Finex Credit Limited v Macharia (Civil Appeal E189 of 2024)
[2025] KEHC 18665 (KLR) (Civ) (16 December 2025) (Judgment)

Neutral citation: [2025] KEHC 18665 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E189 OF 2024

FR OLEL, J

DECEMBER 16, 2025

BETWEEN

FINEX CREDIT LIMITED ..... APPELLANT

AND

EDWARD MWANGI MACHARIA ..... RESPONDENT

(BEING AN APPEAL FROM THE JUDGMENT/DECREE ISSUED BY HON MKALA JACOB PUNGA (RM- ADJUDICATOR) SITTING DATED 9 th FEBRUARY 2022 IN NAIROBI MILLIMANI COMMERCIAL SCCCOMM NO E8129 OF 2023)

JUDGMENT

QUOTE

A. Introduction

1. The Appellant filed his claim before the small claims court and averred that through two separate contracts, dated 08.09.2021 and 15.10.2021, they did advance to the respondent sums of Kshs.250,000/= and Kshs.100,00/= respectively and it was expressly agreed that the said loans would attract compound interest of 10% per month. The first loan was payable after two months at an agreed sum of Kshs.302,500/=, while the second loan was due after one month at an agreed sum of Kshs.110,000/=. The respondent had materially breached the said contract by failing, neglecting and/or refusing to repay any amounts due from the said loan and as a result the appellant sought for judgment to be entered in their favour for a sum of Kshs.987,361/= plus costs and interest.

2. The respondent did file his statement of Defence, where he denied in toto all the averments made in the statement of claim and added that the constituted utter falsehood and deliberate misrepresentation

of facts with the soul intention of misleading the court and put the appellant to strict proof thereof. He therefore prayed that this suit be dismissed with costs.

3. PW1 Japhet Mucheka, a director of the appellant regurgitated the facts as stated in the statement of claim, the witness statements and produced their filed documents in support of their case. In total it was his contention that they disbursed Kshs.350,000/= to the respondent, which remained unpaid and had accumulated interest to the tune of Ksh.987,361/=. PW1 further confirmed that the loan was secured by the respondent's title deed and he did execute all transfer documents in their favour to cover for default and indeed when the respondent failed to settle the amount due, the went ahead and transferred the said property to themselves, with the intention of disposing it off to recover their money.

4. Unfortunately, they were unable to sell the said property nor did they take possession of the same and thus urged the court to award them the liquidated damages as claimed. Under cross examination, PW1 confirmed that the loan taken was secured by the respondent title deed, which upon default , they had transferred to themselves but had also discovered that the said parcel of land had been invaded by squatters, thus did not have physical possession thereof. He also confirmed that they had transferred the amounts loaned out to the respondent through their bank to the respondents bank and referred to their bank statements to prove the same.

5. Under Reexamination, PW1 confirmed they were willing to return the security back to the respondent as long as they were paid their sum of money. The respondent opted to close their case without calling any witness, and upon considering the pleadings, evidence and submissions rendered, the trial court held that it was inequitable for the appellant to hold onto the respondent land that was used as security, which property they had already transferred to themselves and still file the suit to seek payment of the outstanding sum. Based on the foregoing, the learned trial Magistrate held that the loan was satisfied immediately the land was transferred to the claimant and proceeded to dismiss the suit with costs to the respondent.

6. The Appellant, being dissatisfied with the said award, filed their memorandum of Appeal on 10th February, 2024, raising seven (7) grounds of appeal, namely: -

    a. That the learned trial magistrate erred in law by failing to uphold the consequence of breach of contract as parties had agreed to.

    b. That the learned trial magistrate erred in law by rewriting the contract between the parties which was not the business of the court to conduct.

    c. The learned trial Magistrate erred in law in finding that the security was for the performance of the contract was payment for the sum due, which is a finding unsustainable in law.

    d. The learned Magistrate erred in law by going beyond the pleadings to arrive at judgment.

    e. The learned Magistrate, erred in law by failing to note the Appellants plea that what has been offered as security was onerous property i.e. the benefit it brought was outweighed by the trouble that would be faced in dealing in it.

    f. The learned trial Magistrate erred in law by concluding that the collateral immediately discharged the duty to pay the loan.

    g. The learned trial Magistrate erred in law by arriving at a judgment that is unsustainable in law.

7. The Appellant thus did pray that this Appeal be allowed, the judgment of the trial court be set aside and substituted with an order of this court awarding the Appellant the relief claimed in the subordinate

court or such other relief as the court may deem fit. They also sought to be awarded the costs of this Appeal.

B. Analysis and Determination

8. I have considered this appeal, submissions, and the impugned judgment. I have also considered the decisions relied on and perused the trial court's record.This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the *Small Claims Court Act* provides that appeals from the said court shall be only on issues of law. It provides thus:

> Section 38
>
> 1. A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
>
> 2. An appeal from any decision or order referred to in subsection (1) shall be final."

9. It is clear from the aforementioned provision that the jurisdiction of this Court from the Small Claims Court will only lie on matters of law and not on factual issues. An appeal limited to matters of law does not permit the appellate court to substitute the tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts.

10. In John Munuve Mati Vr The returning officer, Mwingi North Constitency & 2 others (2018) eKLR, what amounts to "matters of law" was described as;

> (38) The interpretation or construction of *the constitution*, statute, or regulations made thereunder or their application to the sets of facts established by the trial court. As far as facts are concerned, our engagement with them is limited to background and context, and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into consideration of the credibility of witnesses or which witnesses are more believable than others; by law, that is the province of the trial court.

11. This Appeal turns on one question, which is the effect of the lender transferring the security held for the debt to itself and whether this act excludes other remedies of debt recovery. It is not in dispute that the parties herein did enter into an agreement where the respondent borrowed a sum of Kshs.350,000/= from the Appellant which sum attracted compounded interest of 10% per month and signed over his security Title No IR: 129922/Land reference No. 12610/66 (Original Number 12610/16/3) as security for the said loan. Despite demand, the respondent was unable to settle the sum owned and subsequently was sued for the outstanding loan amount of Kshs.987.361/= plus costs and interest.

12. During trial, it emerged that the Appellant had transferred the security to themselves, but argued that they did not have physical possession of the same as there were squatters who had invaded the said parcel and thus were unable to dispose it off to recover the loan. They were therefore justified to file the suit to recover the amount due and owing. The trial Magistrate did consider this issue and held that having exercised the option of transferred the suit property to themselves, it had to be assumed that the loan amount had been paid and it was upon the Appellant to move to the Environment and Land court to evict the squatters.

13. I do agree with the Appellant, that what was created by deposit of the security was an informal charge as recognized under Section 79 of the *land Act*, and that they had a right to sue for recovery of the debt owned, but by pulling the trigger and opting to transfer the said security title to themselves, before

filing the said suit, they directly acquiescence into taking any encumbrances attached thereto and are estopped from complaining otherwise.

14. What was open for the Appellant was to value the said security-property and sue the respondent for the loan balance due after considering the said property value and/or sale value, which process they did not undertake. The appellant cannot have their cake and eat it, as that would be amount to unjust enrichment. The trial Magistrate finding to that effect was on point and cannot be faulted.

C. Disposition

15. This Appeal therefore has no merit and the same is dismissed no orders as to costs.

16. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MARSABIT THIS 16TH DAY OF DECEMBER, 2025.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 16th day of December ,2025.

In the presence of: -

N/A .....Appellant

N/A ..... Respondent

R. Jarso.....Court Assistant