



REPUBLIC OF KENYA



**Muli v National Bank of Kenya Limited (Civil Appeal E341 of 2019)
[2025] KEHC 13903 (KLR) (Civ) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13903 (KLR)

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

**CIVIL
CIVIL APPEAL E341 OF 2019**

**JM OMIDO, J
OCTOBER 2, 2025**

BETWEEN

JOSPHAT MUSYOKI MULI APPELLANT

AND

NATIONAL BANK OF KENYA LIMITED RESPONDENT

(Being an appeal from the judgement and decree of Hon. E. Wanjala Senior Resident Magistrate delivered on 23rd May, 2019 in Milimani CMCC No. 442 of 2017 Josphat Musyoki Muli v National Bank of Kenya Limited)

JUDGMENT

1. The Appellant herein, Josphat Musyoki Muli has brought this appeal, being aggrieved by the judgement and decree of Hon. E. Wanjala, Senior Resident Magistrate, delivered on 23rd May, 2019 in Milimani CMCC No. 442 of 2017 Josphat Musyoki Muli v National Bank of Kenya Limited.
2. The Appellant has presented eight (8) grounds of appeal vide the Memorandum of Appeal dated 20th June, 2019 as follows:
 - a. The learned Magistrate erred in law and in fact in failing to find that the Appellant had proved his case and was therefore entitled to the orders sought, and in particular, the order that the Appellant had repaid the loan to the Respondent in full.
 - b. The learned Magistrate erred in law and in fact in failing to find that the Respondent had arbitrarily, irregularly, unlawfully and without notice to the Appellant, increased the rate of interest charged on the Appellant's loan.



- c. The learned Magistrate erred in fact and in law and misdirected herself in finding that the revision of the interest without notice to the appellant was legally sound, and further that she could not interfere with it.
 - d. The learned Magistrate erred in law and in fact holding that the Respondent was entitled to revise the rate of interest without notice to the Appellant.
 - e. The learned Magistrate erred in law and in fact in failing to find that the letter of offer and the contract between the Appellant and the Respondent which allowed the Respondent to revise the rate of interest without notice to the Appellant was unfair, oppressive and unreasonably favoured the Respondent.
 - f. The learned Magistrate erred in law and in fact in failing to find that the discretion of the Respondent to revise the interest rate was not completely unfettered.
 - g. The learned Magistrate erred in law and in fact by finding that the Appellant was indebted to the Respondent and consequently allowing the Respondent's counterclaim.
 - h. The learned Magistrate erred in law and in fact by failing to consider the Appellant's submissions.
3. The Appellant proposes that the instant appeal be allowed and that the trial court's judgement dismissing the Appellant's suit and allowing the Respondent's counterclaim be set aside and be substituted with an order allowing the Appellant's suit and dismissing the Respondent's counterclaim.
 4. The Appellant further seeks costs of this appeal and of the suit and counterclaim before the lower court.
 5. This being the first appellate court, I am required under Section 78 of the *Civil Procedure Act* and as was espoused in the case of *Selle v Associated Motor Boat Co. Ltd* [1969] E.A. 123 to re-assess, re-analyse and re-evaluate the evidence adduced in the Magistrate's Court and draw my conclusions while bearing in mind that I did not see or hear the witnesses when they testified.
 6. In *Selle*, Sir Clement De Lestang observed that:

“This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.

However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”
 7. The record of the trial court bears it that the Appellant commenced the proceedings before the trial court vide a plaint dated 26th January, 2017 seeking an order confirming that he had fully paid the loan advanced to him by the Respondent and further sought that the Respondent renders a just and true account on the loan.
 8. The Appellant pleaded that under a memorandum of understanding between his employer, the Department of Defence (“the DoD”) and the Respondent dated and executed on 10th November, 2005 and an addendum to the same dated and executed on 27th July, 2010, the Appellant was advanced, at his request, by the Respondent a loan of Ksh.1,300,000/- at an interest rate of 13% per annum that was



