



**Kamande v Achieng t/a Casana Rehani (Civil Appeal E226 of 2024)
[2025] KEHC 12162 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 12162 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E226 OF 2024**

**F WANGARI, J
JULY 10, 2025**

BETWEEN

MONICA NYAMBURA KAMANDE APPELLANT

AND

CAROLINE ACHIENG T/A CASANA REHANI RESPONDENT

*(Being an appeal against the Judgment and decree of Hon. Viola Muthoni
(RM) delivered on 2nd July 2024 in Mombasa SCCC No. E180 of 2024)*

JUDGMENT

1. The background of the appeal is a Statement of Claim dated 26th February 2024 on breach of contract. That at all material times to the suit, the Claimant/Appellant was the registered and beneficial owner of motor vehicle registration number KDD 546H make Nissan Juke black in colour. That the Claimant entered into an agreement with the Respondent on 8th November 2023 where the Respondent agreed to lend the Claimant Kshs. 250,000/- payable on 8th December 2023 as Kshs. 325,000/- and the motor vehicle was to be used as security for the loan.
2. The Claimant avers that on 8th December 2023, they went to the Respondent's premises at Mtwapa to repay the loan but the Respondent was absent and that the Respondent stopped picking her calls. The Claimant stated that the Respondent had been using the motor vehicle for her own gain as it had been spotted in several places with different drivers which was not part of the agreement. That the Respondent had been using the motor vehicle for hire making Kshs. 5,000/- per day from 8th December 2023 to 26th February 2024 amounting to Kshs. 380,000/- which the Claimant claimed the proceeds.
3. The Claimant further states that despite following the requisite procedure set down, the Respondent refused to accept the loan amount and return of the motor vehicle electing to take the Claimant in circles. That this prompted her to report the matter at Mtwapa Police Station. That as a result of the aforesaid breach, the Claimant suffered loss and damage which she held the Respondent liable.



4. The Claimant prayed for judgment against the Respondent for return of the motor vehicle, nominal charges for breach of contract, loss of user at Kshs. 380,000/-, special damages for Kshs. 380,000/-, costs of the suit and interest, and such other or further relief as this honourable court may deem fit to grant.
5. The Respondent filed a Response to Statement of Claim and Counter-Claim dated 28th March 2024 and averred that the Claimant approached her for a friendly loan of Kshs. 250,000/- on 8th November 2023 to pay medical emergency bills for her sister who was suffering from cancer. That the two parties entered into a written contract dated 8th November 2023 and upon executing the contract, the Claimant received cash of Kshs. 124,000/- and Mpesa transfer of Kshs. 126,000/- on the said date, that the amount was payable on 8th December 2023, and that the loan was secured by motor vehicle registration number KDD 546H.
6. The Respondent stated that thereafter, the Claimant requested for additional funds to enable her settle the outstanding medical bills for her sister and to procure a flight ticket to rejoin her husband in the Netherlands. That through several other verbal agreements, the amount in the contract was increased to a total sum of Kshs. 485,000/- through diverse disbursements vide cash pay and the Claimant's Mpesa number 0721919205.
7. That on 8th December 2023, the Claimant failed to repay the said Kshs. 485,000/- as agreed. That she further requested variation of the terms by an addition of 3 months to enable her repay the loan amount at an additional interest of Kshs. 360,000/-. That the Respondent agreed to the varied terms and continued holding onto the vehicle.
8. The Respondent stated that on 4th February 2024, the Claimant requested the Respondent for a bank account to deposit the sum of Kshs. 845,000/-. That instead of repaying the loan on 12th February 2024, the Claimant reported false accusations at Mtwapa Police Station that the Respondent had stolen the motor vehicle. That consequently, the Respondent was charged vide Shanzu Criminal Case No. E194 of 2024, Republic v Caroline Achieng George for stealing the motor vehicle. The Respondent denied ever evading payment or using the motor vehicle for any other gain save as collateral for the advanced loan.
9. The remedies sought by the Respondent included loan repayment of Kshs. 845,000/-, loss of business in the tune of Kshs. 378,990/- and loss of loan in the tune of Kshs. 80,000/-. That the alternative to the loan repayment of Kshs. 845,000/- the Respondent prayed that the court issues an order for force transfer of the motor vehicle registration number KDD 546H, Nissan Juke, black in colour as per the transfer form dated 8th November 2023, cost of the suit and interest thereon at court's rate until payment in full, interest on the amounts prayed for above at court rate from the date of filing suit until payment in full, and any other relief that the court deemed fit.
10. This suit was heard and Judgment delivered on 2nd July 2024 where the court dismissed the claim, entered judgment for the Respondent against the Claimant for Kshs. 864,990/- plus interest from date of delivery of judgment, the Respondent was ordered to unconditionally surrender the motor vehicle KDD 564H to the Claimant on payment of the decretal sum in full, and the Respondent granted costs of the counterclaim.
11. Being dissatisfied, the Appellant appealed the judgment and decree through the Memorandum of Appeal dated 9th July 2024 on grounds inter-alia, that the learned adjudicator erred in law in entering judgment in favour of the Respondent against the Appellant, the court lacked jurisdiction in making a finding that the Appellant was responsible for the arrest and detention of the Respondent despite the same being an independent duty of the police, office of the director of public prosecutions and/



