



**National Bank of Kenya Ltd v Murua (Commercial Appeal E139 of 2024)  
[2025] KEHC 15096 (KLR) (Commercial and Tax) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15096 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E139 OF 2024  
BK NJOROGE, J  
OCTOBER 23, 2025**

**BETWEEN**

**NATIONAL BANK OF KENYA LTD ..... APPELLANT**

**AND**

**BARINE MICHENI MURUA ..... RESPONDENT**

**JUDGMENT**

1. This is a Judgement in respect of the Appeal arising from the judgement delivered by Hon S. A. Opande Principal Magistrate delivered on 24<sup>th</sup> April, 2024 in Milimani MCCC No. 5306 of 2017.

**Background Facts**

2. On or about November 2014, the Respondent applied for a Kshs. 6.25 million business loan from the Appellant bank, secured by charges over five properties. A letter of offer was signed in February 2015, and the facility was partly meant to redeem existing loans with other banks. The Appellant disbursed only Kshs. 2.2 million to clear those loans and withheld the balance of Kshs. 4.05 million. In 2017, it issued a new offer letter demanding repayment of an alleged outstanding amount and later threatened to auction two of the Respondent's properties, prompting the Respondent to file suit seeking specific performance and other reliefs.
3. The Trial Court found in favour of the Respondent and ordered specific performance of the original letter of offer dated 10<sup>th</sup> February 2015. It further directed the bank to write off interest on the disbursed amount, delist the Respondent from the Credit Reference Bureau, and pay Kshs. 500,000 as general damages for breach of contract. The Respondent was to repay the principal sum within 36 months under the original terms, and the bank was ordered to bear the costs of the suit and interest.



4. The Appellant, being dissatisfied and aggrieved with the Judgment, filed the Memorandum of Appeal dated 23<sup>rd</sup> May 2024 on the following grounds: -
  - a. The Trial Magistrate erred in law and in fact in Ordering Specific Performance of the letter dated 10<sup>th</sup> February, 2015 whereas the Respondent only availed securities sufficient to cover a sum of Kshs. 2,500,000.00/= where Legal Charges were executed by both parties and registered for the said sum of Kshs.2,500,000.00/= only.
  - b. The Trial Magistrate erred in law and in fact by writing off interest accrued from the sum of Kshs. 2,200,000.00/= which is akin to re-writing a contract between the parties despite the learned magistrate having noted that the Respondent (Plaintiff) in the primary suit failed to service the loan for ten (10) years.
  - c. The Trial Magistrate erred in law and in fact by ordering the Appellant to delist the Respondent from the Credit Reference Bureau as a defaulter despite making a finding that the Respondent has defaulted in servicing the loan amounts of Kshs. 2,200,000.00/= disbursed for ten (10) years.
  - d. The Trial Magistrate erred in law and in fact by making a finding that title deeds for Magumoni/ Thuita/1415,1416 and 1417 were released to the Appellant, whereas during the hearing before the trial Court, the Respondent produced in Court evidence that the said Titles were variously Charged with other banks as at 11.05.2021.
  - e. The Trial Magistrate erred in law and in fact in awarding general damages at an inordinately high sum of Kenya shillings Five Hundred Thousand (Kshs. 500,000.00/=) for the alleged breach of letter of offer dated 10.02.2015 by the Appellant despite failure by the Respondent to provide sufficient security or release of the Title Documents Charged with other banks to date from the Respondents own evidence during trial.
  - f. The Trial Magistrate erred in law and in fact by misdirecting himself, attempting to re-write contracts between parties, contradicting the findings and Orders issued and failing to consider, appreciate and uphold the Appellant's Defence, viva voce testimony by the Appellant's witness and submissions and subsequently entered judgment for the Plaintiff against the Defendant therein.
  - g. The Trial Magistrate erred in law and in fact in coming to the conclusions and the Judgment he came up with contrary to the precedent and the Submissions argued before her.
5. The Appellant prayed for the following orders;
  - a. The Appeal be allowed;
  - b. The Order for Specific Performance of the letter of offer dated 10<sup>th</sup> February 2015 be set aside.
  - c. The Order to write off interest accrued from the Kshs.2,200,000.00/= disbursed be set aside and replaced with an Order allowing the Appellant to recover interest as sought in the Counter-claim prayer (c) till payment in full.
  - d. The Order to delist the Respondent from Credit Reference Bureau as a defaulter be set aside.
  - e. The awards made to the Plaintiff/Respondent in the Judgment of the Milimani Principal Magistrates' Court (Honorable S.A. Opande) delivered on 24/05/2024 be set aside and/or varied and the decree made thereon be vacated and replaced with the orders of the court;



- f. Costs before this Court and the Principal Magistrate Court at Milimani in Civil Suit No. 5306 of 2017 be awarded to the Appellant herein.

### **Issues for Determination**

6. The Court has carefully considered the Appeal, Record of Appeal as well as the submissions by the parties, and the following issues are for determination;
  - a. Whether there was breach of contract by the Appellant.
  - b. Whether the Trial Magistrate erred in law and fact in arriving at the judgement.

### **Analysis**

7. This is the first Appellate court. As such, the Court is guided by what was stated in the case; *Lake Flowers Vs Cila Francklyn Onyango Ngonga & Anor* [2008] eKLR, where it was stated:

“Being a first appeal, the principle upon which this court acts is well settled, in that the court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. In particular, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that she has 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 demeanor of a witness is inconsistent with the evidence in the case generally. *Selle v. Associated Motor Boat Company* [1968] EA 123.”