- to be repaid within 72 months at a monthly repayment rate of Ksh.26,097/- commencing October, 2010, which his employer was to deduct from his salary.
9. The Appellant further pleaded that sometime in March, 2016, he visited the Respondent's offices with the intent of topping up the loan and was informed that his unpaid balance was Ksh.544,079/- because of changes on the loan terms, specifically that the interest rate had been renegotiated and altered between the Respondent and the DoD, to the exclusion of the Appellant. His position was that at the time, he had an unpaid balance of Ksh.78,291/-.
 10. The Respondent filed a statement of defence and counterclaim admitting that the Appellant was its customer and had obtained the loan of Kshs.1,300,000/- on the terms as was pleaded by the Appellant. The Respondent pleaded that in October 2010, the Respondent reviewed the interest rate upwards to 27% per annum due to costs of funds in the market but that the DoD later renegotiated for its employees a rate of 19% per annum and that as a result, the Appellant was required either to seek an extension of the loan period or a variation of the installment payment which he did not do and thus fell into arrears of Kshs.347,164.50/- as at 16th November, 2016, which continued to accrue interest of at the commercial rate of 14.5% per annum, which amount the Respondent counterclaimed for.
 11. The Respondent pleaded that the Appellant's last payment was made in November, 2016.
 12. The Respondent further pleaded that the review of the interest rate from 13% per annum to 23% per annum which was done in November, 2010 (which was subsequently renegotiated to 19% per annum in September, 2012, and which renegotiated rate was to take effect on 1st October, 2012) was done in line with the terms and conditions that were contained in a letter of offer dated 20th August, 2010 that the Appellant had signed.
 13. The Appellant testified before the trial court and adopted the contents of his witness statement dated 26th January, 2017 as his evidence in chief. In his statement, the Appellant stated that he was employed by the DoD and pursuant to the memorandum of understanding that was entered into between the DoD and the Respondent on 10th November, 2005, he applied for and took a loan facility of Ksh.1,300,000/- from the Respondent, which amount he was to repay in 72 monthly instalments of Ksh26,097/- inclusive of interest at 13% per annum.
 14. In his further evidence as recorded in his statement, the Appellant told the trial court that he visited the Respondent's offices in March, 2016 with the intention of applying to top up his loan but was notified, to his surprise, that his outstanding loan balance was Ksh.544,079/-. He was further informed that the loan terms had subsequent thereto been renegotiated between the Respondent and his employer, without his inclusion. He stated that he was not informed about the review of interest rates.
 15. To his knowledge, his unpaid balance was then Ksh.78,291/- as the agreed monthly instalments had been dutifully paid, as and when they fell due.
 16. The Appellant produced the following documents in support of his case: Appellant's employment/ staff identity card. A copy of the Appellant's letter dated 10th June, 2016 to the Respondent requesting for an explanation on the variance of the loan balance. A copy of the Appellant's letter dated 10th June, 2016 to the Respondent's Director of Bank Supervision requesting for investigations to be conducted on the variance of the loan balance. A copy of a complaint form dated 10th March, 2016. A copy of a demand letter dated 25th July, 2015. A copy of a letter from the Respondent dated 10th August, 2016, in response to the demand letter.



