



**Mogo Auto Limited v Onjor (Civil Appeal E472 of 2025)
[2026] KEHC 659 (KLR) (Civ) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E472 OF 2025

AC MRIMA, J

JANUARY 29, 2026

BETWEEN

MOGO AUTO LIMITED APPELLANT

AND

FRANK KENNEDY ONJOR RESPONDENT

(Being an appeal from the judgment of Hon. Philomena Makokha (Resident Magistrate/ Adjudicator) delivered on 10th January 2025 in Nairobi SCCCOMM No. E4921 of 2024)

JUDGMENT

Introduction and background:

1. Through an Amended Statement of Claim dated 21st June 2024, Frank Kennedy Onjor, the Respondent, sued Mogo Auto Limited, the Appellant at the Small Claims Court in Nairobi [Milimani] SCCCOMM E4921 of 2024 (hereinafter referred to as ‘the suit’) for a mandatory injunction restraining the Appellant from repossessing selling and/or interfering with Motor vehicle Registration number KCX 341D Honda Step wagon (hereinafter referred to as ‘the Motor vehicle’), a declaration that the loan has been fully settled with an overpayment of Kshs.123,220/=, that the logbook and transfer be released to him and costs of the claim.
2. The Respondent averred that he had taken a loan facility with the Appellant for the sum of Kshs. 600,000/= and that as per the contract, the total amounts payable by the Respondent was Kshs. 739,824/= inclusive of interest. He posited that he had paid a total of Kshs. 863,044/= which sum was even an overpayment. Further, the Respondent claimed that the Appellant unilaterally changed the terms of the contract vide an amendment dated 7th February 2024 indicating that the instalments to be paid in Kenyan Shillings would fluctuate based on the dollar and as a result of this amendment, he would suffer irreparable loss and damage if the Appellant repossessed the Motor vehicle. He contended



that he never signed an Insurance Premium Financing Agreement that charged him a total of Kshs. 113,319/= as insurance fees.

3. In conclusion, he argued that the Appellant owed him a total of Kshs. 123,220/= being the overpayment and the sum of Kshs.113,319/= which he paid for insurance.
4. The claim was strenuously defended. The Appellant filed an Amended Response to the claim dated 30th July 2024. It denied unilaterally amending the terms of the contract and reiterated that the amendment was limited to having the insurance fee levied on the Respondent's account removed to stop him from making monthly insurance instalments and that this was done at the request of the Respondent. Additionally, it argued that the loan agreement and the ancillary security agreement, which were both signed by the Respondent, included the loan payment schedule in dollars. It emphasized that the log book loan advanced to the Respondent was USD 4,896.67 which was equivalent to Kshs.600,000/=.
5. The Appellant averred that it entered into an ancillary insurance premium Financing Agreement dated 5th December 2022 which obligated the Respondent to make monthly payments according to the insurance terms and conditions. It reiterated that the parties were bound by the terms of the agreements having freely signed both the loan agreement and the insurance financing agreement. It emphasized that pursuant to the ancillary security agreement, the Respondent had expressly assigned and transferred all his rights, title, estate and interest in the motor vehicle to the Appellant by way of mortgage as a continuing security for loan until the loan together with costs, expenses, fees and interest charged had been satisfied in full. The Appellant reiterated that it had an interest in the motor vehicle as a secured creditor under the loan agreement.
6. In sum, the Appellant averred that the Respondent had defaulted severally to make payments and as at 23rd May 2024, the Respondent had paid Kshs. 620,597.00/= with accrued interests, penalties and fines totalling to USD 6,444.32. For these reasons, they urged the Court to dismiss the claim with costs.
7. The suit proceeded under Section 30 of the [Small Claims Court Act](#) and the trial Court rendered its judgment on 10th January 2025 in favour of the Respondent in the following terms: -
 1. A declaration is issued that the claimant has fully repaid the loan and is entitled to a refund of Kshs. 123,220 as an overpayment;
 2. The Respondent is directed to refund Kshs. 123,220/= to the claimant within 30 days of this judgment;
 3. The Respondent shall bear the costs of this suit.
8. It is that decision that precipitated the instant appeal.

The Appeal:

9. Aggrieved by this judgment, the Appellant filed the instant appeal vide the Memorandum of Appeal dated 4th February 2025 and preferred the following grounds of appeal: -
 1. That the learned adjudicator erred in law by misconstruing the evidence adduced and thereby arriving at a wrong conclusion that the Respondent had fully repaid the loan sum of Kshs. 825,231 without any proof thereof;
 2. That the learned adjudicator erred in law by misapplying and/or disregarding the principles of law laid down in *National Bank of Kenya V Pipeplastic Samkolit (k) Ltd (2001) eKLR* despite correctly citing the case, and proceeded to rewrite the contractual terms between the



parties by holding that the sum of Kshs.825,231.00 exceeded the agreed loan amount thereby disregarding express contractual provisions including the application and loan processing fees, the applicable interest rate, default interest and penalties, and the requirement for repayments to in US dollars at the prevailing forex exchange rate.

