



**Wambia v Co-operative Bank of Kenya Limited (Civil Appeal  
168 of 2020) [2025] KECA 1644 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1644 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL 168 OF 2020  
MSA MAKHANDIA, P NYAMWEYA & LK KIMARU, JJA  
OCTOBER 3, 2025**

**BETWEEN**

**VITALIS MAKOKHA WAMBIA ..... APPELLANT**

**AND**

**CO-OPERATIVE BANK OF KENYA LIMITED ..... RESPONDENT**

*(An appeal from the Judgment and Decree of the High Court of Kenya at Busia (W. Kiarie J.) dated 30th September 2020 in Civil Appeal No. 13 of 2019 From the Original Ruling and Order in Busia Chief Magistrate Civil Case No. 110 of 2017)*

**JUDGMENT**

1. This is a second appeal by Vitalis Makokha Wambia, the appellant herein, arising from the judgment delivered on 30<sup>th</sup> September 2020 by the High Court of Kenya at Busia (W. Kiarie J.) in Civil Appeal No. 13 of 2019. The High Court in its judgment dismissed the appellant's first appeal against the judgment on 28<sup>th</sup> May 2019 in Busia Chief Magistrate's Court Civil Case No.110 of 2017 (Hon. M.A Odhiambo RM) (hereinafter "the trial Court"). The appellant's suit in the trial Court and in the High Court concerned an alleged loan default by the appellant, and reference of the appellant to a credit reference bureau by Co-operative Bank of Kenya Limited, the respondent herein.
2. The appellant's case was that he was declared redundant in January 2011, while servicing a loan advanced by the respondent, and which was secured by his salary. Further, that he was paid his terminal benefits in March 2011 through his account with the respondent, who recovered the same towards the loan payment. In addition, that in February 2012, the respondent notified the appellant that he had defaulted in the loan repayment, after referring him to a credit reference bureau as a defaulter without any prior formal communication. The appellant claimed that at the time, it was only the interest and other costs which were in default, but that he had cleared the principal loan, and that he subsequently paid the respondent the amount due and had a credit of Kshs 0.65.



3. However, that in January 2013, when the appellant approached Equity Bank for a loan facility, he was informed that he needed to clear his name from the credit reference bureau, yet he had repaid his loan. After presenting evidence to the respondent, the respondent agreed that it would issue him with a clearance certificate and notify the Metropol Credit Reference Bureau that he had repaid his loan. Subsequently, in April 2016, the appellant was informed of a loan balance of Kshs 8,503.55 generated by a new computer software installed by the respondent in December 2014, which he disputed, and despite his demands that the said loan balance be removed from the system, the respondent failed to do so and listed him as a defaulter without his knowledge. The appellant accordingly sought a declaration in the trial Court that the respondent clears him from its system as a defaulter and pays general damages as may be assessed by the Court.
4. The respondent denied the appellant's assertions and pleaded that it advanced a loan facility to the appellant who defaulted in 2011, and at the time of referring him as a defaulter to the Metropol Credit Reference Bureau his loan account was still in arrears, and he was duly notified of the loan default.
5. The appellant reiterated his claims in his testimony in the trial Court, produced correspondence and documents in support of his claim, and denied owing the respondent any money. Kiprof Keino, the appellant's personal banker, testified on behalf of the respondent as DW1, and produced documents to support his testimony that the appellant had incurred an interest penalty of Kshs 8503.55 of which he was made aware.
6. After hearing the parties, the trial Court delivered a judgment on 28<sup>th</sup> May 2019 in which it held that the appellant was not wrongly listed since the respondent's letter dated 13<sup>th</sup> February 2012 notified him that his account was in arrears, and gave him a notice of 14 days to regularize his account or risk being forwarded to the credit reference bureau.
7. Being dissatisfied, the appellant lodged an appeal in the High Court, in which he alleged that the trial Court had failed to analyse documentary evidence that he had tendered thus arriving at a wrong decision, and erred in holding that the respondent had duly issued the appellant with a notice of intention to list him with the credit reference bureau, when service of the same was not proved. The High Court framed the two issues for determination as being whether the appellant had repaid his loan, and whether he was unfairly referred to the credit reference bureau. On the first issue, the High Court found that the appellant did not exhibit clearance by the bank to indicate that he had repaid the loan, and instead produced exhibits that showed that he had an outstanding loan of Kshs.8503.55 as at 2<sup>nd</sup> September 2016. On the second issue, the High Court held that by his own admission, the appellant said that he was expected to have repaid the loan by March 2008, and there was evidence to show that by 2<sup>nd</sup> September 2016 he had an outstanding loan, and he never adduced evidence to the contrary. Accordingly, he had therefore defaulted and was rightly referred to the credit reference bureau.
8. The appellant consequently filed the instant appeal and has raised four (4) grounds of appeal in his Memorandum of Appeal dated 9<sup>th</sup> November 2020, namely:
  1. The Hon. Judge erred in law and fact by failing to analyse, evaluate and appreciate the Appellant's documentary evidence in totality that was tendered in the Trial Court and therefore came to a biased and wrong conclusion of dismissing the Appellant's Appeal.
  2. Hon. Judge did not address all the issues raises by the Appellant in his memorandum of Appeal
  3. The Hon. Judge erred in law and fact by upholding the Trial Court ruling that offends the provisions of the Evidence Act, Laws of Kenya (sic) by requiring the Appellant to prove his case



beyond the shadow of doubt a high standard required in criminal case compared to civil case which requires balance of probabilities

