



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Peter v Mutua (Commercial Case E004 of 2023)
[2024] SCC 2 (KLR) (23 February 2024) (Judgment)**

Neutral citation: [2024] SCC 2 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT LAMU
COMMERCIAL CASE E004 OF 2023
FM MULAMA, RM
FEBRUARY 23, 2024**

BETWEEN

GAKII JANE PETER CLAIMANT

AND

DAVID NJIRU MUTUA RESPONDENT

JUDGMENT

Introduction.

1. The claimant Gakii Jane Peter filed the instant claim against the respondent seeking judgement in the sum of Kshs.530,000/= among other orders as well as interests from 21/11/23 and costs of the claim.
2. The respondent at the time of entering appearance filed a notice of part admission of the claim and went further admitted to owing the claimant Kshs.200,000/= and consequently judgment on admission For Kshs.200,000/= was entered on 29/1/2024.
3. The matter proceeded by way of viva voce evidence with each party testifying without calling any witnesses and thereafter filed respective submissions in support of their cases which have been duly considered.

Claimant's case

4. The claimant in her evidence stated that on diverse dates in 2021 she lent the respondent Kshs.530,000/= on the promise that the respondent will pay by 2022 which he didn't and she reported the matter to the police after which they entered into a loan repayment agreement with the respondent. The said agreement was produced in evidence.



Respondent's case.

5. The respondent partly admitted the claim and denies owing the claimant the balance of Kshs.330,000/= and stated that the amount is what the claimant presumes was the interest on the Kshs.200,000/= advanced to him.
6. The respondent further does not deny entering into the loan repayment agreement dated 21/8/2023 but states that he did so under duress as he had been handcuffed and under the escort of police officers claims that are disputed by the claimant.

Issue for Determination.

- a. Whether the claimant proved the remainder of the claim to wit Kshs.330,000/=.

Analysis and Determination.

a. Whether the claimant proved the remainder of the claim to wit Kshs.330,000/=.

7. The claim generally is based on the debt repayment agreement dated 21/8/2023 in which the claimant and the respondent duly executed in the presence 3 eye witnesses who turned out during hearing were witnesses to the respondent including his wife.
8. During hearing the respondent distanced himself from the agreement to the extent that he was under duress to sign the agreement.
9. Was there duress when the agreement was signed? During the hearing of the matter, it was the testimony of the respondent that after the matter was reported to the police and an OB number obtained by the claimant, he was arrested and forced to enter into the contract and he was then escorted to the advocate's offices in handcuffs and forced to sign the agreement.
10. Nothing in evidence shows that this is indeed true. None of the witnesses to the agreement has been called to prove these serious allegation moreso considering that all the witnesses who signed the agreement were present at the behest of the respondent.
11. One of the witnesses is said to be the wife to the respondent. Nothing would have been easier that her taking to the dock to testify and confirm these allegations.
12. The advocate who prepared and witnessed the agreement was also not called as a witness to confirm the said allegations.
13. Such serious allegations that go into the substratum of the dispute ought to be proved for them to have a bearing on the matter as opposed to being bare allegations without being substantiated. Section 107 of the *Evidence Act* is clear.
14. Aforegoing it is my finding that in the absence of any evidence to prove undue influence and/or duress, none can be said to have been unfairly exerted on the respondent to warrant him signed the said agreement.
15. I now turn to determine whether the claimant has proved the claim for Kshs.330,000/=. Clause 1 of the agreement, the respondent admits to owing the claimant Kshs.530,000/= and undertakes to repay the same in three months from 21/8/2023.



16. Clause 2 thereof goes further to give the specific date within which the entire amount shall be paid to the claimant and lastly clause 4 gave the claimant the leeway to institute criminal and civil proceedings should the respondent fail to pay the amount owing.
17. It is clear from the agreement that indeed the respondent admitted to owing the claimant Kshs.530,000/= and the agreement stands valid as already found by the court that there was no duress.
18. The respondent asserted that in his view that the extra amount of Kshs.330,000/= is what in his view the claimant assumes it's the interest on Kshs.200,000/=. Nothing could be clearer than 3 which is clear that there is no provision as to any interest accrued and/or accruing. This to me is interpreted to mean that the claimant is only asking for the principal sum and she has not asked for any interest.
19. It is now not in dispute that parties to a contract get into such a contract in good faith and they are bound by such terms as contained in the contract and it is never the business of courts of law to rewrite contracts between parties. The court simply gives effect to the said contracts unless coercion, fraud or undue influence are pleaded and proved. (see the case of [*Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd*](#)[2017] eKLR)
20. Taking cue from the [*Pius Kimaiyo case*](#) (*supra*) this court cannot rewrite the contract dated 21/8/2023. The contract hence remains valid since none of the vitiating factors have been proved.
21. It is clear to my mind now that the claim is one for allowing for the reasons cited above.
22. The claimant other than the Kshs.530,000/= she has sought for damages for breach of contract and interest on the amount from 21/11/23. The claim for damages for breach of contract was not demonstrated and/or proved and it is not allowed.
23. On the issue of interest, vide the agreement dated 21/8/23, the respondent had promised to pay the amount by 21/11/2023 and failure to pay the amount on that particular day as agreed, it is only fair that the claimant be awarded interest. The award of interest and the start date for purposes of computing is the discretion of the court which has to be exercised judiciously.
24. The respondent was to pay the amount by 21/11/2023 and his failure to honour his own promise, the claimant is entitled to interest from that date when the debt fell due that is on 21/11/2023.

Conclusion and Disposition.

25. The upshot of the foregoing I make the following final orders;
 - a. The claim for Kshs.330,000/= succeeds and the claimant is awarded the full amount Kshs.530,000/= as prayed in the statement of claim dated 28/12/2023.
 - b. The claimant is also awarded interest on the amount awarded in (a) above from 21/11/2023 until payment in full.
 - c. The claimant is awarded costs of the claim assessed at an all-inclusive sum of Kshs. 65,600/=
 - d. Let the file be closed forthwith.
26. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS 23RD DAY OF FEBRUARY 2024.

HON. FLAVIAN.M. MULAMA



ADJUDICATOR SCC LAMU

In the presence of:-

Court Assistant:- Vivian Wambui.

Mr. Mutethia for Claimant

Mr. Omwancha for the Respondent.

