



REPUBLIC OF KENYA



**Naftal v Uwezo Microfinance Bank Limited (Civil Appeal E756 of 2022)
[2024] KEHC 9843 (KLR) (Civ) (10 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9843 (KLR)

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

CIVIL

CIVIL APPEAL E756 OF 2022

REA OUGO, J

JULY 10, 2024

BETWEEN

MOSES ONDERI NAFTAL APPELLANT

AND

UWEZO MICROFINANCE BANK LIMITED RESPONDENT

*(Being an Appeal from part of the Judgement delivered on 31st August,
2022 at the Small Claims Court at Nairobi in SCCCOM/E1875/2022)*

JUDGMENT

1. The Respondent had initiated a claim against the Appellant in the Small Claims Court, demanding a settlement for a sum of Kshs. 980,409.23 as an outstanding amount from an advanced loan of Kshs. 1,000,000/= to the Appellant who had failed, refused, and/or neglected to pay. The Respondent also sought relief by way of compensation and settlement of costs as would be assessed by the court after forfeiture and waiving of all sums in excess of Kshs. 1,000,000, excluding costs and interests.
2. In his Response Statement, the Appellant denied owing the Respondent any money and that he was a stranger to the claim and contents of the claim. He added that none of his personal accounts had ever been credited by the Respondents any funds. Without prejudice to the foregoing, the Appellant further pleaded that he was a member and the chairman of Moto Moto Youth Self Help Group which the Respondents had offered a loan to acquire a motor vehicle, registration number KCD 829Z -Toyota Hiace make, under the agreed terms of asset financing. The Appellant stated that the Respondent retained the Log Book of the said motor vehicle upon the joint registration of the logbook as had been agreed but later repossessed the motor vehicle and auctioned it to service the loan sometime in 2017.
3. The Appellant lodged a counterclaim against the Respondents for general damages for threats, harassment, anxiety, nervousness, and emotional anguish caused by the constant calls from the



Respondents through his phone number; 0728076862. The Appellant complained about the basis under which his name had been handed by the Respondents to the Reference Bureau. He lamented that he could not conduct his business without a clearance certificate from the Bureau or secure any advance credit from any institution due to the Respondent's actions.

4. The Appellant had sought a dismissal of the Respondents' claims with costs to the Respondents. He also sought a judgment against the Respondents on the Counterclaim/Set Off in the sum of Kshs 1,000,000/=.
5. The trial court after a hearing found that there was no binding contract between the parties and against the Appellant in his capacity as Chairman. The Court ordered the Respondent to secure the delisting of the Appellant's name from the Credit Reference Bureau promptly. The Court observed that the Appellant acknowledged being the contact person as far as the contract went and that follow-ups by the Respondent were to be expected. He admitted making payments towards the settlement of the loan, in whatever capacity for two years and therefore the claims against harassment and emotional anguish could not stand as there was no proof that he had taken any steps to stop it. The claim against the Appellant was dismissed with costs.
6. The Appellant was satisfied by the order to be delisted from the Credit Reference Bureau but found it unsatisfactory that the magistrate did not award damages for breach of duty of care.
7. The appellant in his submissions identified two issues for the court's determination firstly, whether providing inaccurate information to the Credit Reference Bureau justifies an award of damages; and secondly, the quantum of damages to the appellant.
8. It was argued that it was not in dispute that the respondent provided inaccurate information that led to the Appellant being listed in the Credit Reference Bureau. The report with inaccurate information was produced in court. The respondent further did not dispute that the erroneous listing of the Appellant in the Credit Reference Bureau caused him emotional distress. For these reasons, the Appellant believes that damages are cognizable. In the case of *Guimond v. Trans Union Credit Information Co.*, 45 F.3d1329, 1333 (9th Cir.1995) a similar issue the court held that inaccuracies in the credit report alone are sufficient to justify an award of damages for the embarrassment without the need for any further proof of damages stating as follows:

In addition, we find that a failure to comply § 1681e(b) is actionable even absent denial of credit. Accordingly, the district court erred in finding that any liability under § 1681e(b) was predicated, as a matter of law, on the occurrence of some event — denial of credit or transmission of the report to third parties — resulting from the compilation and retention of erroneous information."

9. The information given by the Respondent to the Credit Reference Bureau alleging that the Appellant was indebted to the Respondent was inaccurate, in breach of the duty of care owed to the Appellant and contrary to Rule 25 of the Credit Reference Bureau Regulations, 2013 as the borrower from the loan agreement was Moto Moto Self-help group and not the Appellant as indicated in the Credit Reference Bureau reports. He cited the case of *Christopher Orina Kenyariri v Barclays Bank of Kenya Limited and another* [2018] eKLR where the court held that the bank owes a duty of care not to carelessly forward the name of a party who is not indebted to it stating as follows:

“ 54. The 1st defendant owed a duty of care not to carelessly forward the plaintiff's name to the 2nd defendant when the defendant when the plaintiff was not indebted to the 1st defendant.”



