



REPUBLIC OF KENYA



**Kinuu v Wanyonyi (Civil Appeal 6 of 2017) [2025] KEHC 9683 (KLR) (7 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9683 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE**

**CIVIL APPEAL 6 OF 2017**

**RK LIMO, J**

**JULY 7, 2025**

**BETWEEN**

**LEAH WANJA KINUU ..... APPELLANT**

**AND**

**CAROLYNE WANYONYI ..... RESPONDENT**

*(Appeal arose from judgment of Hon G.N. Sitati  
delivered on 21/2/2017 in Kitale CMCC NO.390 of 2015)*

**JUDGMENT**

1. This appeal arose from judgment of Hon G.N. Sitati delivered on 21/2/2017 in Kitale CMCC NO.390 of 2015. In that suit the appellant had sued the respondent for failing to refund a sum of Kshs.320,000/- allegedly advanced to her as a loan. The respondent denied owing the appellant the cited amount and that the amount loaned to her had been repaid leaving a balance of Kshs.105,800/-.
2. The trial court found that the appellant's claim had not been proved and dismissed it.
3. The appellant felt dissatisfied and filed this appeal raising the following grounds namely;
  - i. That the trial court erred by entering judgment for Kshs.105,800/- instead of Kshs.320,000/- as prayed in the plaint.
  - ii. That the trial court erred by holding that Kshs.105,800/- was the amount owing to the appellant.
  - iii. That the trial court did not appreciate the law governing documentary evidence and arrived at the wrong decision.
  - iv. That the trial court erred by denying the appellant costs of the suit after entering judgment for the sum of Kshs.105,800/-.



- v. That the trial court erred by denying the appellant interests on the amount owed without giving reasons.
  - vi. That the findings by the trial magistrate was against the weight of evidence.
4. In her written submissions through her learned counsel dated 8/5/24, the appellant contends that the respondent admitted repaying Kshs.214,000/- to the appellant but tendered no evidence in proof. According to the appellant, by that admission, the burden of proof shifted from her to the respondent pursuant to provisions of Section 109 of *Evidence Act*.
  5. She submits that the respondent testified and acknowledged that she signed an acknowledgment that she was indebted to the appellant. She argues that if it was true that the appellant conceded that she had not paid Kshs.105,800/- why did she not undertake to pay Kshs.105,800/?. He draws this court's attention to a document tendered as PExhibit 1 stating that the document shows a balance of Kshs.245,800/-. She contends that the respondent could not give an explanation on the calculations shown on the exhibit. According to the appellant there was no evidence that the respondent had paid Kshs.214,000/- leaving a balance of Kshs.105,800/- and faults the trial court for fishing out for evidence to assist the respondent and being selective in looking at the exhibit tendered by the appellant. She relies on a decision by Julius Mwirigi Manyara Samson –vs- Alexander Kithure (C.A. NO.134 OF 2002 at Meru), where the court held that it was erroneous to import evidence in a case. She also relies on Orix Oil (K) Ltd –vs- Paul Kabeu & 2 Others in her contention that as a successful party, she was entitled to costs.
  6. She contests the respondent's claim that she altered the interests charged. She submits that there is no evidence that she charged interests. She submits that the respondent did not deny signing the agreement arguing that her details including Identification Card are captured.
  7. The respondent has opposed this appeal vide written submissions dated 16/7/24 done through counsel. She contends that she tendered sufficient evidence to show that she was only indebted to Kshs.105,800 which amount was mutually agreed to be settled through monthly instalments of Kshs.7500/-. She claims that she stopped repayment when the appellant demanded interests over and above what had been agreed.
  8. The respondent submits that the trial court was correct to enter judgment on the conceded amount adding that the interests charged by the appellant were injurious, extortionate, penal and illegal.
  9. She supports the trial court's decision on interests stating that Section 26 *Civil Procedure Act* gives the court discretion in awarding interests.
  10. This court has considered this appeal and the response made. This is a first appeal and as a first appellate court the mandate of this court is to re-evaluate the evidence tendered and make own conclusion.
  11. The appellant's claim in the trial court was based on an acknowledgment that was handwritten and tendered during trial as PExhibit 1. The appellant claimed that the same supported her claim that she had advanced a loan of Kshs.320,000/- to the respondent but a look at that document reveals unclear calculations which as correctly noted by the trial court were done in a different pen from the initial hand wording which I have found to be rather unclear and confusing. the writing reads;

“On this date I Caroline Wanyonyi have agreed to pay Leah Wanja a sum of Kshs.320,000/- by December 2011 – 31<sup>st</sup> December”.

Below the writing are calculations which are difficult to discern. The appellant contends that the respondent had the burden of unravelling the said calculations and their significance but I disagree.



The burden of proof always lies with the plaintiff. It only shifts when a case has been made on a balance of probability. In this case the appellant failed to demonstrate how she advanced Kshs.320,000/- to the respondent and on what basis.

12. Secondly and more importantly, the appellant in her testimony stated that the respondent went to her on 3/9/2011 and she gave her Kshs.320,000/-. She does not say whether the respondent asked for a financial aid or why they never wrote down an agreement indicating concisely the terms of the agreement. The respondent in her testimony stated that the appellant used to give out loans to people and that she borrowed 25,000/- at agreed interest of 40% per month and that she repaid 140,000/- and later paid a further 70,000. She testified that on 3<sup>rd</sup> September 2011, she went to where she worked with calculations and since she had embarrassed her severally, she wrote an acknowledgement of Kshs.320,000/- out of which she claims she paid 214,200 leaving a balance of Kshs.105,800/-.
13. What came out clearly from the evidence tendered was that the appellant could have been operating shylock business of lending out money outside the law and regulations issued through the Central Bank Act.
14. The provisions of Section 33R of the *Central Bank of Kenya Act* provides that non-deposit credit providers must be registered with the Central Bank of Kenya and operate with a licence issued under Section 33S of the Act. The Act provides that it is an offence to operate without a licence. The appellant did not tender any evidence showing that she was operating a licensed business of lending money and charging interests therefrom. The business in other words was unlawful and nothing fruitful can flow from an illegality.
15. This court finds that the appellant's action against the respondent from whichever angle one looks at it could not be sustained. If she had simply advanced a friendly loan without charging interests, she needed to explain the meaning of calculations contained in the exhibit she tendered in evidence.

The lack of clarity in that document alone meant that she had not proven her case to the required standard.

In short this court finds no merit in this appeal. The same is dismissed with costs to the respondent.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 7<sup>TH</sup> . DAY OF JULY , 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of;

Munialo for the applicant

Songole for the respondent

Court assistants – Duke/Chemosop

