the way, the appellant defaulted in his repayments. Consequently, the 1st respondent, through the 2nd respondent, repossessed the motor vehicle on the 10th June 2021.
6. It was further the averment of the respondents that, although the appellant paid the attendant repossession charges and had the motor vehicle released to him, he defaulted again, precipitating a demand letter for the payment of the total outstanding amount within 7 days. Thereafter, the 1st respondent instructed the 2nd respondent to repossess the security.
7. By way of Counterclaim, the 1st respondent asked for judgment against the appellant in the sum of Kshs. 293,042.35 which, in its averment, was the amount outstanding from the appellant as at 26th October 2021 together with interest at contractual rates from 26th October 2021 until payment in full. Therefore, the respondents prayed for judgment for:
 - (a) Kshs. 295,042.35 together with interest from 26th October 2021 until payment in full.
 - (b) Costs for the suit and the Counterclaim.
 - (c) Any other relief that the Court may deem appropriate.
8. Upon hearing the parties, the learned magistrate dismissed the appellant's case in a judgment delivered on 30th November 2023. In her finding, the appellant had failed to prove his case against the



respondents to the requisite standard. At the same time, the learned magistrate found in favour of the 1st respondent on its Counterclaim. The judgment reads:

It is important to note that the defendant filed a counter claim seeking orders compelling the plaintiff to pay Ksh. 293,042.35/= which is the loan balance.

They have proved their counterclaim to the satisfaction of the court and the said prayers are granted as prayed save for costs which shall be borne by each party.”

9. Being dissatisfied and aggrieved by the decision of the lower court, the appellant filed the instant appeal on the following grounds:
 - (a) That the learned magistrate erred in law and in fact in finding that the respondents herein followed due process in repossessing the suit motor vehicle thus arriving at the erroneous decision that the appellant had not proved his case.
 - (b) That the learned magistrate erred in law and in fact in finding that the 1st respondent acted lawfully in repossessing the suit motor vehicle despite the glaring evidence to the contrary.
 - (c) That the learned magistrate erred in law and in fact in failing to properly and constructively evaluate the entire evidence on record.
 - (d) That the learned magistrate erred in law and in fact in finding that the appellant had come to equity with unclean hands thereby arriving at an erroneous decision with regard to the merits of the appellant’s claim in her impugned judgment.
 - (e) That the learned magistrate erred in law and in fact in holding that the 1st respondent’s Counterclaim is merited despite the glaring irregularities by the 1st respondent’s conduct in respect to the disputed contract and suit motor vehicle.
 - (f) The learned magistrate erred in law and in fact in finding that the acceptance of late deposits and conduct of the 1st respondent herein had not ratified the actions of the appellant and varied the terms of the contract despite the glaring evidence on the face of the record.
 - (g) That the learned magistrate erred in fact and in law by failing to appreciate that the appellant suffered colossal business and or monetary loss owing to the respondent’s unlawful acts.
10. In the premises, the appellant prayed that the appeal be allowed and that the judgment of the lower court be set aside. The appellant also prayed that the costs of the appeal and of the lower court suit be awarded to him.
11. The appeal was urged by way of written submissions, pursuant to the directions given herein on the 15th April 2024. Accordingly, the appellant filed his written submissions dated 28th May 2024. He reiterated his version of the facts and proposed the following two issues for determination:
 - (a) The legality of the repossession and the intended sale of the appellant’s motor vehicle.
 - (b) Whether the appeal is merited.
12. The appellant submitted that, though he was in default, he had by that time repaid two-thirds of the loan facility and therefore the repossession exercise was carried out in utter disregard of the applicable law. The appellant relied on Section 20 of the [Consumer Protection Act](#) and the case of *Shiva Carriers Ltd v NIC Bank Kenya PLC & another* [2018] eKLR. The appellant contended that no justification was given by the respondents for the outstanding balance, yet he kept making payments up until the time he was served with a Proclamation by the 2nd respondent.