17. Upon being cross examined, the Appellant told the trial court that it was not open for the Respondent to review the interest rates as it was bound by the terms of the memorandum of understanding that set the same at 13% per annum, effective 22nd November, 2011.
18. The witness was however referred to a letter of offer that he executed and admitted that the same had a provision allowing the Respondent to vary the interest rate on the loan without notice, based on the prevailing money market. He was further referred to a copy of a newspaper advert and agreed that the same was a notification by the Respondent to its customers that interest rates had been reviewed to 23% per annum.
19. On being further cross examined, the Appellant stated that the Respondent's letter 10th August, 2016 served to inform him to either increase his monthly instalments or seek the extension of the period for repayment, after the review of the interest rates.
20. The Respondent called Rose Chebet Seroney, its Relationship Manager, Workplace Banking as its witness. The witness adopted the contents of her witness statement dated 14th September, 2018.
21. In precis, the Respondent's witness told the trial court that in November, 2011, the Respondent, in accordance with the terms and conditions of the letter of offer dated 20th, August, 2010, reviewed the interest rates to 27% per annum due to the cost of funds in the market.
22. That following the review, the Appellant was informed to either increase his monthly instalments or seek extension of the period for repayment, which the Appellant failed to do, as a result of which his account continued to fall into arrears.
23. The witness told the court that the Appellant's last payment was made 16th November, 2016 and the loan amount then outstanding was Ksh.347,167.50/-, which amount continued to attract interest at the commercial rate of 14.5%.
24. The witness stated that in September, 2012, the DoD renegotiated the interest rates for its employees and the same was reviewed and reduced to 19% per annum, effective 1st October, 2012.
25. The Respondent's witness produced the following documents in support of the Respondent's case: A copy of a personal loan application form dated 5th August, 2010, signed by the Appellant. A copy of a letter of offer dated 20th August, 2010. A copy of the memorandum of understanding dated 10th November, 2005. A copy of an addendum to the memorandum of understanding dated 27th March, 2007. A copy of an addendum to the memorandum of understanding dated 27th July, 2010. A copy of a notice of change of interest rates appearing in the Daily Nation newspaper of 21st November, 1991. A copy of a statement of account for the period August, 2010 to February, 2017. A copy of a statement of loan outstanding details.
26. On being cross examined, the Respondent's witness told the trial court that under clause (iv) of the memorandum of understanding, the Respondent was required to give the DoD a written notice before revising the interest rates, which the Respondent's witness admitted was not done, but stated that an oral notice was given to the DoD. She stated that employees of the DoD were required to rely on the memorandum of understanding and their respective letters of offer when applying for loans.
27. On reexamination, the Respondent's witness told the trial court that there was no requirement that the customers who were employees of the DoD be individually informed of the new interest rates.
28. Upon considering the record and the evidence before her, the learned trial Magistrate set out the issues for determination as follows:



- a. Whether the revising of the interest rate by the Defendant upwards from 13% - 27% was lawful.
 - b. Whether the Plaintiff has established his claim against the defendant.
 - c. Whether the Defendant has established their claim against the plaintiff in terms of the counterclaim.
29. With regard to the first issue for determination, which was whether the revision by the Respondent of the interest rate from 13% to 27% (and subsequently to 19% upon negotiation with the DoD) was lawful, the learned trial Magistrate considered the import of two clauses: The clause in the letter of offer dated 20th August, 2010 which provided that the Respondent reserved the right to vary the interest without notice to the Appellant. Clause 6(a)(iv) of the memorandum of understanding dated 10th November, 2005, which provided that prior to the variation of the rate of interest or additional interest, the bank was obligated to give the DoD a 30-day notice of its intention to vary the interest as such and that the revised interest rates would only apply to loan applications approved as at the date the revised dates took effect.
30. The learned trial Magistrate reached the conclusion that as the Appellant did not provide evidence to controvert the position that the notice of the intention to change the rate of interest was orally given to the DoD, the revision of the interest rate was within the loan agreement and the law.
31. In respect of the second issue which was whether the Appellant established his claim against the Respondent, following the determination on the first issue that the change of the rate of interest was properly effected by the Respondent, the learned trial Magistrate reached the finding that the Appellant had no tenable claim against the Respondent.
32. On the third issue which was whether the Respondent established its claim against the plaintiff in terms of the counterclaim, the trial court, having determined the earlier two issues in the negative, found that the counterclaim was proved on a balance of probabilities.
33. This court directed that the appeal herein be canvassed by way of written submissions and both parties filed their respective submissions.
34. I have perused and considered the memorandum of appeal, the submissions by the parties and the record of the trial court. The parties present two substantive issues for determination, which once resolved by this court, will then determine whether or not the appeal herein should be allowed.
35. The first issue, as discernible from the record is whether or not the Respondent acted within its rights to revise and enhance the interest rate on the Appellant's loan from 13% to 23% as it did, effective 22nd November, 2011.
36. The second issue is, subject to the determination on the first issue, whether the Respondent's counterclaim was proved as against the Appellant.
37. In his submissions on the first issue, the Appellant argued that the Respondent arbitrarily, irregularly, unlawfully and without notice increased the rate of interest charged on the Appellant's loan.
38. The Appellant relied on the following authorities:
- a. Margaret Njeri Muiruri v Bank of Baroda (Kenya) Limited [2014] eKLR in which the court stated as follows:

