



REPUBLIC OF KENYA



**Kamanda v Ndunda (Civil Appeal E024 of 2025)
[2025] KEHC 12818 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E024 OF 2025
AN ONGERI, J
SEPTEMBER 19, 2025**

BETWEEN

DENIS KAMANDA APPELLANT

AND

PHILIP NDUNDA RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. S. M. Musili (Adjudicator/
RM) in Voi SCCC No. E021 of 2024 delivered on 21st February 2025)*

JUDGMENT

1. The Appellant Denis Kamanda was the Claimant in Voi SCCC No. E021 of 2024 where he was seeking Kshs. 448,760/= plus costs and interest.
2. The Appellant alleged that he had advanced the Respondent the said amount on 18th January 2024 when the Respondent secured an interior design job in Voi Town and the Respondent required financial assistance to acquire necessary materials for the job.
3. The Appellant said the Respondent requested him to loan him Kshs. 345,200/= and he promised to refund the said amount with 30% interest by March 2024.
4. The Appellant said he dutifully loaned the Respondent the said sum but the Respondent has failed to repay the money.
5. The Respondent denied the claim and said that the money was in respect of an investment that went sour and further that there was no agreement between them.
6. The trial court found that the parties did not put any agreement in writing and held that this was an investment that did not succeed.



7. The trial court said they would have shared the profits and entered judgment in favour of the Appellant in the sum of Kshs. 172,150/= (half the amount the Appellant alleged to have paid the Respondent).
8. The Appellant has appealed to this court on the following grounds:-
 - i. The learned trial Magistrate erred in law by neglecting and/or failing to apply the well established principle of restitutio in integrum upon finding that there was breach of contract.
 - ii. The learned trial Magistrate erred in law by apportioning liability for breach of contract against the Appellant without evidence from the Respondent or at all as to the Appellant's culpable conduct or contribution towards breach.
 - iii. The learned trial Magistrate erred in not awarding the Appellant the agreed interest of KES 103,560.00 despite the availability of uncontroverted evidence proving the amount.
9. The Appellant filed written submissions as follows:-
10. That the Appellant, Denis Kamanda, is appealing against the judgment of the Small Claims Court which held both parties equally liable for the failure of a project and denied his claim for agreed-upon interest.
11. The core of the appeal challenges the lower court's decision on three main points. First, the Appellant argues the trial magistrate made a factual finding of equal liability without any supporting evidence from the Respondent, Philip Ndunda.
12. The Appellant contends that the uncontested evidence clearly showed his role was purely that of an investor who provided funds, while the Respondent was solely responsible for executing the interior design project.
13. Since the Respondent failed to perform and never blamed the Appellant for the project's failure, the court's sua sponte decision to apportion liability was arbitrary, capricious, and based on no evidence.
14. Second, the Appellant submits the trial court failed to consider a crucial piece of relevant evidence: a WhatsApp conversation (CEXh 2e) that explicitly discussed the 30% interest on the principal amount.
15. That this evidence was presented and referenced during hearings but was completely omitted from the court's judgment. The Appellant argues that had this uncontroverted evidence been considered, it would have, on a balance of probabilities, justified the award of the agreed interest of KES 103,560.00.
16. Third, the Appellant asserts the trial court made errors of law and principle. That the court erroneously demanded "precision" from an oral agreement, a standard higher than the balance of probabilities required in civil cases.
17. Furthermore, that the court incorrectly claimed that the lack of a written agreement left it unable to determine the consequences of the breach.
18. The Appellant argues the court should have applied the established legal principle of restitutio in integrum (restoring the injured party to the position they would have been in had the breach not occurred).
19. That applying this principle would have meant awarding the Appellant not just the returned principal of KES 345,200.00, but also the gains he was prevented from making (the agreed interest) and the costs of the suit.



