



Consolidated Bank of Kenya v Waso Trustland Project (Civil Appeal E006 of 2024) [2025] KEHC 10643 (KLR) (Civ) (17 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
CIVIL APPEAL E006 OF 2024
SC CHIRCHIR, J
JULY 17, 2025**

BETWEEN

CONSOLIDATED BANK OF KENYA APPELLANT

AND

WASO TRUSTLAND PROJECT RESPONDENT

(Being an appeal from the Judgment of Hon. L.Mutai in Civil case number E12 of 2022 at the Chief Magistrates Court at Isiolo)

JUDGMENT

1. The Respondent herein filed suit at the Chief Magistrates Court at Isiolo seeking orders as follows:
 - a. An order directing the defendant to re-open the plaintiff's Account No. xxx at Consolidated Bank of Kenya, Isiolo Branch, to be operated by the plaintiff's bona fide signatories namely Gira Huka Gambe (Chairperson), Jillo Adan Abdi (secretary/ CEO), Abdi Jillo Dadacha (Treasurer) and Jaldesa Tuke (Board Member).
 - b. Interest on the account balance in the plaintiff's account No. xxx at Consolidated Bank of Kenya, Isiolo Branch at 14% per annum from 2/10/2020 when the said account was closed till the date of the judgment.
 - c. General damages for breach of contract
 - d. Special damages of Kshs.25,000/=
 - e. Costs of the suit
 - f. Interest on (b),(c), (d) and (e) above Court's rate.



No.24 of 2019. Further, it avers that no new board members or signatories visited the Appellant's Bank to request for alleged changes and to provide specimen signatures.

8. Further, the Appellant submits, that there was no formal closure of xxx, and that indeed the Account statements as they appear on Pages 18 to 27 of Record of Appeal clearly show that there have been no activities on the account since 02/10/2020.
9. The Appellant filed further submissions dated 3rd April 2025, wherein it averred that the Respondent's impugned account No.xxx was a current account which generally does not earn interest; as evidenced by the Account statements produced.
10. The Appellant has therefore urged this Court to find that it has sufficiently demonstrated that the Respondent's impugned Account No. xxx is a current account attracting monthly maintenance fees only. Further the Appellant urges this court to find that it is not possible to pay interest on Respondent's non-interest earning account . The respondent has relied on the case of *Amwago v Eco bank Ltd* (2025) KEHC 3477 (KLR) in this regard

Respondent's Submissions

11. The Respondent submits that it is not contested that the Respondent leadership wrangles were duly solved by the NGO's Coordination Board and that the resolution of the conflict were captured in the two letters both dated 16/12/2021 , that were produced in evidence. That it is not contested that the Appellant was served with a letter seeking the Appellant to grant the Respondent access to their funds, and it was upon the Appellant's failure to comply that this suit was filed. It its further submitted that the denial of the respondent's access to its Account was deliberate.
12. The Respondent further submits that the trial court took judicial notice of the fact that banks use their customer's money to make profit and therefore the Respondent herein is entitled to interest at 14% as adjudged by the trial court for the period that the Appellant closed and/ froze the Respondents account.

Analysis and Determination

13. The duty of this court ,as the first Appellate court, is to review the evidence , evaluate it and arrive at its own conclusion, while making allowance for the fact that the trial court had the additional benefit of hearing and seeing witnesses first – hand. (see : *Selle & Ano v Associated Motor Boat Co. Ltd* (1968) EA 123)
14. I have considered the grounds of Appeal and the rival submissions. Even though one of the Appellant's prayer is the setting aside of the trial court's Judgment it is evident from its grounds of appeal and the submissions that gravamen of its Appeal is the issue of interest at 14% . Nevertheless the issue of interest can only be answered by addressing the question of whether the Appellant indeed unlawfully barred the respondent from accessing its Account.
15. It is evident that the Respondent had leadership wrangles which necessitated the Appellant to close or stopped the operation of the Account. In this regard , the Appellant has submitted that the Account went dormant , not closed. However the defence witness (DW1)admitted receiving the demand letter from the Respondent Advocates, and the letter demanded for the re-opening of the Account. There was no response to the effect that the Account was never closed in the first place but was in dormancy. Further paragraphs 5, 8, and 11 suggest that the Appellant was reluctant to allow the operation of the Account due to the wrangles going on in the Respondent's company. Further , again, and in any event , the Appellant's ground 1 of the memorandum of Appeal states that the Account was frozen because



of the wrangles that were going on in the Respondent's organization. Consequently the Appellant cannot run around and submit that the Account went into dormancy for want of operation. I therefore find the Appellant's argument that the Account went into dormancy for want of any transaction implausible.

The Question of Interest

16. The statements of the subject Account which were produced by both parties show that there was no interest earned between July 2018 and October 2020 when the account was frozen. It meant that the Account was not earning interest even at the time it was operational. Further save to make it one of the prayers, neither the Respondent's pleading or evidence laid a basis for the award of 14% interest. A perusal of the trial court's judgment also show that, the court did not lay a basis for the awarding interest at 14%.
17. Accordingly, to award interest at 14% is impose on the parties terms which they had not agreed to in the first place. It is trite law that courts have no business re-writing contracts of parties. In the case of *Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited* [2017] KECA 152 (KLR) the court of Appeal had this to say: "We are alive to the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties, They are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved."
18. However there is evidence to show that in december 2021, the NGO- Co-ordination Board advised the Appellant about the bonafide members of the Respondent's Board. I take judicial Notice, of the fact that by Law, the NGO- Co-ordination Board is the Registering body of all Non- governmental organizations(NGOs) in Kenya. Thus if one wanted to know if an NGO is registered or its members of the Board, one would have to carry out a search at the NGO Board. There was no valid reason therefore as to why the Appellant did not use the advice from the NGO Co-ordination Board communicated through the letter dated 16/12/2021 to reopen the account with the signatories being the Board members stated therein.
19. Consequently the loss and inconvenience that the respondent suffered from December 2021 is due to the fault of the Appellant. For that reason, the respondent was entitled to interest albeit not at the unsupported rate of 14%.
20. In the end the Appeal partially succeeds and I hereby proceed to make orders as follows:
 - a) The judgment of the Trial court is hereby varied to the extent that the order of interest at 14% per annum is hereby aside.
 - b) The sum of ksh.5,344,764.60 will attract interest at court rates from the date of the judgment in the lower court until the Account is re-opened.
 - c) Each party to meet its own costs

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 17TH DAY OF JULY 2025.

S. CHIRCHIR

JUDGE.

In the presence of :