“29. We find it particularly unfortunate that in the present appeal, the respondent varied the interest and seemed not to provide this



knowledge to the appellant or to the borrower. We think this was wrong. If that information was readily availed to the borrower, the borrower would make an informed decision based on his or her circumstances and the consequences that are likely to arise due to the variation undertaken. The borrower may choose to opt out of the contract through full liquidation or look at other institution that would accommodate his or her interest. Information supplied to a borrower before any adverse variation of interest rate is made affords him an opportunity to assess this relationship with his lender, and the right to terminate the contract may even be exercised.”

- b. Christopher Ndolo Mutuku & another v CFC Stanbic Bank Limited [2013] eKLR in which the court held that:

“ 12. From the evidence on record, the Defendant seems to have applied the rate of interest of 13.75% from the commencement of the facility. There is no evidence to show that the Plaintiffs were notified of the charge from 13% to 13.75% in terms of the contract between the parties. Accordingly, the charge of 13.75% for the period 2007 and September, 2007 was irregular and without any basis, I will shortly revert to the other rates of interest charged.”

The court went on to state:

“ 14. It may be argued that publication of change of rate of interest in the daily newspapers is an effective convenient and cheaper way of communicating the change of the rate of interest to the borrowers. Lenders may argue that it is cumbersome to write to each of their individual customers to advise on the change of interest rates. To my mind, that cannot be acceptable for the reasons that, the lenders do enter into individual contracts with each of their customers therefore having individual obligations inter se. Further, it is not every day that every borrower flips through the daily newspapers to see if his lender has effected changes of the rate of interest applicable to his borrowing.”

- c. Kimaiyo Langat v Cooperative Bank of Kenya Limited [2017] eKLR in which the court referred to the case of Margaret Njeri Muiruri (supra) and observed as follows:

“We find it objectionable that the lender can vary interest to its benefit, without any recourse to or passing such information to the borrower, especially where such interest rises up to an exorbitant level. There does not appear to be any notice to the Appellant in this case as to what the rate of interest would be...”

The court went further to state that:

“Courts are have never been shy to interfere with or refuse to enforce contracts that are unconscionable, unfair, oppressive due to the procedural abuse during the formation of the contract, or due to contract terms that are unreasonably favourable to one party and would preclude meaningful choice for the other party.....”



39. Further, the Appellant submitted that the letter of offer and the contract between the Appellant and the Respondent which allowed the latter to unilaterally revise the rate of interest without notice to the former were unfair, oppressive and unreasonably favoured the Respondent and urged this court to find that the discretion of the Respondent to revise the interest rate was not completely unfettered. On that point, the Appellant placed reliance on the following authorities:

a. Margaret Njeri Muiruri (supra) where the following holding was made:

“26.While we agree that the clause does not appear to give the Respondent discretion to vary the rate of interest, we do not accept that this discretion was absolute. Once interest is agreed upon, and an agreement is entered into which in effect gives a lender the discretion to vary the interest, it is our view that the discretion cannot be exercised willy nilly to charge exorbitant interest...