13. The appellant further submitted that he could not understand how he went to court with unclean hands and yet it was the respondent who had acted in an underhand manner by repossessing the chattel without any justifiable cause. He pointed out that, having paid for two months' instalments in June 2021 and subsequently overpaid the installment for the month of July 2021, it could not be said that he was in default without a plausible justification for that posturing.
14. Thus, the appellant impugned the process employed by the respondents in repossessing the suit motor vehicle and contended that it went against the provisions of Sections 15 and 16 of the Hire Purchase Act, Cap 507 of the Laws of Kenya. He therefore submitted that the learned magistrate erred in finding that the respondents had followed the due process in repossessing the suit motor vehicle.
15. The appellant faulted the decision of the lower court in so far as it entertained and allowed the Counterclaim in spite of the evidence tendered by him as to the payments made as at the time of repossession. He submitted that, on the basis of the evidence tendered before her, the learned magistrate ought to have found that a justification had been made for the issuance of a permanent injunction and for accounts to be taken to give a true reflection of what he had paid and the balance, if any. The appellant relied on *Kenya Power & Lighting Co. Ltd v Sheriff Molana Habit* [2018] eKLR on the scope of a permanent injunction and when the order is warranted.
16. The appellant emphasized his contention that what was in dispute before the lower court was not that he was in arrears, but rather whether he was in default or not. He submitted that he had overpaid previous instalments and his lateness in paying the subsequent installment ought to have been covered by those excess payments and a reconciliation of accounts made before repossession was resorted to. He consequently urged the Court to find that his appeal is merited and allow the same with costs.
17. The respondents relied on their written submissions dated 23rd September 2024. They proposed the following issues for determination:
 - (a) The legality of the repossession and intended sale of the appellant's motor vehicle.
 - (b) Whether the appeal is merited.
18. On the legality of the repossession, the respondents submitted that it is erroneous for the appellant to rely on the Hire Purchase Act or the *Consumer Protection Act*, since the agreement was not a hire purchase agreement but an agreement under the *Movable Property Security Rights Act*, No. 13 of 2017. They therefore contended that it was immaterial that the appellant had paid two-thirds of the loan.
19. The respondents further submitted that, under the *Movable Property Security Rights Act*, the 1st respondent is entitled to repossess and sell the subject motor vehicle in the event of default. In particular, they relied on Sections 71 and 72 of the said Act and pointed out that the appellant had expressly consented to repossession in the event of default. It was therefore their submission that the repossession effected by the 2nd respondent was in full accord with the applicable law, including the *Auctioneers Act*, No. 5 of 1996.
20. The respondents defended the decision of the lower court and submitted that the learned magistrate did not err at all in finding that the appellant was in default; that he had approached the Court with unclean hands; and that the Counterclaim by the 1st respondent was meritorious. They underscored their assertion that the appellant was in default; and that the loan account statement was riddled with penalty charges evidencing persistent and consistent default by the appellant. They also urged the Court to note that the penalty charges were contractual and were provided for in the loan application form. They consequently prayed for the dismissal of the appeal with costs.



21. This being a first appeal, it is the duty of the Court to re-evaluate the evidence adduced before the lower court with a view of coming to its own findings and conclusions thereon; while giving due consideration for the fact that it did not have the advantage of seeing or hearing the witnesses. This is in line with *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123 wherein it was held that:
- ...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..."
22. I have given careful consideration to the evidence placed before the lower court in the light of the Grounds of Appeal filed herein, as well as the written submissions filed herein by learned counsel. The appellant testified before the lower court on 18th May 2023. By way of evidence in chief, he adopted his witness statement dated 10th September 2021. He produced the Bundle of Documents filed in proof of his case, and they were marked the Plaintiff's Exhibits 1 to 9.
23. The appellant stated that he is an accountant by profession and an experienced banker. He confirmed that he approached the 1st respondent for a loan which he repaid regularly until the month of March 2021 when the 1st respondent decided to give him a top-up loan in the name of rescheduling the date. He expressed disappointment that his protestations were ignored by the 1st respondent and was instead sent a deed of variation of security to sign.
24. The appellant further testified that the 1st respondent ended up charging him interest at more than 100% plus unnecessary transfer fees in addition to interfering with his car's electric system and the gear box upon repossession. He therefore asserted that he had a dispute with the loan balance and consequently approached the lower court for redress.
25. On behalf of the respondents, evidence was called from the 1st respondent's Legal Officer, Sheila Imali (DW1). She likewise adopted her witness statement dated 25th November 2022 and the 1st respondent's Bundle of Documents as Defence Exhibits 1 to 12. She testified that the appellant approached the 1st respondent for a financial facility on 19th October 2020, which was to be secured by Motor Vehicle Registration No. KBU 2X6K. She further stated that the facility was registered under the Movable Properties Security Rights Act; and that the appellant dutifully repaid the loan until 5th March 2021 when he applied for and was granted a US\$ 21,245/=, thereby increasing the principal balance outstanding to Kshs. 220,442/=.
26. DW1 further stated that contrary to the agreement that the appellant would repay the instalments as and when due, he defaulted and fell into arrears. As a result, the 1st respondent instructed the 2nd respondent to repossess the subject motor vehicle. She added that the motor vehicle had to be transferred from Kisumu to Nairobi for sale but was released to the appellant upon payment of some of the instalments. The motor vehicle was repossessed a second time following default by the appellant, after due notice has been issued and served on the appellant. It was this second repossession that prompted the filing of the lower court suit.
27. There is consensus between the parties that the appellant applied for a loan facility of Kshs. 200,000/= from the 1st respondent on the 19th October 2020. The parties were also in agreement that the appellant would pay the 1st respondent's loan processing charges and other incidental sums in the sum of Kshs.