or the magistrates court in Shanzu, in making a finding on the Respondent's counterclaim and that the Respondent was entitled to the orders sought, in making a finding that the Appellant had not proved her case against the Respondent and consequently dismissing the Appellant's case with costs to the Respondent, by failing to consider the Appellant's pleadings, evidence and/or submissions, and in making an award of costs to the Respondent without any basis and/or giving the reasons thereto.

12. The Appellant prayed for orders that the appeal be allowed, that judgment and decree delivered on 2nd July 2024 be set aside, that the court enters a judgment in favour of the Appellant by allowing the Appellant's case against the Respondent, and that costs of the appeal and the trial court be borne by the Respondent.
13. The Respondent then filed a Memorandum of Cross Appeal dated 26th September 2024 that the learned adjudicator erred in law and facts in disallowing to award the Respondent the claim of Kshs. 80,000 despite the available evidence on record that was never controverted by the Appellant, in failing to find that the total principal loan amount advanced by the Respondent to the Claimant was Kshs. 485,000/- that was never controverted by the Appellant, in failing to find that the Respondent gave the Appellant Kshs. 124,000/- in cash and that the same was never controverted by the Appellant, and by failing to consider the Respondent's pleadings, evidence and/or submissions.
14. The Respondent prayed that the Cross-Appeal be allowed and award the Respondent Kshs. 80,000/- and principal loan of Kshs. 485,000/- as against the Appellant, that in the alternative the cross appeal be allowed and award the Respondent Kshs. 124,000 advanced to the Appellant in cash, and that costs of the appeal and cross appeal be borne by the Appellant.
15. The appeal was canvassed by way of written submissions. The Appellant in their submissions dated 18th December 2024 argued on the issue of whether the court has jurisdiction to make an award of general damages for arrest and detention of the Respondent by citing the case of Owners of the Motor Vessel 'Lilian S' v Caltex Oil (Kenya) Ltd (1989) eKLR that jurisdiction of the court is everything.
16. The Appellant submitted that for a fact in issue to be heard and determined by the Small Claims Court, it has to fit into the tenets provided under Section 12 (1) of the Small Claims Act. That the Appellant's statement of claim was for breach of contract which squarely falls within Section 12 (1) of the Small Claims Court Act. That however, the Respondent sneaked into the record a counterclaim for compensation and/or loss of user for the alleged unlawful arrest and/or detention at Shimo La Tewa Prison contrary to the said section.
17. The Appellant further relied on the holding in the case of Daniel Waweru Njoroge & 17 Others v Attorney General, Civil Appeal No. 89 of 2010 (2015) eKLR and stated that the Respondent's contention was for a false arrest and detention and that the honourable magistrate erred in law in making a finding for an award of general damages and/or loss of user as the Small Claims Court lacks the jurisdiction to hear and determine a dispute arising from an alleged tort of false imprisonment. The Appellant prayed that the appeal is allowed and/or dismissal of the cross appeal.
18. The Respondent in their submissions dated 28th March 2025 argued on whether the trial court had jurisdiction to deal with the counterclaim as it did that the Small Claims Court derives its jurisdiction from Sections 11, 12 13 and 17 of the Small Claims Court Act and other enabling provisions of the law, and that the court had jurisdiction to determine the Counter Claim as empowered under Section 12. The Respondent submitted that the court rightfully awarded the Respondent loss of business as the same was well pleaded and proved by the audit report filed by the Respondent.
19. The Respondent stated that the Appellant also admitted that she initiated the report of the security motor vehicle having been stolen by the Respondent, a false allegation that the Respondent stole the