28. We are in agreement with the sentiments of the English Court that the discretion on the Respondent in the present case was not completely unfettered, and applying those sentiments to the appeal now before us, we find it objectionable that the lender can vary interest to its benefit, without any recourse to or passing such information to the borrower, especially where such interest rises up to an exorbitant level. There does not appear to be any notice to the appellant in this case as what the rate of interest would be. As stated earlier, the right or discretion given under the contract to vary interest was not unfettered and the contract must be construed reasonably. It must be shown or at least be self-evident that at the time the interest was being changed, it was brought to the attention of the borrower.”

b. David Wafula Nyongesa v National Bank of Kenya [2020] eKLR in which the court stated thus:

“2. I have cited from the decision in Margaret Njeri Muiruri v Bank of Baroda (Kenya) Limited (supra) extensively because the issues in that matter were, to a large extent, similar to those that are the subject of the appeal before me. The contract terms herein fixed the interest rate at 15% but reserved a right to the Respondent to vary the same without so much as consultation or notice to the Appellant. Interest was varied, almost by double, from 15% to 27%. No notice was given to the Appellant, and according to the Respondent, he was expected to have gotten notice through the media. The money lending contract was negotiated and in writing, it should follow that when the interest rate has to be varied by the lender, the borrower ought to be notified of the intent to vary the interest rate, so that he gets an opportunity to negotiate. At the very least, once the variation is done the borrower ought to be notified personally or directly. A publication of a notice of the variation in the media cannot suffice, for it presupposes that the borrower has access to the media in question and it would be unreasonable to expect him to pay special attention to everything, should he have access to the media that appears in that media. After



all, he would not be expected to know when the media would carry notice that are of interest to him. The variation in question was huge from 15% to 27%, it has serious implications of the installments that the Appellant was to pay every month and, no doubt, generally on his financial affairs. It was only fair that he should have been notified directly, either through snail mail, e-mail or text. It would therefore mean that the manner the term of interest was varied was unconscionable, unfair and burdensome on the Appellant.”

40. On the second issue, the Appellant submitted that the Respondent did not adduce any evidence to prove the counterclaim and that the learned trial Magistrate fell into error by allowing it, citing the reason that the increase in the rate of interest on his loan was not justified.
41. On the basis of the foregoing, the Appellant submitted that the learned trial Magistrate erred in law and in fact by finding that the Appellant was indebted to the Respondent and consequently allowing the Respondent’s counterclaim.
42. On its part, the Respondent submitted that although the interest rate on the loan agreed upon was 13% per annum, as per the memorandum of understanding with the DoD, the letter of offer that the Appellant signed provided that the Respondent reserved the right to change the rate of interest without notice, depending on the costs of funds in the money market and that by increasing the rate to 23% per annum, the Respondent acted within its contractual rights.
43. The Respondent submitted that Clause 6a of the memorandum of understanding also provided that the rate of interest could be varied with a 30-day notice to the DoD. The Respondent further submitted that the DoD, the Appellant and all the Respondent’s other customers were notified of the review of the interest rates through the notice that was published in the Daily Nation newspaper of 21st November, 2011.
44. The Respondent further stated in its submissions that the Appellant willfully entered into the loan agreement, which had clear terms and that the court did not have the mandate to adjust the terms agreed between the parties, unless the Appellant pleaded and proved that he was coerced, unduly influenced or fraudulently made to sign the same, which, according to the Respondent, the Appellant did not do.
45. The Respondent placed reliance on the following authorities:
 - a. Christopher Ndolo Mutuku & another v CFC Stanbic Bank Limited [2013] eKLR in which the court held that:

“ There was no dispute that there was a change of rate of interest. The issue is whether such change was lawful and in accordance with the terms of contract between the parties. In order to discern whether the changes were in the terms of the contract, it is imperative to revert to the said contract for its terms and conditions.”
 - b. Gatobu M’ibuutu Karatho v Christopher Muriithi Kibai [2014] eKLR in which the court observed that:

“ A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.”