10. The consequences of psychological trauma caused by the Respondent's negligence persist and an award of damages would be a pleasant relief. He urged the Court to find the Respondent liable to pay damages amounting to Kshs 1,000,000/- for the listing of the appellant in the Credit Reference Bureau. In support of his submission, he referred the court to the case of *Christopher Orina Kenyariri v Barclays Bank of Kenya* [2018] eKLR where the plaintiff was awarded Kshs 3,000,000/- as general damages for wrongful listing with Credit Reference Bureau.
11. The appeal was opposed and the respondent filed grounds of opposition dated 25th November 2022. The Respondents avers that the Appellant had taken the loan in his capacity but declined to pay. The Respondent further asserts that it had engaged Auctioneers who repossessed motor vehicle KCD 829Z. The Appellant had been served with a statutory power of sale as per the loan agreement on 17th June 2017 to which the Appellant did not object. The Appellant is guilty of laches as he did not initiate a suit against being listed in the Credit Reference Bureau and had failed to prove the extent of loss and damage occasioned by the Respondent before the trial court.
12. The respondent also filed their submissions dated 21st March 2022. The respondent submits that it has complied with the trial court's judgment by writing off Kshs 980,409.23/- and updated the Appellant's Credit Reference Bureau status, even though it suffered a loss and the full loan balance will never be recovered.
13. Despite an accrued amount of Kshs. 2,564,910.66/-, the Respondent opted to waive a substantial amount of the accumulated interests and penalties as per the loan agreement and only demanded Kshs. 980,409.23/-. The Respondent was predisposed to financial distress and suffered loss and liquidity setbacks on the Appellant's default. In the case of *Francis Musyoki Kilonzo & another v Vincent Mutua Mutiso* [2013] eKLR, it was stated that:

“This court therefore uphold principles of equity and justice. An applicant seeking such orders must come before the court with clean hands. The maxim on the principles of equity is expressed as follows:

No one is entitled to the aid of a Court of equity when that deed has become necessary through his or her own fault, a court of equity shall not assist a person in extricating himself or herself from circumstances that he or she created.”
14. It was submitted that the Appellant does not deserve the audience of this Court as the whole negative listing issue was occasioned by their default. Rule 25 of the *Credit Reference Bureau Regulations, 2013* obligates the Respondent as the credit information provider to provide the customer in writing or through electronic means with a notice of intention to submit the negative information within 30 days before submitting the information to provide the Credit Reference Bureau with accurate information. Consequently, even after informing the Appellant of being negatively listed, no complaint, demand/suit was initiated against the Respondent by the Appellant for wrongful listing and the severe psychological trauma by the Appellant is only riddled with falsehoods. In any case, had the Respondent not initiated a Recovery suit for the outstanding balance, the Appellant would still be negatively listed. We submit that the Appellant is guilty of laches and hence does not deserve any relief.

Analysis And Determination

15. I have carefully considered the pleadings at the subordinate court, the appeal and the submissions by the parties. The only issue for determination is whether the appellant is entitled to damages. The



appellant's counterclaim and in his pleadings he did not seek damages for breach of duty of care. Paragraph 5 titled 'Counterclaim' reads:

“Without prejudice to the respondent's response, the respondent counterclaims against the claimant general damages for the threats, harassment, untold anxiety, nervousness and emotional anguish caused by the claimant to the respondent by constantly calling him via his cell phone through phone number 0728076862; adversely and without cause getting the respondent listed in the Credit Reference Bureau on the Basis of the Claimant's misguided and misplaced claims. In addition, the Respondent cannot conduct his business without a clearance certificate from the said entity or secure any advance credit from any institution due to the claimant's action.”

16. The appellant sought general damages against harassment and erroneously listing the Credit Reference Bureau. The question before the court is whether the appellant is entitled to damages.

17. It is not in dispute that the appellant was erroneously listed in the Credit Reference Bureau. The trial court found that the respondent had a contract with Moto Moto Self Help Group and not the appellant. Therefore, the CRB listing of the appellant was unfairly punitive. In *Namalwa Christine Masinde v National Bank of Kenya Ltd* [2016] eKLR the court held that:

“20. The court therefore awards the plaintiff on financial embarrassment and unlawful listing with CRB as a loan defaulter by an award of general damages of Kshs. 200,000/= costs and interest.”

18. In this case, the appellant must have suffered financial embarrassment and is therefore entitled to damages. I therefore award the appellant general damages of Kshs 200,000/-. The appellant shall have the costs of the appeal.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT BUNGOMA THIS 10TH DAY OF JULY 2024.

R.E. OUGO

JUDGE

In the presence of:

Appellant- Absent

Respondent- Absent

Wilkister/ Diana -C/A