20. In conclusion, the Appellant prays for the appeal to be allowed, the lower court's judgment set aside, and judgment entered in his favor for the full principal amount plus the agreed interest and costs.
21. The respondent did not file any submissions as directed by the court.
22. This being an appeal from the Small Claims Court, the same can only be entertained on points of law.
23. The jurisdiction of this court, as the final appellate court from a Small Claims Court, is circumscribed by statute. Pursuant to Section 38 of the *Small Claims Court Act*, an appeal to the High Court lies only on a point of law.
24. This court is therefore not tasked with a re-hearing or a re-evaluation of the facts afresh, but rather with an examination of whether the lower court correctly identified and applied the relevant legal principles to the established facts.
25. The central task is to determine if the trial court's decision was based upon a mistaken view of the law.
26. The issues for determination in this appeal are as follows:-
 - i. Whether the trial magistrate erred in law by apportioning liability between the parties on a 50/50 basis without any evidential foundation from the Respondent;
 - ii. Whether the trial magistrate erred in law by failing to consider and make a finding on the Appellant's claim for agreed interest despite the presence of evidence in the form of a WhatsApp conversation;
 - iii. Whether the trial magistrate erred in law by failing to apply the principle of restitutio in integrum and instead treating the transaction as a failed investment for which losses were to be shared.
27. This is an appeal from the judgment and decree of of the Small Claims Court at Voi, delivered on 21st February 2025 in Voi SCCC No. E021 of 2024.
28. The Appellant, Denis Kamanda, being dissatisfied with the said judgment, has lodged this appeal on the grounds that the learned trial magistrate erred in law by apportioning liability without evidence, failing to consider crucial evidence on interest, and misapplying the legal principles governing breach of contract.
29. The Respondent, Philip Ndunda, though served, did not file any submissions in opposition to the appeal.
30. On the first issue, the record is clear that the Appellant's claim was founded on a loan advanced to the Respondent.
31. The Respondent's defence, while denying the claim, characterised the money as an investment that had failed.
32. The trial magistrate, after hearing the evidence, made a factual finding that there was no written agreement and then proceeded to hold that the transaction was an investment and that its failure should lead to an equal sharing of the loss, consequently awarding the Appellant half of the principal sum.
33. This finding, however, is not supported by any evidence adduced by the Respondent. The Respondent did not testify or call any evidence to demonstrate how the Appellant was contributorily negligent or in what way the parties had agreed to share losses.
34. The burden of proof for such an assertion lay squarely on the Respondent.



35. The trial magistrate's decision to apportion liability was therefore an error in law, as it was not based on any evidence before the court but on mere speculation. A finding of fact that is not based on any evidence constitutes an error of law.
36. Regarding the second issue, the Appellant produced a WhatsApp conversation (CEXh 2e) which he contended evidenced the agreement for a 30% interest.
37. The trial court was duty-bound to consider all the evidence presented before it. The failure of a judicial officer to analyze and make a determination on a specific piece of probative evidence is an error of law.
38. The WhatsApp conversation was a relevant factor that went to the heart of the Appellant's claim for interest. The trial magistrate's judgment was completely silent on this exhibit. This omission amounts to a failure to consider relevant and material evidence, which is an error of law warranting appellate intervention.
39. On the third and final issue, the trial magistrate's characterization of the transaction as a joint investment for profit-sharing, and consequently loss-sharing, was a finding of fact.
40. However, the legal consequence that flowed from that finding was mishandled. If the court believed the Respondent's assertion that it was an investment (a finding this court notes was against the weight of the Appellant's uncontroverted evidence), the appropriate remedy for a failed venture where one party provided capital and the other expertise would be determined by the law of partnerships or joint ventures.
41. The default position in such arrangements, in the absence of a specific agreement to share losses, is not an automatic equal division of the capital loss.
42. The learned magistrate provided no legal basis for the 50/50 apportionment. Conversely, if the court accepted the Appellant's evidence, which was that of a loan, the applicable principle for breach of contract is that of *restitutio in integrum*, which aims to put the injured party in the position they would have been in had the contract been performed.
43. The trial magistrate's failure to correctly identify the legal nature of the transaction and apply the corresponding legal principles was a fundamental error of law.
44. Having found that the trial magistrate erred in law on all three fronts, this appeal is allowed.
45. The court finds that three errors of law were made by the trial court (the Small Claims Court Adjudicator) as follows:
 - i. Error in Ignoring Evidence: The trial magistrate completely failed to consider the WhatsApp evidence (CEXh 2e) that proved the agreement on the 30% interest. Failure to analyze key evidence is a fundamental error of law.
 - ii. Error in Apportioning Liability: The trial magistrate invented a 50/50 loss-sharing agreement without any evidence from the Respondent to support it. This was an arbitrary decision unsupported by the facts or the law.
 - iii. Error in Legal Principle: This Court holds that the correct principle for a breach of a loan contract is *restitutio in integrum* (restoring the injured party to the position they would have been in had the contract been performed). For a loan with agreed interest, this means awarding the principal plus the agreed interest.



46. In the circumstances, the judgment of the Small Claims Court in Voi SCCC No. E021 of 2024 delivered on 21st February 2025 is hereby set aside in its entirety.
47. In its place, judgment is entered for the Appellant against the Respondent for the sum of Kshs. 345,200.00.
48. Furthermore, having found that the trial magistrate erred in ignoring the evidence on agreed interest, and upon my own evaluation of the said evidence which was uncontroverted, I award the agreed interest of 30% on the principal sum, which amounts to Kshs. 103,560.00.
49. The Appellant shall give credit for the amount already paid and also have the costs of the suit in the lower court and the costs of this appeal.
50. It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 19TH DAY OF SEPTEMBER 2025 IN OPEN COURT
AT VOI HIGH COURT.**

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