46. The rejoinder by the Respondent on the second issue was that the Appellant was indebted to the Respondent in the amount claimed in the counterclaim as the interest rate on the loan was properly and lawfully reviewed to 23% and that the learned trial Magistrate could therefore not be faulted for entering judgement on the counterclaim.
47. I will now proceed to consider the first issue that I have framed, which is whether or not the Respondent acted within its rights to revise and enhance the interest rate on the Appellant's loan from 13% to 23% as it did, effective 22nd November, 2011 and the second issue is whether the Respondent's counterclaim was proved as against the Appellant.
48. There is no dispute that the Appellant and the Respondent entered into the loan agreement. What is in contention is whether the adjustment by the Respondent of the interest rate was lawful and/or within the terms of the loan agreement.
49. To address this issue, it is imperative that this court looks at and considers the relevant clauses on interest rate adjustment as contained in the memorandum of understanding dated 10th November, 2005 and in the letter of offer dated 20th August, 2020, the latter of which the Appellant does not contest that he willfully signed.
50. The dispute presented is one over an increase in the rate of interest charged on the loan advanced to the Appellant, an employee of the DoD, in a case whereby the DoD had entered into a memorandum of understanding with the Respondent, which provided that DoD's employees would be advanced loans at a uniform interest rate of 13% per annum.
51. The Appellant contended before the trial court that the Respondent unlawfully increased the interest rate from 13% per annum to 23% per annum, contrary to the terms of the memorandum of understanding and without proper notice to the Applicant and/or the DoD.
52. The relevant clause in the memorandum of understanding, under the heading of interest, stated as follows:
 - “(a). Interest
 - i. The rate of interest will be based on the amount advanced and the repayment period agreed upon between the Bank and the Borrower and will be at a UNIFORM rate of 13.0% p.a. as more specifically shown in the Schedule hereto annexed.
 - ii. The amount of interest will be applicable to new loans only.
 - iii. The new interest rates shall be effective immediately after being duly signed by the authorized signatories of DOD and the Bank.”
53. It is to be noted from the memorandum of understanding, which was relied upon by both parties, that DoD employees were required to sign individual letters of offer to access the loans. The Appellant did so and was granted a loan repayable in 72 monthly instalments.



54. It is instructive from the letter of offer that the Appellant admittedly signed that the same contained a clause allowing the bank to vary the interest rate without notice, depending on “the cost of funds in the money market.” The relevant clause in the letter of offer provided as follows:

“The Bank however reserves the right to change the rate of interest without notice depending on the cost of funds in the money market.”

55. The position that the Respondent presented was that midway through repayment of the loan, it published a notice in the Daily Nation newspaper stating that, due to prevailing economic conditions, its base lending rate was being revised from 18% to 23% per annum, effective 22nd November, 2011. The Respondent thereafter applied the new rate to the Appellant’s loan balance.

56. The notice that was published in the Daily Nation newspaper of 21st November, 2011 that the Respondent produced was worded as follows:

“NATIONAL BANK OF KENYA

As the challenging economic conditions continue to affect all the business sectors in our nation, it is unavoidable that we have to revise our Base Lending Rate upwards from 18% to 23% p.a. with effect from 22nd November, 2011.”

57. The Appellant, relying on the memorandum of understanding, took the position that the increase in the interest on the loan was unlawful and in breach of the loan agreement and challenged the Respondent’s authority to vary the rate unilaterally and without proper notice.

58. Notably, the Appellant did not challenge the agreement or any of its terms on the common law grounds that would warrant the setting aside of a contract or any part/term thereof, such as mistake, duress or undue influence, illegality, fraud etc.

59. What then is the legal effect of the memorandum of understanding, vis a vis the letter of offer that the Appellant signed?

60. While the memorandum of understanding between the Appellant’s employer (the DoD) and the Respondent provided for a uniform 13% per annum interest rate, a binding contractual relationship existed between the Appellant and the Respondent vide the letter of offer that the parties executed.

61. Courts have consistently held that a third-party agreement (such as the memorandum of understanding) cannot override express terms that are agreed upon by a borrower and a lender in a loan instrument (see the authorities of *Peter Njuguna v Kenya Commercial Bank* [2009] eKLR; *National Bank of Kenya Ltd v Kitiyo (Civil Appeal E062 of 2023) [2025] KEHC 1408 (KLR)*; and *Lucy Nungari Ngigi & 4 Others v National Bank of Kenya Limited & Another* [2015] eKLR).

