



**Bulalila v Northwave Credit Limited (Civil Appeal E285 of 2023)
[2025] KEHC 10875 (KLR) (Commercial and Tax) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10875 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E285 OF 2023**

BK NJOROGE, J

JULY 24, 2025

BETWEEN

SAMSON ABUKWI BULALILA APPELLANT

AND

NORTHWAVE CREDIT LIMITED RESPONDENT

*(Appeal against the decision of Hon. C.A. Okumu Resident Magistrate/
Adjudicator delivered on 29th September 2023 in SCCCOM No. E3134 of 2023.)*

JUDGMENT

1. This is a Judgement arising out of the Appeal against the decision of Hon. C.A. Okumu Resident Magistrate/Adjudicator delivered on 29th September 2023 in SCCCOM No. E3134 of 2023.

Background Facts

2. The Appellant herein had filed a claim against the Respondent at the Small Claims Court seeking a refund of money paid towards a motor vehicle purchase price. The Respondent neither appeared nor participated in the hearing of the claim, despite being served with the Claimants pleadings. Therefore, the matter proceeded by way of a formal proof. In its judgment, the Trial Court dismissed the claim for lack of evidence that the loan had been repaid.
3. The Appellant being dissatisfied with the Judgement of the Honourable C.A. Okumu, Resident Magistrate/Adjudicator, delivered on the 29th September, 2023, filed the Memorandum of Appeal dated 27th October 2023. He has appealed against the whole Judgement on the following grounds;



- a] The Magistrate erred in law and in fact by failing to appreciate the fact that the Appellant had paid a total of Kshs. 200,000/- towards the purchase of the motor vehicle registration number KCR xxxF.
 - b] The Magistrate erred in Law and in fact by failing to appreciate that the Respondent had swindled the Appellant of Kshs. 200,000 being the Appellants' contribution in the purchase of the motor vehicle.
 - c. The Magistrate erred in law and in fact by failing to failing to appreciate the fact that by repossessing the motor vehicle and not refunding the Appellant his Kshs.200,000/- the Respondent was unjustly enriching itself at the Appellant's expense.
 - d. The magistrate erred in law and in fact by dismissing the Appellant's claim.
 - e. The Magistrate misapprehended the law by reaching a conclusion that is inconsistent with the binding and persuasive authorities of the Superior courts and thereby arrived at a wrong conclusion by disregarding the doctrine of stare decisis.
4. The Appellant prayed for orders that;
- a. The Appeal be allowed.
 - b. The Judgement of the Honorable C.A. Okumu Resident Magistrate/Adjudicator delivered on the 29th September, 2023 be and is hereby set aside.
 - c. The Judgement be entered as prayed in the statement of claim dated 3rd May, 2023.
 - d. Costs for this Appeal be awarded to the Appellants.
5. The Respondent herein did not respond to the Appeal despite service; thus, it stands undefended.

Issues for determination

6. The Appellant filed written submissions alongside his Appeal and the Record of Appeal, which the Court has carefully considered. The single issue for determination is;
 - a. Whether the Trial Court erred in law by dismissing the Appellant's claim.

Analysis

7. This being an appeal from the Small Claims Court, Section 38 of the [Small Claims Court Act](#) under which the appeal has been preferred provides as follows; -

“ [1] A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.

[2] An appeal from any decision or order referred to in subsection [1] shall be final.”

8. It therefore follows that appeals originating from the Small Claims Court to this court can only on the points of law. Consequently, this Court cannot, in appeals emanating from that Court, entertain an invitation to interfere with the factual findings of the Trial Court. The duty of this Court when dealing with such appeals is therefore equivalent to that of the Court of Appeal in its capacity as a second appellate Court.



9. The Appellant submits that he had paid Kshs.200,000/- towards the purchase of the motor vehicle registration number KCR xxxF. That this qualified him to be termed as a partner and not a borrower. Therefore, the learned Adjudicator failed to appreciate that the Motor Vehicle Registration Number KCR xxxF was a joint property between the parties. That thus both parties had the obligation to ensure that the Motor Vehicle Registration Number KCR xxxF was to be held and applied by parties exclusively for the purposes of taxi business under the agreement dated 17th August, 2022, and not otherwise.
10. The Court has perused the Record of Appeal and in summary, the agreement dated 17th August 2022 indicates that the agreement is between Josephat K Too, who was the seller, and Samson Abukwi the buyer.
11. There is also a letter dated 14th December 2022 from the Respondent to the Appellant, whereby the Respondent was demanding to receive the full payment of the arrears sum of Kshs.143, 198. This demand was pursuant to a loan facility of Kshs.312,800 advanced to the Appellant. The same loan was disbursed to the Appellant on 22nd August 2022, and it was to run for 24 months.
12. In response to this letter, the Appellant responded via the email dated 13th January 2023, acknowledging that the Respondent had financed him to buy the car worth Kshs.550, 000.
13. Further to the above, on 7th August 2022, the Appellant wrote to the Respondent stating;