4. The Hon. Judge did not read and or appreciate the Appellant's submissions thereby coming to a wrong conclusion of upholding the biased decision of the Hon. Trial Magistrate.
9. We heard the appeal on this Court's virtual platform on 10<sup>th</sup> December 2024. The appellant, Mr. Vitalis Makokha Wambia, appeared in person while learned counsel Mrs. Brigitte Adhiambo Owuor appeared for the respondent, and they both highlighted their written submissions dated 28<sup>th</sup> February 2024 and 9<sup>th</sup> December 2024 respectively. In commencing our determination of the appeal, we are mindful of our duty with regard to second appeals, as set out in the decision of this Court in *Stanley N Muriithi & another vs Bernard Munene Ithiga* [2016] eKLR. We will thus confine ourselves to matters of law, unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered, or looking at the entire decision, it is perverse. We are however mindful that failure on the part of the first appellate court to re-evaluate the evidence tendered before the trial court and as a result, arriving at the wrong conclusion is a point of law.
10. In this regard, the main legal issue arising in this appeal is whether the decision of the learned Judge of the High Court was supported by the evidence on record and the applicable law on the reference of a defaulter of a loan to a credit reference bureau. The appellant submitted that the learned Judge singled out only two pieces of evidence namely exhibits "VMW IV" and "VMW V" which showed that the charge of Kshs 8503.53 introduced on 19<sup>th</sup> December 2014; and that between February 2013 and December 2014 no activity was recorded on the account. Further, that the learned Judge disregarded exhibit "VMW III", a certified bank statement proving loan payment, and did not address the issue of lack of notice given to the appellant before being referred to the credit reference bureau, which is a legal requirement. According to the appellant, he was referred to the credit reference bureau on 15<sup>th</sup> January 2015, and the notice period was less than the legally stipulated 30 days.
11. On her part, Mrs Owuor made reference to various judicial authorities to submit that the issues raised by the appellant are not questions of law. Also cited were the provisions in sections 107, 108 and 109 of the *Evidence Act*, in support of the proposition and the appellant had failed to adduce evidence to persuade both the trial court and the High Court that he had cleared the loan.
12. We have considered the arguments made by the appellant and respondent, and are alive to the provisions of section 31 of the *Banking Act* on the sharing of credit information and information on non-performing loans by institutions mandated to share or provide such information under any written law and as prescribed by in regulations. Section 31(4) provides as follows:

"Without prejudice to the generality of subsection (3)(b) or (c), regulations under that subsection may provide for the establishment and operation of credit reference bureaus, for the purpose of collecting prescribed credit information on clients of institutions licensed under this Act, and institutions licensed under the *Microfinance Act* (Cap. 493C), and the *Sacco Societies Act* (Cap. 490B), and public utility companies and any other institution mandated to share credit information under any written law and disseminating it amongst such institutions for use in the ordinary course of business, subject to such conditions or limitations as may be prescribed."
13. Regulation 18 of the Banking (Credit Reference Bureau) Regulations 2020, accordingly provides that a credit information provider may share customer information, including positive and negative credit information, and such customer information may include a "customer's credit status including the nature and amounts of loans or advances and other credit facilities advanced or granted, amounts



outstanding thereof, credit application and related matters”. Regulation 26(1) provides that a credit information provider who furnishes negative information to a bureau with respect to a customer shall, in writing or through electronic means, notify the customer of the intention to submit the negative information at least thirty days before submitting the negative information to the bureau or within such shorter period as the contract between the credit information provider and the customer may provide, and under regulation 26(9), once the credit information is furnished, the credit information provider shall, within thirty days from the date the information was furnished to a bureau, notify the customer that the customer’s credit information has been forwarded to the bureau.