62. Guided by the jurisprudence that emerges from the above decisions. I am of the persuasion that the memorandum of understanding that was entered into between the DoD and the Respondent could not be enforced by the Appellant directly against the Respondent because the letter of offer was the actual contract instrument between the Appellant and the Respondent. Hence, the letter of offer governed the terms of the loan, and not the memorandum of understanding.

63. With regard to the variation clause in the letter of offer which provided that the Respondent reserved the right to vary the interest rate without notice, I opine that while such clauses may at times be enforceable under the law, they are subject to reasonableness, good faith and compliance with notice requirements. Even in situations where a bank has discretion to vary interest rates, such discretion



must be exercised reasonably and with adequate notice to the borrower. That then, in my view, means that a clause allowing unilateral variation without reasonable notice may be declared unconscionable or unfair, particularly where the borrower is not afforded a reasonable opportunity to adjust their repayment arrangements.

64. The Respondent relied on a general newspaper publication that purported to communicate a significant increase in interest rates. The newspaper notice was published on 21st November, 2011 indicating that interest rates would be adjusted from 18% to 23% per annum and that the changes would take effect the next day, 22nd November, 2011. One day notice cannot, in my view, amount to reasonable notice.
65. Moreover, considering that the loan agreement was premised on a letter of offer that was signed by the parties, a general notice would in my opinion not suffice. The proper manner of notification of changes to the applicable interest rate ought to have been a notice issued to the Appellant as an individual, regarding his particular loan.
66. In the case of *Kenya Commercial Bank v Osebe* [1982] KLR 296, it was emphasized that a borrower is entitled to personal notice of any material changes to contract terms, including interest. There is no evidence that the Appellant was given individualized written notice, despite the significant financial implications. A general newspaper notice would not, in my view, satisfy the duty of good faith and fair dealing required in banker-customer relationships.
67. There is more on the newspaper notice. From a perusal of the same, one would notice that it indicated that the base lending rate would increase upwards from 18% to 23% per annum. Noting that the interest rate that at the time applied to the Appellant's loan was 13%, (and not 18%), the notice was ambiguous as to whether the same applied to loans whose base interest rate was not 18%, as that of the Appellant.
68. Another ambiguity in the notice was that it did not state whether the new rates would apply to future loans or whether the same included existing loans, such as that of the Appellant, or both.
69. Having said so much, I reach the result, on the premises of the foregoing reasons, that the unilateral variation of the interest rate on the Appellant's loan by the Respondent without reasonable notice was unconscionable, oppressive, unfair and unreasonable and that the said notice was, in any event, ambiguous.
70. On that basis, I find that the appeal has merit. I proceed to allow it in the following terms:
 - a. The trial court's order dismissing the Appellant's suit is hereby set aside and substituted with a declaration that the unilateral variation of the interest rate on the Appellant's loan without reasonable notice was unconscionable, oppressive, unfair and unreasonable and consequently, that the Respondent was only entitled to recover from the Appellant the loan amount and interest at 13% per annum.
 - b. The trial court's order allowing the Respondent's counterclaim is hereby set aside and substituted with an order dismissing the counterclaim with costs.
 - c. The Respondent shall bear the Appellant's costs of the suit and counterclaim before the trial court.
 - d. The Respondent shall bear the Appellant's costs of this appeal, which I assess at Ksh.30,000/-.
71. This file is hereby closed.



DELIVERED (VIRTUALLY), DATED AND SIGNED THIS 2ND DAY OF OCTOBER, 2025.

JOE M. OMIDO

JUDGE

For The Appellant: Mr. Githae For Mr. Wanjohi.

For The Respondent: Mr. Mureithi.

Court Assistants: Mr. Ngoge & Mr. Juma.

