Omondi t/a Litepace Ventures v Presta Capital Limited (Civil Appeal E150 of 2024) [2025] KEHC 14863 (KLR) (Civ) (23 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14863 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E150 OF 2024

H NAMISI, J

OCTOBER 23, 2025

BETWEEN

BRIAN OMONDI T/A LITEPACE VENTURES ..... APPELLANT

AND

PRESTA CAPITAL LIMITED ..... RESPONDENT

(Being an Appeal against the Judgement of Hon. Nasimiyu, Adjudicator delivered on 30 April 2024 in Milimani Small Claims SCCCOM No. E9709 of 2023)

JUDGMENT

1. This appeal arises from a suit in the Small Claims Court filed by the Respondent, seeking the following reliefs:

    i. Judgement in the sum of Kshs 955,499/=;

    ii. Costs of the Claim;

    iii. Other appropriate relief.

2. The Respondent's claim was founded upon a loan agreement and an accompanying promissory note, both dated 9 September 2022. The Respondent advanced a sum of Kshs 1,087,134/= to the Appellant, on agreement that the sum would be repaid in 12 equal monthly instalments of Kshs 90,594.50. The Respondent averred that while the Appellant made some payments, he subsequently defaulted, leaving an outstanding balance of Kshs 955,499/= as at the date of filing the claim.

3. In his Response dated 13 March 2024, the Appellant admitted to owing the Respondent the sum of Kshs 648,758/=. He pleaded that he had lent the borrowed sums to his own clients, most of whom had defaulted on their repayments to him. Consequently, he had been servicing the loan from his own

resources and proposed to settle the admitted debt by making monthly payments of Kshs 20,000/- while he pursued his defaulting clients.

4. Acting on the strength of the Appellant's admission, the trial court entered a partial judgement on admission for the sum of Kshs 648,758/=. Upon hearing the parties on the issue of the contested balance of Kssh 306,741/-, the trial court made a finding that the Appellant had proven that he had made payments totalling Kshs 51,000/- after a demand letter was issued by the Respondent. However, the trial court rejected the Appellant's claim of payments made by mpesa by the Appellant's clients directly to the Respondent. The learned Adjudicator found that the Mpesa statement produced as an exhibit did not demonstrate that the payments were made in accordance with the method stipulated in Clause 5 of the Loan Agreement. The trial court thus concluded that from the disputed amount of Kshs 306,741/=, the Appellant was entitled to a credit of Kshs 51,000/-, leaving a balance of Kshs 255,741/=.

5. To that end, the trial court entered judgement in favor of the Respondent for the total sum of Kshs 904,499/-, plus costs assessed at kssh 30,000/=.

6. Aggrieved by this decision, the Appellant lodged an appeal on the following grounds:

    i. That the learned Magistrate erred in law and fact by disregarding the contract made by the Appellant and Respondent;

    ii. That the learned Magistrate erred in law and in fact by not following the context of *Microfinance Act*;

    iii. That the learned Magistrate erred in law and in fact by failing to appreciate that the Appellant's clients had already paid Kshs 438,376/= through the company's pay bill number 750948, Account number 67339;

    iv. That the Honourable Magistrate erred in law and in fact in finding the Appellant liable for the extra Kshs 255,741/=;

    v. That the learned Magistrate erred in law and in fact in finding the Appellant liable for the extra Ksh 255,741/= even after the Appellant showed prove of the mails from the company confirming the amount had been paid to their pay bill;

    vi. That the learned Magistrate erred in law and fact in failing to hold and or understand / appreciate that since the Appellant was working as an agent of a microfinance company as a lending company, sometimes there might be what is considered "bad loans" or faulty loans in the banking sector;

    vii. That the trial court wrongly failed to give due weight to the submissions of the Appellant;

    viii. That consequently the learned Magistrate's decision occasioned a miscarriage of justice.

    ix. The judgement of the Magistrate is bad in law and fact

7. The appeal was canvassed by way of written submissions.

Analysis & Determination

8. In its submissions, the Respondent has raised two preliminary objections to the competence of the appeal. First, it was contended that the appeal is improperly before the Court. The judgement was delivered on 30 April 2024, yet the Memorandum of Appeal was filed on 20 July 2024, approximately 3 months later. The Respondent argued that this is well outside the 30-day period prescribed in section

79G of the *Civil Procedure Act*. The Respondent submitted that no application for extension of time was filed, and as such, the appeal is nullity and should be struck out. In support of this position, the Respondent cited the Supreme Court case of County Executive of Kisumu -vs- County Government of Kisumu & 8 Others (Civil Application 3 of 2016) KESC 16 (KLR), where the Court held that a document filed out of time without leave is unknown in law.