“I Samson Abukwi Bulalila of ID No.10840652, hereby commit to forward monthly installment payments to Northwave Credit Limited for a loan I have borrowed of Kshs.312, 800 [Three Hundred and Twelve Thousand Eight Hundred] shillings only secured with Motor Vehicle from Northwave Credit Limited through Mpesa Paybill No. 734127 on or before my due date. My monthly instalment of the loan facility approved by Northwave Credit Ltd, each unit payment is Kshs.27, 599.

I Samson Abukwi Bulalila I have read and understood the terms and conditions that govern the Loan Agreement and agree to abide by failure to which I authorize Northwave Credit Limited to take legal recovery procedures and immediate repossession of the vehicle.”
14. In addition, on 23rd December 2022, the Appellant wrote to the Respondent seeking more time to settle the arrears.
15. From the above summary, it is undeniable that the Appellant had acquired a loan from the Respondent. He had used that loan as part of his finances to purchase a Motor Vehicle in his own name. He put the Motor Vehicle into Taxi business which he operated sorely. From the proceeds of the business, he repaid the loan in monthly instalments to the Respondent. This vehicle was involved in an accident, a risk that was insured. The Appellant was not able to continue with the business when the vehicle was in the garage and he failed to remit the monthly installments. Therefore, the narrative that the Motor Vehicle Registration Number KCR xxxF was a joint property between the parties is incorrect. The submissions that both parties had the obligation to ensure that the Motor Vehicle Registration Number KCR xxxF was to be held and applied by parties exclusively for the purposes of taxi business under the agreement dated 17th August, 2022 is misleading and dishonest.



16. It was the Appellant’s position that the Trial Court in making its findings rewrote the agreement between the Appellant and the Respondent. In *National Bank of Kenya Ltd v Pipeplastic Samkolit [K] Ltd & another*, [2001] eKLR the Court of Appeal held that:
- “A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”
17. It is trite that the terms of the contract bind parties and as already established therein above, this was a contract for a loan in which the Appellant was required to abide by its terms, failure of which the Respondent was at liberty to repossess the vehicle.
18. As things stand, the Appellant did not produce any evidence to prove that he abided by the terms of that contract. Further, the Appellant has not paid the arrears even after being served with a demand letter by the Respondent.
19. It was the Appellant’s further argument that the Trial Court misapprehended the law by arriving at a wrong conclusion by disregarding the doctrine of stare decisis and referred to the case of *Kana v Mwangi* [Civil Appeal E006 of 2020] [2003] KEHC 19019 [KLR].
20. In this particular mentioned case, the Court found that the parties were bound by the terms of their contract. The Respondent having failed to pay the monthly instalments, the Appellants’ right to repossess the vehicle had accrued. The Court further stated that
- “for the respondent to walk away with a refund of whatever monies she had paid to the appellant, without taking into account diminution in value of the vehicle during the period when it was in her possession, amounted to unjustly enriching her. It cannot be that she got the benefit of using the vehicle for some time, whether profitably or not, and upon default, she is allowed to recover whatever money she had paid to the appellant.”
21. The Court fully associates itself with the finding in this case and finds that the Appellant breached the loan contract and as things stand, the Appellant did not produce any evidence to confirm that the Respondent is actually in possession of the vehicle. Be as it may, upon default by the Appellant, the Respondent’s right of repossession had accrued. The party guilty of breach of contract cannot and should not expect compensation out of that breach.
22. It would appear as if the Appellant’s mindset was that the loan had to be paid exclusively from the proceeds of the Taxi business. The Court has not seen any terms of an agreement to that effect. The Court sympathises with the Appellant for the motor vehicle accident that led to cessation of the taxi business. However, this did not bring to an end or stall the obligations to repay the loan. At least no such evidence was placed before the learned Adjudicator.
23. In any event, the Court cannot overturn the factual findings by the Learned Adjudicator, unless they are perverse. This has not been established in this Appeal.
24. In light of the above, the Appeal is hereby dismissed.
25. As to costs, the same lie at the discretion of this Court. Seeing that the Appeal is undefended, there shall be no orders as to costs.

Determination

26. The Appeal is dismissed in its entirety



27. There shall be no orders as to costs.

28. It is so ordered.

SIGNED, DATED AND DELIVERED AT MILIMANI THIS 24TH DAY OF JULY, 2025.

NJOROGE BENJAMIN K.

JUDGE

Mr. Rodgers Alinyo for the Appellant

N/A for the Respondent

Mr. Luyai-Court Assistant