21,100/=; and therefore the total amount repayable was Kshs. 221,100/=. The loan was to be repaid over a period of 18 months in instalments of Kshs. 23,127/=.

28. There is further no disagreement that the security for the facility was the motor vehicle Registration No. KBU 2X6K; or that the appellant dutifully repaid the loan at the initial stages until March 2021 when he applied for variation of repayment date. According to the appellant, in the process of variation of the repayment date, it came to his attention that the 1st respondent had given him a top up loan of Kshs. 21,245/=. On the other hand, the 1st respondent asserted that the top-up facility was granted at the instance of the appellant. Notwithstanding the different positions taken over the variation, the fact of the matter is that the appellant was given another facility letter to sign in connection with the variation. The same was exhibited as Document No. 5 in the Defendant's List and Bundle of Documents.
29. From the evidence adduced before the lower court, the appellant fell into arrears on two occasions. The appellant explained that this was due to the fact that his contract ended in April 2021. He hastened to explain that he was not a serial defaulter, but that he was only late in paying; and therefore on each occasion the 1st respondent ought to have taken into consideration that he had overpaid some of the prior instalments. He also took the view that, since he had applied for reconciliation of his account, the respondents ought not to have proceeded with repossession before giving him a plausible explanation for the discrepancies noted by him.
30. In the circumstances, the issues for determination are:
- (a) The legality of the repossession and intended sale of the appellant's motor vehicle.
 - (b) Whether the Counterclaim was proved to warrant the orders made in respect thereof by the lower court.
 - (c) What orders ought to be made on costs.

A. On the legality of the repossession and intended sale of the appellant's Motor Vehicle Registration No. KBU 2X6K:

31. Needless to say that it is the contractual documents that determine the terms of engagement between the parties; and that the Court can do no more than to interpret the said terms to ascertain the expressed intention of the parties when they made the contract, with a view of giving it effect. In the persuasive case of *RTS Flexible Systems Ltd vs. Molkerei Alois Müller GmbH & Co KG (UK Production)* [2010] UKSC 14, these principles were discussed as follows:

The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations.”

32. From the evidence placed before the lower court, the dispute arose from a loan agreement between the appellant and the 1st respondent. From the 1st respondent's standpoint, the appellant was in default, while in the appellant's view he had only delayed in payment and therefore there was no justification for the drastic act of repossession. I have therefore looked at the agreement for its full tenor and effect. It is notable that the Contract consisted of the Loan Application Form, the Terms and Conditions, the Statutory Declaration and the Endorsement Letter.



33. There is no dispute that the repayments were to be effected by way of monthly instalments on a specific date of the month; failing which the situation would be treated as an act of default. This is manifest at Clause 4 of the Terms and Conditions; which states as follows at Clause 4.1:

Default will be deemed to have occurred if the borrower fails to remit one of any monthly installments on their due date.”