14. We have perused the record of appeal, and note that the respondent provided evidence of three demand letters it wrote to the appellant dated 23<sup>rd</sup> April 2011, 23<sup>rd</sup> July 2011 and 12<sup>th</sup> February 2012 on his principal loan arrears amounting to Kshs 19,881.35, and of the intention to refer him to a credit reference bureau. In addition, the appellant exhibited a letter by the respondent dated 8<sup>th</sup> January 2013 addressed to the credit reference bureau (exhibit “VMW II”), informing that there had been a change in the appellant’s credit information and asking the bureau to update the appellant’s credit information; and a mini statement certified by the respondent which showed a debit balance on the appellant’s account on 23<sup>rd</sup> April 2011 of Kshs 19881.35, and that several payments were made to the account thereafter of Kshs 5,000/= (on 29<sup>th</sup> February 2012), Kshs 7,000/= (on 26<sup>th</sup> March 2012), Kshs 6,400/= (on 24<sup>th</sup> April 2012), and Kshs 982 /= (on 5<sup>th</sup> December 2012). The said mini statement reflected a nil balance in the account as at 20<sup>th</sup> December 2012 . However, as noted by the learned Judge of the High Court, the appellant did also exhibit another bank statement (exhibit “VMW “V”) which showed a debit balance on the same account of Kshs 8503.55 as at 6<sup>th</sup> January 2015, and a credit report dated 18<sup>th</sup> November 2016 (exhibit “VMW “IV”) that showed that his credit information was updated by the respondent on 7<sup>th</sup> November 2016 to show a debt of Kshs 8504/=. We are therefore persuaded that the finding by the learned Judge of the High Court on the appellant’s indebtedness was supported by the evidence on record.
15. We are however of a different view as regards the findings made by the High Court on the fairness and legality of the subject referral of the appellant to a credit reference bureau. It is notable in this regard that the appellant’s exhibit “VMW IV” showed that the credit information was updated by the respondent on 7<sup>th</sup> November 2016 to show a debt of Kshs 8504/=. whereas the notices of referral to a credit reference bureau that were exhibited by the respondent were with respect to loan arrears of Kshs 19,881.35; the appellant exhibited evidence of subsequent payments of the loan (exhibit “VMW III”); and the respondent’s witness (DW1) confirmed that the appellant was listed for a second time in 2015, which is the main fact that precipitated the appellant’s suit .
16. Therefore, while the respondent brought evidence to show that it gave the required notices of the first referral in February 2012, it did not provide any evidence of the notices of the second referral in 2015. A plain reading and interpretation of regulation 26(1) of the Banking (Credit Reference Bureau) Regulations 2020 leads to the conclusion that that it is mandatory that notice of the intention to furnish any negative credit information to a credit reference bureau is given to a customer, especially when construed and read together by regulation 26(2), which provides that the provisions in regulation 26(1) shall not be mandatory with respect to the furnishing of positive information of a customer. It is also notable that the notice must be given at least thirty days before submitting the negative information to a bureau, and is therefore a requirement that applies every time such negative credit information is furnished by a bank such as the respondent.
17. Quite apart from being a basic element of fair administrative action, the reasons why the notice of an intention to give negative credit information of a customer is mandatory and necessary are laid bare



and explained by the requirements and procedures that are set out in regulation 26 (3) to regulation 26(8) of the Banking (Credit Reference Bureau) Regulations 2020. These are as follows:

3. A credit information provider shall not furnish any information relating to a customer to any bureau if the credit information provider knows or has reasonable cause to believe that the information is inaccurate.
  4. A credit information provider shall not furnish information relating to a customer to any bureau if the credit information provider has been notified by the customer, in writing or verbally, at the address specified by the credit information provider for such notices, that the specific information is inaccurate.
  5. Despite paragraph (4), the credit information provider may submit the credit information to a bureau once it has addressed the customer's concern on the inaccuracy of the credit information —
    - a. by re-affirming the accuracy of the information to the customer; or
    - b. by rectifying the inaccuracy.
  6. Where the credit information provider has been notified of any inaccuracy in the credit information and there is reasonable cause to believe that the information may not be accurate, the credit information provider shall inform all the bureaus to which the information has already been submitted of this fact within five days from the date of the notification and shall, within fourteen days, carry out investigations and inform the bureaus of the outcome of the investigation.
  7. A credit information provider shall —
    - a. correct any inaccurate or erroneous information when the inaccuracy or erroneousness of information comes to the credit information provider's knowledge or attention; and
    - b. notify the bureaus within five days from the date of learning of the inaccurate or erroneous information.
  8. A bureau that has been notified under paragraph (7) of inaccurate or erroneous information shall update its database within two working days of the date of the notification.”
18. We feel obligated to opine that had the required procedure set out hereinabove been followed, it is very likely that clarity may have been provided as regards the disputed outstanding loan amount, and that the protracted legal proceedings leading to this appeal may have been obviated. We therefore find that the High Court's findings as regards the referral of the appellant to the credit reference bureau were not supported by the evidence and the law, and were therefore in error.
19. We accordingly find the appellant's appeal to be merited to this extent, and set aside the judgments delivered on 30<sup>th</sup> September 2020 by the High Court of Kenya at Busia (W. Kiarie J.) in Civil Appeal No. 13 of 2019, and the judgment delivered on 28<sup>th</sup> May 2019 in Busia Chief Magistrate's Court Civil Case No.110 of 2017 (Hon. M.A Odhiambo RM). We also order the respondent to forthwith update the appellant's credit information with the relevant credit reference bureaus by removal of the loan arrears of Kshs 8503.55, and to comply with the procedure set out in in Banking (Credit Reference Bureau) Regulations 2020 with respect to the furnishing of any negative credit information to credit reference bureaus in relation to the said loan arrears. The appellant is awarded the costs of the suit in the trial Court, of the appeal in the High Court and of this appeal. Given that the the issue of the appellant's outstanding loan arrears remains unresolved, we hereby award nominal general damages of



Kshs.100,000/- to the appellant as against the respondent, with interest at court rates from the date of this judgment until payment in full.

20. Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**Signed**

**DEPUTY REGISTRAR**

