

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**HCCA N. E093 OF 2024**

**LUCY KATHURE G.....APPELLANT**  
**VERSUS**

**NCBA BANK LTD.....RESPONDENT**

*[Being an appeal from the decision Chief Magistrate's Court at Meru delivered on 12/6/2024 in Meru CMC. 149 of 2020 by - Hon. J. M.Njoroge - Chief Magistrate].*

**JUDGMENT**

**BACKGROUND**

1. The appellant moved the lower court vide a plaint dated 18<sup>th</sup> July, 2020, where she sought the following orders:-
  - a) An order directing that the defendant to issue the plaintiff with a loan statement and subsequently accept to receive only the monies due and owing to the defendant from the plaintiff and after receipt of full sum plus interest not to interfere with the plaintiff's peaceful utilization ownership and enjoyment of the said lorries.***
  - b) Costs of the suit and interests.***
  
2. The appellants case before the lower court was that she had approached the respondent for credit facility, for the

purchase of Motor vehicle registration number KCQ 713F and KCS 891L. that the loan was to be repaid over a period of 5 years.

3. That despite this, the respondent attempted to repossess the said motor vehicles, without any reasonable cause.
4. That as a result the appellant lost business. That the appellant had attempted to obtain a loan statement from the respondent filed defence to the appellant's claim. It admitted that it had advanced the appellant the credit facility but the appellant had failed to service the loan as required.
5. It denied that the appellant only had a balance of KSh. 50,000/=. It averred that any repossession of the motor vehicle was out of the appellants failure to service the loan, hence lawful.
6. After full trial, the court rendered judgment and issued the following orders:-

- a) The defendant to issue the plaintiff with a loan statement and subsequent accept to receive only the monies due and owing to the defendant.**
- b) The injunction orders shall be vacated**
- c) That there shall be no orders as to costs.**

## **THE APPEAL.**

7. Aggrieved by the said judgment, the appellant filed a memorandum of appeal dated 11<sup>th</sup> July, 2024 which set out the following grounds:-

- i. That the decision of the trial magistrate is bad in law.***
- ii. That the learned trial magistrate erred in law and in fact in failing to consider the submissions of the appellant, hence arriving at a wrongful decision.***
- iii. That the learned trial magistrate erred in law and fact in failing to take into account the evidence authorities and submissions of the appellant, hence arriving at a wrongful decision.***
- iv. That the learned trial magistrate erred in law and in fact in failing to consider the prevailing circumstance, hence arriving at a wrongful decision.***
- v. That the learned trial magistrate erred in law and in fat in failing to consider the prevailing circumstances, hence arriving at a wrongful decision.***
- vi. The judgment of the trial court is against the weight of the evidence tendered.***

8. The appellant thus sought the following orders: -

***a) This appeal be allowed and the judgment of the learned magistrate dated 12/6/2024 be set aside in the alternative and without prejudice to the foregoing.***

***b) The court be pleased to order for retrial.***

***c) The costs of this appeal and the trial court be borne by the respondent.***

9. After filing the appeal, the applicant also filed an application dated 18<sup>th</sup> July, 2024 where she sought the following orders:

***a) Spent***

***b) That an order of temporary injunction be issued restraining the defendant by themselves, their agents, relatives, employees and/or through anybody else whomsoever acting on their behalf from proclaiming, attaching, impounding or selling by way of auction the appellants' property including KCQ 713F and KCS 891L Isuzu NPR, pending the hearing and determination of this application.***

***c) That an order of temporary injunction be issued restraining the defendant by themselves, their***

***agents from proclaiming, attaching, impounding or selling the appellants' property including KCQ 713F and KCS 891L Isuzu NPR, pending the hearing and determination of this appeal.***

***d) That costs of this application be provided for.***

10. Temporary injunction orders were issued pending the determination of the appeal. The appeal was canvassed by way of written submissions, only the respondent filed its submissions.
11. Even without going to the said submissions, this court has examined the appeal, itself. The competence of the Appeal has to be determined first. It is dealt that the trial court granted the appellant the prayers sought in her plaint. So, the question that arises is whether there is a competent appeal before this court.
12. In my view, there is no competent appeal, since the applicant got her wish and the orders sought were granted.
13. The appellants appeal appears to be a mischievous attempt to continue to enjoy the injunction orders that she obtained, first at the trial and then in this appeal. It is noted that in her

sit she never sought away permanent injunction. Once the suit was determined, the interlocutory injunction orders lapsed and the trial outrightly ordered so.

14. Going by the above, I find that this appeal is incompetent. I need not go to the merits of it in such circumstances, it s the first time, I have seen a successful party appeal against orders in its favour, but as I have stated, the appellant chose an ingenious way to prolong the injunction orders. Unfortunately, that has to come to an end.

15. In conclusion, I find that this appeal is incompetent and it is struck out with costs to the respondent.

16. For the avoidance of any doubt, all the injunction orders are vacated forthwith and the respondent is at liberty to exercise its agreement to recover any outstanding arrears.

17. Orders accordingly.

**Dated, Signed & Delivered at Meru this 11<sup>th</sup> day of  
November, 2025.**

**H. M. NYAGA  
JUDGE**