34. There is no doubt therefore that an act of default occurred when the appellant failed to remit the instalment for the month of March 2021 on its due date. This is irrespective of the fact that he may have overpaid some of the prior installments. He did not show that the sums paid were equivalent to the installment for the month March 2021. It has to be borne in mind that other than the installment due, an act of default activated penalties and other charges which were expressly provided for at Clause 9 of the Terms and Conditions as follows:

Interest on outstanding dues of 0.3% shall be charged on an unpaid installment amount from the fourth day of lateness in payment of the due installment, on a daily basis until full payment of the amount due...”

35. Therefore, the learned magistrate cannot be faulted for holding that the appellant was in default. That said, the next question to pose is whether, in the circumstances, the 1st respondent’s right to repossession had crystallized. It is notable that at Clause 18 of the Terms and Conditions, the parties were in agreement that in case of a dispute arising regarding the loan contract the same would be referred to arbitration in accordance with the provision of the *Arbitration Act*. It is therefore a deviation from the Terms and Conditions of the loan agreement when, instead of arbitration the appellant opted to file the lower court suit, which option was also within his rights.

36. Additionally, the Terms and Conditions are explicit at Clause 19 of the Terms and Conditions that the parties chose and agreed on the applicable law as follows:

This contract arising out of the Borrower’s acceptance of the Facility on the terms and conditions set out herein shall be governed by and construed in all respects in accordance with the Laws of Kenya and more-so the terms and conditions set out in the *Movable Property Security Rights Act* (2017) Laws of Kenya and to the exclusive jurisdiction of Kenyan Courts.”

37. In *Fidelity Commercial Bank Limited v Kenya Grange Vehicle Industries Limited* [2017] eKLR the Court held:

...where the intention of the parties has in fact been reduced to writing, under the so called parole evidence rule, it is generally not permissible to adduce extrinsic evidence, whether oral or written, either to show the intention, or to contradict, vary or add to the terms of the document, including implied terms. Courts adopt the objective theory of contract interpretation, and profess to have the overriding aim of giving effect to the expressed intentions of the parties when construing a contract. This is what sometimes is called the principle of four corners of an instrument, which insists that a document’s meaning should be derived from the document itself, without reference to anything outside of the document (extrinsic evidence), such as the circumstances surrounding its writing or the history of the party or parties signing it...”



38. It is plain therefore that any reference to the Hire Purchase Act is a deviation from the expressed will and intention of the parties. I have accordingly confined my attention to the Movable Property Security Act (the Act) to ascertain the rights of the parties in the event of default.
39. In this regard, Section 66 of the Act states:
- A secured creditor may exercise its post-default rights by application to a court or in accordance with this Part, without applying to a court.”
40. Section 67 of the Act, on the other hand provides that:
- (1) If there is a default with respect to any obligation, the secured creditor shall serve on the grantor a notification, in writing or in other form agreed between the parties, to pay the money owing or perform and observe the agreement as the case may be.
 - (2) The notification required under subsection (1) shall adequately inform the recipient of the following matters—
 - (a) the nature and extent of default;
 - (b) if the default consists of non-payment, the actual amount and the time by the end of which payment must be completed;
 - (c) if the default consists of the failure to perform or observe any covenant, express or implied, in the agreement, the act the grantor must do or desist from doing so as to rectify the default and the time by the end of which the default must have been rectified;
 - (d) the consequence that if the default is not rectified within the time specified in the notification, the secured creditor will proceed to exercise any of the remedies referred to in section 65; and
 - (e) the right of the grantor in respect of certain remedies to apply to the court for relief against those remedies.
 - (3) If the grantor does not comply within the time period indicated in the notification after the date of service of the notification, the secured creditor may—
 - (a) sue the grantor for any payment due and owing under the agreement;
 - (b) appoint a receiver of the movable asset;
 - (c) lease the movable asset;
 - (d) take possession of the movable asset;
 - (e) sell the movable asset; or
 - (f) pursue any of the remedies under section 65.
 - (4) The Cabinet Secretary may prescribe the form and content of a notification to be served under this section.
41. The parties are in agreement that the 1st respondent issued the statutory Notice by way of its letter dated 14th August 2021 and therefore complied with the above provision. In addition to stating the exact amount of loan arrears and the options available to the appellant, the 1st respondent drew the



appellant's attention to Section 67(2)(e) of the Act; namely, that he had the statutory right to apply to the court for relief against the exercise of the 1st respondent's statutory power of sale. No doubt the appellant opted to exercise that right by filing the lower court suit.