motor vehicle when the Appellant knew that the vehicle was used as collateral and legally held by the Respondent as loan security. That the DCI confirmed that the Appellant's actions were unjust and she was charged with a criminal offence of issuing false information to a police officer.

20. According to the Respondent's view, the trial court rightfully awarded Kshs. 375,000/- for loss of business, a claim for special damages which was well pleaded and proved by the audited report. That the court disallowed the Appellant's claim for loss of user of Kshs. 380,000/- and special damages of a similar amount as she failed to adduce evidence to that effect. Further, the Respondent points out that the Appellant approached the court with unclean hands and the condemnation of costs was fair and just in the circumstances.
21. On the issue of whether the cross appeal as filed is meritorious, the Respondent submitted that the trial court awarded them Kshs. 361,000/- loan advanced to the Appellant together with the agreed interest rate of Kshs. 125,000/- chargeable on Kshs. 250,000/-. Further, the Respondent states that the court failed to consider Kshs. 124,000/- given to the Appellant in cash. Therefore, the total amount payable to the Respondent ought to be Kshs. 610,000/-.
22. Additionally, the losses suffered by the Respondent include loss of business to the tune of Kshs. 378,990/- as shown in the audit report and which was rightfully awarded by the trial court, and the loss of Kshs. 80,000/- spent by the Respondent as legal fees and related costs in Shanzu Criminal Case No. E194 of 2024, Republic v Caroline Achieng George.

Analysis

23. The role of the first appellate court to reexamine and to reevaluate evidence to come up with its own findings was set out in *Selle v Associated Motor Boat Co.* (1968) E.A 123 as follows: -

“ ... 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 ... ”
24. I have considered the Record of Appeal dated 10th December 2024 and submissions by the parties. The issues for determination are: -
 - a. Whether the Small Claims Court had jurisdiction to make an award of general damages for the arrest and detention of the Respondent as pleaded in the Counterclaim
 - b. Whether the Respondent is entitled to awards in the Cross Appeal
 - c. What orders on costs should be made by this court
25. On the first issue of jurisdiction, the Appellant stated that their Statement of Claim was for breach of contract which squarely falls within Section 12 (1) of the *Small Claims Court Act* but the Respondent in their Counterclaim pleaded compensation and/or loss of user for the alleged unlawful arrest and/or detention at Shimo La Tewa prison. That the Small Claims Court erred in making a finding for an award of general damages and/or loss of user as it lacks the jurisdiction to hear and determine a dispute arising from the alleged tort of false imprisonment.
26. The Respondent argued that the Small Claims Court had jurisdiction to determine the counterclaim as empowered under Section 12 of the *Small Claims Court Act*. That the court rightfully awarded the Respondent loss of business as the same was well pleaded and proved. Further, that the Appellant also admitted that she initiated the report of the motor vehicle having been stolen by the Respondent when she was all aware that the vehicle was used as collateral and legally held by the Respondent as loan



security. That the DCI confirmed that the Appellant's actions were unjust and she was charged with a criminal offence of issuing false information to a police officer.

