

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E406 OF 2024

SOPHIA MUTONI NJIRU.....
APPELLANT

VERSUS

PETER KINYUA NJIRU.....
RESPONDENT

**(Appeal from the judgement and decree, of Hon. AG Njoroge,
Adjudicator of 23rd February 2024, in Milimani SCCOMM No. E9329 of
2023)**

JUDGEMENT

1. The claim, at the trial court, had been initiated by the appellant, against the respondent, for recovery of a friendly loan, advanced on the promise that it would be paid back after 60 days. Upon being served, the respondent did not file a response, but raised a preliminary objection, dated 18th December 2023, arguing lack of jurisdiction on the part of the trial court, on account of an arbitration clause in the money lending agreement.
2. The preliminary objection was canvassed first, by way of written submissions. The same was sustained, in a ruling delivered on 23rd February 2024.
3. The appeal herein arises from the said ruling, and turns on issues around whether the respondent should have filed a response first, before raising the preliminary objection; failure to seek stay of proceedings to pursue the arbitration; considering procedural issues first before getting into the substance of the claim by the appellant; failure to consider replying affidavit; failure to consider precedents; failure to consider that the arbitration agreement would undermine public interest; failure to consider that enforcing the arbitration agreement would violate constitutional rights; and the invocation of the arbitration clause constituted abuse of the process of court.
4. Directions were given, on 2nd May 2025, for disposal of the appeal, by written submissions. I see submissions, on record, filed by both sides.

5. Before I can consider the appeal on merits, it would be prudent to consider preliminary matters that may go to jurisdiction, for without jurisdiction, I would not be able to take the further step of evaluating the matter on merits. See *Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] KLR 1 [1989] eKLR [1989] KECA 48 (KLR) (Nyarangi, Masime & Kwach, JJA) and *Macharia & another vs. Kenya Commercial Bank Limited & 2 others* [2012] KESC 8 (KLR) [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ).
6. The claim, at the trial court, was filed on 30th November 2023, and the impugned ruling was delivered on 24th February 2024.
7. Under section 34(1) of the Small Claims Court Act, Cap 10A, laws of Kenya, the Small Claims Court exercises jurisdiction within a period of 60 days, from the date of the filing of the claim. That is to say that the claim ought to be heard and determined within that 60-day window. It would mean that once the 60 days lapse, the Adjudicator ought to lay down tools.
8. The filing was on 30th November 2023. 60 days should have expired on or about 30th January 2024. The ruling, delivered on 24th February 2024, ordering the parties to pursue arbitration, was outside jurisdiction, and the orders made in it were null and void.
9. As the said ruling was delivered, and orders in it were made, outside jurisdiction, no appeal would validly arise from it on merits, and the High Court would have no jurisdiction to determine it on merits. Consequently, there can be no valid appeal herein.
10. The claim was founded on a money lending contract, dated 23rd March 2019. The limitation period for matters founded on contract, is 6 years, according to section 4(a) of the Limitation of Actions Act, Cap 22, Laws of Kenya. That period, for the purpose of the instant case, was set to lapse on or about 25th March 2025. The suit was, therefore, filed within the limitation period. The expiry, of the 60-day-jurisdiction of the Small Claims Court, did not affect the validity and viability of the claim. Other courts, besides the Small Claims Court, would have jurisdiction to hear and dispose of it, should the claim be placed before them.
11. I have supervisory jurisdiction, under Article 165(6)(7) of the Constitution, which would confer me with jurisdiction, under section

18 of the Civil Procedure Act, Cap 21, Laws of Kenya, to order transfer of the claim out of the Small Claims Court, to either the High Court or the Magistrate Court. As it falls within the pecuniary jurisdiction of the Magistrate Court, it should be transferred to the Magistrate Court.

12. Consequently, the final orders herein are that the claim, in Milimani SCCCOMM/E09329/2023, shall be transferred from the registry of the Milimani Small Claims Court, to the registry of the Magistrate Court, at the Milimani Commercial Courts, for hearing and disposal. The appeal is hereby determined on those terms. Each party to bear its own costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
BUSIA, ON THIS 27TH DAY OF NOVEMBER 2025.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Michael Onyango, Court Assistant, Milimani, Nairobi.

Advocates

Ms. Ondari, instructed by AK, Advocates for the appellant.

Mr. Mathenge, instructed by Wokabi Mathenge & Company, Advocates for the respondent.