42. In the light of the foregoing, it is my finding that the learned magistrate came to the correct conclusion in finding that the repossession by the respondents was perfectly lawful and was effected in accordance with the applicable law.

B. On whether the Counterclaim was proved to warrant the orders made in respect thereof by the lower court:

43. By way of Counterclaim, the 1st respondent asked for judgment against the appellant in the sum of Kshs. 293,042.35 which, according to it, was the amount outstanding from the appellant as at 26th October 2021 together with interest at contractual rates from 26th October 2021 until payment in full. Therefore, the respondents prayed for judgment for:

- (a) Kshs. 295,042.35 together with interest from 26th October 2021 until payment in full.
- (b) Costs for the suit and the Counterclaim.
- (c) Any other relief that the court may deem appropriate.

44. In proof of the counterclaim, the 1st respondent relied on the evidence of Sheila Imali (DW1) and the respondent's Bundle of Documents as Defence Exhibits 1 to 12. The evidence of DW1 has been summarized herein above at paragraphs 25 and 26.

45. Section 69 of the Act provides borrowers with the right of redemption in the following terms:

- (1) Any person whose rights are affected by the enforcement process in accordance with this Part is entitled to redeem the collateral by paying or otherwise performing the secured obligation in full, including the reasonable cost of enforcement.
- (2) The right of redemption may be exercised until the asset is sold or otherwise disposed of, acquired or collected by the secured creditor or until the conclusion of an agreement by the secured creditor for that purpose.

46. Upon filing the lower court suit, the appellant sought and obtained orders to forestall the sale of the suit motor vehicle. Accordingly, orders were granted as follows:

1. That an injunction is hereby granted restraining the Respondents whether by themselves, agents, servants and/or those working under them from repossessing, auctioning, disposing and/or selling the applicant's car registration No. KBU 2X6K.
2. That cost shall be in the cause."

47. It is presumed that the motor vehicle was immediately released to the appellant upon service of the formal Order dated 27th January 2022. In the premises, the learned magistrate was correct in allowing the Counterclaim because the debt was yet to be cleared. At any rate, it was never the contention of the appellant that he had fully repaid the loan. What may be in issue is the issue of accounts; and therefore while it is my finding that the decision of the lower court was essentially sound, the parties are to blame for not raising the issue of accounts upfront in accordance with the provisions of Order 20 of the Civil Procedure Rules before the determination of the lower court suit. It is notable that the appellant had prayed for reconciliation of the account at paragraph [b] of his Complaint but failed to have the issue adequately canvassed before the lower court to enable a determination on it by the lower court.



C. What orders ought to be made on costs?

48. The proviso to Section 27(1) of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya is explicit that costs follow the event. Nevertheless, it is also trite that costs are awardable at the discretion of the Court. In *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others*, SC Petition No 4 of 2012; [2014] eKLR set out the guidelines that a court must consider when exercising its discretion to either award or deny costs and its states: -

(14) So the basic rule on attribution of costs is: costs follow the event. But it is well recognized that this principle is not to be used to penalize the losing party; rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the suit. In Justice Kuloba's words [Judicial Hints on Civil Procedure, at p.94]:

[T]he object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure... Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action.

...

(22) Although there is eminent good sense in the basic rule of costs – that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the applicant...”

49. Therefore, while the law gives the court the discretion to award costs or not and to what extent, this Court must evaluate whether the particular circumstances of this case justify an award of costs. Having given due consideration to the circumstances of each party as disclosed by the evidence presented before the lower court, it is hereby ordered that each party shall bear own costs of this appeal as well as costs of the lower court matter.

50. In the result, the appeal fails and is hereby dismissed with an order that each party shall bear their own costs of this appeal as well as costs of the lower court suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS 22ND DAY OF MAY, 2025.

OLGA SEWE

JUDGE