27. According to the Respondent, while the trial court awarded Kshs. 375,000 for loss of business, it disallowed the Appellant's claim for loss of user of Kshs. 380,000 and special damages of a similar amount as she failed to adduce evidence to that effect.

28. Section 12 (1) of the *Small Claims Court Act* provides for jurisdiction of the Small Claim Court as follows: -

“Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to: -

- a. a contract for sale and supply of goods or services;
- b. a contract relating to money held and received;
- c. liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
- d. compensation for personal injuries; and
- e. set-off and counterclaim under any contract.”

29. On perusal of the impugned judgment, the Trial Court made the following finding;

1. “The Respondent Counterclaimed against the Claimant for repayment of the loan of Kshs 845,000/- and in the alternative forced transfer of motor vehicle KDD 546H. In light of this court's earlier finding, the court finds that the Respondent is entitled to the Counterclaim, but for Kshs 486,000/-.
2. The Respondent has also claimed for loss of business for 7 days for Kshs. 378,990/-. The court has considered the Charge Sheet annexed by the Respondent, which shows that she was apprehended on 15th February 2024 and released on bail on 19th February 2024. The Court has also considered the Audit Report of the Respondent for the period ended 31st March 2024.
3. The Respondent runs several businesses including sale of second hand items, bar and restaurant as well as rental buildings. From the Respondent and her witnesses' statement, the Respondent had to close her shop in the period that she was incarcerated, hence the business suffered a loss.
4. From the audit report, sales from the Respondent's business dipped from over 1 million shillings in January 2024 to Kshs 674,400/- in February 2024 and Kshs 846,340/- in March 2024. The court finds that the Respondent has proved on a balance of probabilities that her businesses suffered losses as a result of her absence, having been detained on account of the criminal case. The court awards the Respondent Kshs 378,990/- under this head...”

30. This court is inclined to agree with the Respondent that the court awarded them loss of business in determining their counterclaim pursuant to Section 12 (1) of the *Small Claims Court Act*. It was necessary to loop in the issue of incarceration as the reason behind the loss of business. The same did not amount to a determination of a dispute arising from an alleged tort of false imprisonment.

31. On the second issue of the Respondent's Cross Appeal, the Respondent submitted that the court failed to consider Kshs. 124,000/- given to the Appellant in cash, and the loss of Kshs. 80,000/- spent by the



Respondent as legal fees and related costs in the criminal case. The Respondent prayed that the cross appeal be allowed on the said additional sums.

32. On the two sums, the Small Claims Court held as follows: -

- “1. Issue 1...
2. The Respondent also pleaded that she gave the Claimant Kshs. 124,000/- in cash. There was however no evidence of this. Although the Respondent’s witness states that he knows the Respondent gave the money in cash, he did not see her hand it over.”
3. “Issue 4...
5. As for the claim for loss of loan of Kshs. 80,000/-, the Respondent has only attached an Mpesa message showing that the money was received from one Caroline George on 13th March 2024. There is no evidence of which phone number received this money and that the same was paid by the Respondent in legal fees for the criminal case. Therefore, this prayer fails.”

33. The question that this court is required to answer is whether the Respondent in the Cross Appeal proved their case on a balance of probabilities. The awards in the Cross Appeal that the Respondent is seeking are special damages which must be specifically pleaded and proved.

34. This court has established that there is no sufficient proof of the said amounts. Therefore, the Small Claims Court did not err in declining to make the awards. In line with the above, I find both the appeal and cross appeal herein lack merit.

35. On costs, the same follows the event. Both parties having been unsuccessful, I direct that each party to bear own costs.

Determination

36. Following the foregone discourse, the upshot is that the following orders do hereby issue;
- a. That both the appeal and cross appeal lacks merits and they are hereby dismissed.
 - b. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 10TH DAY OF JULY, 2025

.....

HON. F. WANGARI

JUDGE

In the presence of;

Mr. Maitha Advocate for the Appellant

N/A by the Respondent

Ms. Getrude, Court Assistant