9. Second, the Respondent argued that a judgement entered on admission is not appealable on its merits. It was submitted that the Appellant's admission of a debt of Kshs 648,758/= was clear, unambiguous, and unconditional. Relying on the case of Express Automobile Kenya Ltd -vs- Kenya Farmers Association Ltd & Another, the Respondent asserted that where an admission is so clear, the resulting judgment is a final determination that permanently denies the party a right of appeal on the merits of the admitted portion.

10. In an interesting twist, in his submissions, the Appellant averred that the parties were now in agreement as to the figures. He submitted that he had since paid a sum of Kshs 658,758/= and annexed a bank deposit slip from NCBA Bank dated 2 January 2025. Based on this payment, the Appellant prayed that this Court close the matter and mark it as settled. He further prayed for an order for the release of a title deed held in security.

11. This conduct by the Appellant, while seemingly aimed at resolving the dispute, raises pertinent questions. By taking active steps to satisfy a substantial portion of the very judgment he is challenging, has the Appellant compromised or rendered his appeal moot? What is the legal effect of a party's partial satisfaction of a decree while an appeal against the decree is pending? These are matters that this Court must consider, as they go to the substance and viability of the appeal itself. The Appellant's actions are contradictory; he challenges a judgement while simultaneously acquiescing to its principal finding of liability. While this may not automatically extinguish the appeal, particularly concerning the disputed balance, it significantly colours the context in which the appeal is to be determined.

12. Turning to the first point of objection by the Respondent, the law governing the filing of appeals from subordinate court is section 79G of the *Civil Procedure Act*. From the record, it is clear that judgement was delivered on 30 April 2024 and the Memorandum of Appeal was filed on 29 July 2024. The Appellant did not make a formal application for extension of time. However, in a Supporting Affidavit sworn on his behalf, he depones that the delay was occasioned by difficulties in tracing the file in the trial court in order to obtain proceedings for the appeal.

13. The power of this Court to extend time is discretionary, to be exercised upon an applicant demonstrating good and sufficient cause. The principles that guide this Court in exercising its discretion are well settled. In Leo Sila Mutiso vs Rose Hellen Wangari Mwangi [1999] 2EA 231, the Court of Appeal laid down the following factors for consideration: the length of the delay, the reason for the delay, the chances of the appeal succeeding if the appeal is granted, and the degree of prejudice to the respondent if the extension is granted.

14. In Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR), the Supreme Court emphasized that while rules of procedure are handmaidens of justice and not ends in themselves, they must be obeyed. The Court held that extension of time is not a right of a party but an equitable remedy that is only available to deserving party at the discretion of the Court.

15. Applying these principles, the delay of two months is significant but not inordinate. The reason advanced by the Appellant is a common challenge faced by litigants, particularly those who are unrepresented. While this Court does not condone laxity, administrative inefficiencies with the court registries can sometimes place insurmountable hurdles in the path of a diligent litigant. The prejudice to the Respondent is the continued delay in enjoying the fruits of judgement. On the other hand, the

prejudice to the Appellant in being denied an opportunity to be heard on appeal is the potential denial of his right to access justice under Article 48 of *the Constitution*.

16. Weighing these factors, and considering that the Appellant is unrepresented and may not be well versed in procedural intricacies, this Court is included to exercise its discretion in his favor. The interests of justice are better served by admitting the appeal for determination on its merits. The preliminary objection on timeliness is, therefore, dismissed, and the appeal is deemed to have been admitted out of time.

17. Turning to the grounds of appeal, Section 38 of the *Small Claims Court Act* provides as follows:

    1. A person aggrieved by the decision or an order of the Court may appeal against that decision or an order to the High Court on matters of law;

    2. An appeal from any decision or order referred to in sub section (1) shall be final.

18. In the case of Otieno, Ragot & Company Advocates -vs- National Bank Kenya Ltd [2020] eKLR, the Court of Appeal addressed the duty of a court considering points of law.