#### **a) Whether there was breach of contract by the Appellant.**

8. Firstly, the Court will seek to find out whether the letter of offer was a valid contract between parties? And whether there was breach of the same.
9. It was the Appellant’s submissions that it was never at any point in breach of its contractual obligations. That in the circumstances, the Trial Court was patently wrong and that grounds 1 and 4 of the Appeal ought to succeed. According to the Appellant, it only managed to register charges over Magumoni/Thuita/1317 and 2518, and that the same was only sufficient to secure Kshs. 2,500,000/= . Thus, it would not have been prudent for the Appellant, being in the financial business, to have provided the Respondent the entire loan facility when its interests were unsecured.
10. In contrast, the Respondent submitted that as per the Letter of Offer dated 10<sup>th</sup> February, 2015 the facility applied for was for a total sum of Kshs.6,250,000/= and not Kshs.2,200,000/= . All the five (5) securities having been released to the Appellant and/or its appointed Agent, the Appellant was under an obligation to release the full loan facility to the Respondent.
11. The Respondent added that the Appellant has not shown how it was not in breach of the letter of offer, and neither has it stated why its appointed Agent G.K. Kibira & Company Advocates and/or themselves failed to register first ranking charges over titles no. Magumoni/Thuita/1415, 1416 and 1417 despite the Title Deeds having been released to them.
12. It is undisputed that there was a Letter of Offer dated 10<sup>th</sup> February 2015, which Letter of Offer was for a term loan of Kshs.6, 250, 000 and the Appellant confirmed that the request for the loan term had been approved pursuant to the terms thereof.



13. Further, it is not disputed that the Appellant disbursed Kshs.2,200, 000 after deducting its charges, and that the Appellant was able to register charges over title Magumoni/Mukuuni/1317 and Magumini/Thuita/2518 for Kshs.1, 750 ,000/= and Kshs.750,000/= respectively on 6<sup>th</sup> July, 2015.
14. Among these terms was Clause 8, which provided as follows;

### **Conditions**

The Obligation of the Bank to make available any facility or part thereof shall (at the sole discretion of the Bank, which may waive or defer such condition) be subject to the Bank having received in form and substance satisfactory to it the following.....

15. It is the Court's understanding that the above-mentioned clause gave the Appellant the discretion to make available the facility or part thereof.
16. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, the Court of Appeal held as follows: -  

“...A Court of law cannot re-write 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...”
17. The contract between the parties is to be construed strictly within the four corners of the contract. The Court will not invalidate or ignore terms which are clearly spelt out in the contract by way of the letter of offer.
18. In light of this, the Order for Specific Performance of the letter of offer dated 10<sup>th</sup> February 2015 is hereby set aside.
19. The Respondent, having acknowledged that a Kshs.2, 200, 000 loan facility was disbursed by the Appellant, the same ought to be repaid together with interest as stipulated under Clause 4 of the Letter of Offer dated 10<sup>th</sup> February 2015.
20. Thus, the Order to write off interest accrued from the Kshs.2,200,000.00/= disbursed is hereby set aside and the Appellant is at liberty to recover interest till payment in full.
21. Likewise, Clause 12 of the Letter of Offer allowed the Appellant to list the Respondent on the Credit Reference Bureau as a defaulter pursuant to non – compliance with the terms of the facility. Therefore, the Order to delist the Respondent from Credit Reference Bureau as a defaulter is also set aside.
22. With regard to the title deeds for Magumoni/Thuita/1415,1416 and 1417 it was the Appellant's position that it had only charged two titles that is Magumoni/Mukuuni/1317 and Magumini/Thuita/2518 and that the Respondent had not availed the other titles.
23. On the other hand, the Respondent maintained that the said three (3) Title Deeds were effectively released by Barclays and Equity Bank to the Appellant's appointed agent that is M/s G.K Kibira & Company Advocates for the registration of the necessary securities.
24. In its Statement of Defence, the Defendant admitted that at all times M/s G.K Kibira & Co. Advocates acted on the instructions of the Appellant herein and even went ahead to annex a letter from the Appellant dated 20<sup>th</sup> April 2015. This fact was not disputed by the Appellant.
25. Furthermore, in the witness statement, G. K Kibira Advocate admitted that his firm received Title Documents Magumoni/Thuita/2518, 1415,1416 and 1417. However, there was no confirmation as



to whether the said titles were forwarded to the Appellant. Therefore, the Appellant having been the principal and G.K Kibira & Company Advocates being its agent; it is imperative that the Appellant follows up on the title deeds for Magumoni/Thuita/1415,1416 and 1417 and returns them to the Respondent.

**b. Whether the Trial Magistrate erred in law and fact in arriving at the judgement**

26. Lastly, the Court having determined that there was no breach of contract by the Appellant; the Respondent is not entitled to damages. Thus, the Court finds that the Trial Magistrate erred in law and in fact in awarding general damages.
27. The upshot is that this Appeal succeeds and the Judgement of the Trial Court is set aside in its entirety as the Plaintiff did not prove his case to the required standard.
28. As to costs the same are awarded at the discretion of this Court. The Appellant as the successful party is awarded the costs of the suit in the Court below as well as in this Appeal.

**Determination**

29. The Appeal is allowed in its entirety in the following terms.
  - a) The Judgment and Decree of Hon S. A. Opande Principal Magistrate delivered on 24th April, 2024 in Milimani MCCC No. 5306 of 2017 is quashed and is hereby set aside in its entirety.
  - b) It is replaced instead with a Judgement and Decree dismissing the Plaintiff's suit in its entirety. The Costs of the suit are awarded to the Defendant together with interest at Court rates from the date of Judgement until payment in full.
  - c) The Appellant is awarded the costs of this Appeal together with interest at Court rates from the date of this Judgement until payment in full.
30. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of;

Mr. Muriithi for the Appellant.

Mr. Gaitho for the for the Respondent.

Mr. Peter Wabwire - Court Assistant.

