



**Equity Bank Kenya Limited v Nyaga (Civil Appeal E065 of 2021)  
[2024] KEHC 9305 (KLR) (Civ) (18 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9305 (KLR)

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

**CIVIL**

**CIVIL APPEAL E065 OF 2021**

**AB MWAMUYE, J**

**JULY 18, 2024**

**BETWEEN**

**EQUITY BANK KENYA LIMITED ..... APPELLANT**

**AND**

**JACQUILINE WANJA NYAGA ..... RESPONDENT**

*(Being an Appeal from the Judgment of the Hon. G.A. Mmasi (SPM)  
delivered on 15th January, 2021 in Milimani CMCC No. 261 of 2017)*

**JUDGMENT**

1. The single issue before this Court sitting on appeal is whether the Trial Court’s decision to award the Respondent the sum of Kes. 1,000,000.00 was an inordinately high award of general damages and the Learned Magistrate did not provide any justification for how that figure was arrived at. This is made clear from both the Memorandum of Appeal dated 12<sup>th</sup> February, 2021 as well as the Appellant’s Written Submissions dated 8<sup>th</sup> November, 2023. The Appellant is not aggrieved with the award of general damages per se, it is only aggrieved with the quantum. On page 3 of its written submissions dated 8<sup>th</sup> November, 2023 the Appellant states:

“The (lower) court failed to appreciate the fact that the Respondent was also refunded her monies back by the Appellant which had disappeared from the Bank and that it was only prudent enough to award the Respondent with a reasonable general damages for breach of the contract.”

2. The Respondent’s Written Submissions dated 20<sup>th</sup> May, 2024 strenuously defend the Trial Court’s award of general damages. At Paragraph 27, the Respondent opposes the Appellant’s contention that the Trial Court failed to appreciate the fact that the Appellant refunded the Respondent the monies



lost by referring this Court to the line of the lower court's judgment where it recognizes that while the sums were refunded, they remained outside of the Respondent's use for close to two years.

3. The Appellant does not proffer an alternative sum of general damages that the Trial Court should have awarded instead of the Kes. 1,000,000.00 that it did. The authority on quantum of damages cited by the Appellant at the end of its written submissions dated 8<sup>th</sup> November, 2023 is the case of *Sarah Mogati Ogaro & Anor v Maxwell Odhiambo Olang*, [KSM HCCA No. 122 of 2019] in which general damages of Kes. 500,000.00 were reduced to Kes. 150,000.00 less 15% contribution. However, that case involved personal injuries arising from a motor vehicle and not breach of contract and breach of fiduciary duty by a Bank; so it was a curious authority to cite.
4. On its part, the Respondent cited the Court of Appeal's decision in *Gitobu Imanyara & 2 Others v Attorney General*, [NRB CoA CA No. 98 of 2014] in support of its entreaty that this Court should not interfere with the Trial Court's award of damages merely because this Court would have awarded another sum but rather only interfere with the award if convinced that the Trial Court had proceeded on an incorrect principle of law, or if the Trial Court had awarded an amount that was either extremely high or low.
5. Having considered the evidence laid before the lower court as well as the relative positions of the parties as seen in their filings before this Court, it is clear that the only issue between them is on the quantum of damages that the Trial Court awarded; with the Appellant stating that it is too high and the Respondent arguing that it was appropriate.
6. I am satisfied that the Trial Court cannot be faulted for awarding general damages in the amount of Kes. 1,000,000.00. The Trial Court was clear in the impugned judgment that the award of general damages encompassed breach of contractual obligations, breach of duty of care in tort, fraud perpetrated or abetted by the Appellant, and breach of fiduciary duty of a bank to its customer. With the Appellant having failed to cite a directly applicable authority on this subject matter, it would be difficult for this Court at the appellate stage to explain any extent of downward interference with the lower court's award.
7. In any case, noting the multiplicity and severity of the Appellant's breaches, and also noting that the Respondent was only refunded her money after almost two years, the Appellant should count itself extremely fortunate that it was condemned to pay Kes. 1,000,000.00 and not a higher sum. If this Court were in the shoes of the lower court, I would have awarded a figure higher than that Kenya Shillings One Million, but not so much higher as to render the lower court's award as inordinately low and thus ripe for upward interference by this Court.
8. In the circumstances, it can only be that the present Appeal must fail. In view of the circumstances of the case and the Appeal, it is also just and proper that the Respondent be awarded costs.
9. Consequently, I dismiss this Appeal with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 18<sup>TH</sup> DAY OF JULY, 2024.**

**BAHATI MWAMUYE**

**JUDGE**

In the presence of:

Ms. Taank Counsel for the Appellant

Mr. Kariuki h/b Mr. Omony Counsel for the Respondent

Mr Guyo, Court Assistant

