



REPUBLIC OF KENYA



**Ng'ang'a v Gitahi (Civil Appeal E272 of 2022)  
[2024] KEHC 1078 (KLR) (Civ) (12 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1078 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E272 OF 2022**

**DAS MAJANJA, J**

**FEBRUARY 12, 2024**

**BETWEEN**

**DUNCAN NJENGA NG'ANG'A ..... APPELLANT**

**AND**

**MARY WACUKA GITAHI ..... RESPONDENT**

*(Being an appeal from Judgment and Decree of Hon. B.J. Ofisi RM/Adjudicator dated 4th March 2022 in Nairobi Small Claims Court, Milimani in SCC COM. No. E062 of 2021)*

**JUDGMENT**

1. Before the Small Claims Court, the Appellant sought to recover Kshs. 1,000,000.00 in full settlement of amounts owed under two agreements dated 04.12.2019 and 28.01.2020 from the Respondent. He asserted that under the said agreements, he advanced the Respondent Kshs. 500,000.00 to be invested in forex trading where he would earn interest at 28% per month on his investment. The Respondent denied having received Kshs. 200,000.00 under the agreement dated 04.12.2019 but acknowledged receipt of the Kshs. 300,000.00 under the agreement dated 28.01.2020.
2. After considering the evidence on record including the testimonies of the parties, the Adjudicator rendered judgment dated 04.03.2022. The Adjudicator declined to award the Appellant Kshs. 200,000.00 on the ground that the agreement dated 04.12.2019 was not executed by the parties but awarded him Kshs. 300,000.00 plus interest at court rates from the date of filing suit under the second agreement.
3. The judgment precipitated this appeal grounded on the Memorandum of Appeal dated 04.05.2022. The thrust of the appeal concerns the validity of the agreements dated 04.12.2019 and 28.01.2020.



4. The court's jurisdiction in dealing with appeals from the Small Claims Court is limited by section 38(1) of the *Small Claims Court Act*, 2016 which provides that '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.' A court limited to matters of law is not permitted to substitute the subordinate court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (*John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR).
5. The trial court correctly observed that the agreement dated 04.12.2019 and which was produced in evidence was not executed by the parties. Although the parties may enter into an oral contract, the Appellant's pleading and case was that the parties entered into an agreement dated 04.12.2019. The Adjudicator's conclusion therefore was well founded on the evidence and I see no reason to intervene in light of what the Appellant clearly pleaded.
6. As regards the agreement dated 28.01.2020, both parties acknowledged that they entered the said agreement. The Respondent acknowledged that she received a cheque of Kshs 300,000.00 from the Appellant in relation to the agreement. Having acknowledged validity of the agreement, it follows that the terms of the agreement were binding and enforceable on the parties. In that regard, the Adjudicator erred when it awarded the Kshs. 300,000.00 but failed to award interest contemplated under the agreement.
7. The Respondent, in her submissions, urged that should the court find her liable under the agreement dated 28.01.2020, then it should award amounts in conformity with the in duplum rule. The in duplum rule has since been incorporated into Kenyan law under section 44A of the *Banking Act* (Chapter 488 of the Laws of Kenya). In *Momentum Credit Limited v Kabuiya* [2022] KEHC 13705 (KLR), the court observed that provisions regarding interest under the *Banking Act* applies only to banks or financial institutions. The Appellant and the Respondent do not fall within the purview of the *Banking Act*. The parties are therefore subject to their contractual obligations set out in the agreement dated 28.01.2020.
8. In the circumstances and having found that the Respondent was liable under the agreement dated 28.01.2020 and that the in duplum rule was not applicable, I award interest accrued under the agreement being Kshs. 1,008,000.00 as pleaded in the statement of claim. The total amount recoverable as principal and interest is limited to Kshs. 1,000,000.00 being the pecuniary jurisdiction of the Small Claims Court under section 12(3) of the *Small Claims Court Act*, 2016.
9. I allow the appeal and order as follows:
  - a. The judgment of the Small Claims Court dated 04.03.2022 is set aside and substituted with a judgment for the Appellant against the Respondent for Kshs. 1,000,000.00.
  - b. The Respondent shall pay costs of the subordinate court and of this appeal. The costs of this appeal are assessed at Kshs. 25,000.00

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF FEBRUARY 2024.**

**D. S. MAJANJA**

**JUDGE**

Mr Simiyu instructed by SIM Advocates LLP for the Appellant.

Ms Kirunja instructed by EK Njagi and Company Advocates for the Repondent.