> " This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the 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. (See: Stanley N. Muriithi & Another versus Bernard Munene Ithiga (2016) eKLR)."

19. Similarly in the case of Mwita v Woodventure (K) Limited & another (Civil Appeal 58 of 2017) [2022] KECA 628 (KLR) (8 July 2022) (Judgment), the Court of Appeal stated:

> " This is a second appeal. Accordingly, the jurisdiction of this Court is limited to consideration of matters of law. As was held in the case of Stanley N. Muriithi & Another v Bernard Munene Ithiga [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. See also Kenya Breweries Limited v Godfrey Odoyo [2010] eKLR in which it was held that: "In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself 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."

20. Section 38 of the Act confines the appellate jurisdiction of this Court to a supervisory role focused on the correct application of legal principles by the trial court. A point of law concerns the interpretation of statute, the application of a legal principle, the admissibility of evidence, or the standard of proof required. Therefore, this Court is not at liberty to re-weigh the evidence or substitute its own factual findings for those of the trial court, which had the distinct advantage of seeing and hearing the witnesses. This Court can only interfere if it is demonstrated that the trial Court's decision was based on no evidence at all, or that the court misapprehended the evidence in a manner that reveals a misunderstanding of the applicable law, or that the court applied the wrong legal principle to the facts as found. It is through this narrow legal lens that the single ground of appeal must be examined.

21. A close examination of grounds 1, 3, 4, 5 and 7 reveals that they are, in substance, complaints against the trial court's findings. The Appellant is essentially inviting this Court to re-examine the mpesa

statements and bank slips and to arrive at a different factually conclusion from that of the trial court. This is precisely what section 38 of the *Small Claims Court Act* prohibits. The Appellant has not demonstrated that the trial court's findings were perverse or based on no evidence. To the contrary, the judgement shows a clear analysis of the documents presented. These grounds raise matters of fact, not law, and are, therefore, incompetent.

22. Ground 2 alleges that the trial court erred by not following the context of the *Microfinance Act*. However, the Appellant has not explained how the context of the Act would have altered the outcome of the claim before the trial court. Without such particulars, the ground remains a vague and unsubstantiated assertion that cannot stand.

23. Ground 6 contends that the trial court erred in failing to appreciate the commercial reality of bad loans in the microfinance sector. This ground raises no error of law and therefore fails.

24. Grounds 8 and 9 are omnibus grounds, asserting that the decision occasioned a miscarriage of justice and was bad in law and fact.

25. The Respondent correctly submitted that a significant portion of the judgement was entered in the basis of the Appellant's won admission. The law on this is found in Order 13 Rule 2 of the Civil Procedure Rules, which allows a Court, at any stage, to enter judgement on admission of facts. In Choitram & another v Nazari [1984] KECA 47 (KLR), the Court of Appeal held that for a judgement on admission to be granted, the admission must be plain, obvious, clear and unconditional.

26. The Appellant admitted to only owing the Respondent the sum of Kshs 648,758/=. This admission could not be clearer. It is unequivocal and unconditional. The trial court was, therefore, perfectly entitled to enter a partial judgement on admission for that sum. An appeal against a judgement properly entered on a clear admission is an exercise in futility. It is an attempt to resile from a formal position taken in pleadings, which the law does not permit without successful application to amend or withdraw the admission. The appeal against this portion of the judgement is, therefore, entirely without merit.

27. Finally, the Court must consider the Appellant's submissions and his act of paying Kshs 658,758/=, which is slightly more than the admitted sum. His prayer is for this matter to be marked as settled. This conduct is governed by the doctrine of approbation and reprobation, which posits that a person cannot accept and reject the same instrument. The Appellant cannot accept the benefit of a judgement by satisfying it to avoid execution, while simultaneously challenging its validity on appeal.

28. While the appeal is not technically moot because the disputed balance of Kshs 255,741/- and costs remain outstanding, the Appellant's actions and his express to close the matter amount to a de facto abandonment of the appeal. His actions speak louder than the grounds in the Memorandum of Appeal. This reinforces the conclusion that the appeal lacks merit.

29. In light of the foregoing, the appeal is dismissed. The Appellant shall bear the costs of the appeal assessed at Kshs 40,000/=.

DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF OCTOBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Appellant: N/A

For Respondent: N/A

Court Assistant: Lucy Mwangi