3. That the learned adjudicator erred in law in ignoring the Appellant's amended response to statement of claim and thereby erroneously placing the burden of proof upon the appellant to disprove the claimant's case which is contrary to the rules of evidence by, inter alia, stating that the appellant failed to adduce credible evidence of the arrears to warrant the amendment;
 4. That the learned adjudicator erred in law in holding that the amendment on 7th February 2024 constituted a unilateral variation of the loan agreement by the appellant despite clear evidence to the contrary.
 5. That the learned adjudicator erred in law by misquoting and misapplying Section 84 of the Consumer Protection Act to erroneously hold that the appellant was required to obtain approval from Cabinet Secretary before amending interest rates or repayment terms in financial agreements and in particular the Loan Agreement entered into between the parties.
10. It was upon these grounds that the Appellant sought for orders that the appeal be allowed, the trial Court's judgment dated 10th January 2025 be set aside and be substituted with an order dismissing the Respondent's claim. It also prayed for costs of the both the suit and this appeal.
11. Pursuant to the directions of this Court, the appeal was heard by way of written submissions. The Appellant's submissions were dated 11th July 2025 while the Respondent's submissions were dated 12th September 2025. The crux of these submissions will be ingrained in the latter part of this judgment.

Analysis:

12. Having carefully perused the record, the parties' submissions, the rival arguments and the decisions referred thereto, the following issues arise for determination: -
 - i. Whether the Loan Agreement was unilaterally amended;
 - ii. Whether the claim was proved.
13. Suffice to state that this Court's jurisdiction on appeals from the Small Claims Court is limited to matters of law as provided for under Section 38 of the Small Claims Court Act [Cap.10A] of the Laws of Kenya and that the decision thereof is final.
14. Whereas there has been no universally accepted definition of the term 'matters of law', there has been some working definitions thereto. The term 'point of law' may also be referred to as 'matter of law'. The Black's Law Dictionary defines 'a matter of fact' and 'a matter of law' as follows: -

Matter of fact: A matter involving a judicial inquiry into the truth of alleged facts and
Matter of law: A matter involving a judicial inquiry into the applicable law.
15. Lord Denning, J in *Bracegirdle vs. Oxley (2)* [1947] 1 ALL E.R. 126 at p 130 in espousing the two terms had the following to say: -

.... The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by



testimony; conclusions from those facts are inferences deducted by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depend on them. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law. In a case under the Road Traffic Act, 1930, s. 11, the question whether a speed is dangerous is a question of degree and a conclusion on a question of degree is a conclusion of fact. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The conclusion drawn by these justices from the primary facts, was not one that could reasonably be drawn from them.

16. Drawing from the above, the Court of Appeal in *Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others* [2014] eKLR sated as under: -

.... That reasoning has been adopted in this jurisdiction. In *A.G. Vs. David Murakaru* [1960] EA 484, for instance, Chief Justice Ronald Sinclair sitting with Rudd J. adverted to the factual foundations of legal questions by stating that an appellate court restricted to determining questions of law may yet quite properly interfere with the conclusion of a lower court if the same is erroneous in point of law. This is the case where that lower court arrives at a conclusion on the primary facts that it could not reasonably come to. Such a conclusion or decision becomes an error in point of law. See also *Patel Vs. Uganda* [1966] EA 311 and *Shah Vs. Aguto* [1970] EA 263.

17. Earlier, the Court of Appeal in *M'riungu and Others -vs- R* [1982-88] 1 KAR 360 observed thus: -

.... We would agree with the views expressed in the English case of *Martin v Glyneed Distributors Ltd (t/a MBS Fastenings)* [1983] 1 CR 511 that where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the temptation to treat findings of fact as holdings of law or mixed findings of fact and law, and, it should not interfere with the decision of the trial of first appellate court unless it is apparent that; on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad law.

18. Later, the Court of Appeal in *Charles Kipkoech Leting -vs- Express (K) Ltd & another* [2018] eKLR discussed what entails matters of laws as the Court considered its role as a second appellate Court. It observed thus;

.... Our mandate is as has been enunciated in a long line of cases decided by the Court. See *Maina -vs- Mugiria* [1983] KLR 78, *Kenya Breweries Ltd v Godfrey Odongo*, Civil Appeal No. 127 of 2007, and *Stanley N. Muriithi & another v Bernard Munene Ithiga* [2016] eKLR, for the holdings inter alia that, on a second appeal, the Court confines itself to 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.....

19. And, in *Peter Gichuki King'ara vs. IEBC & 2 others*, Nyeri Civil Appeal No. 31 of 2013, Court of Appeal held that a decision challenged on the basis of wrongful exercise of discretion raises a point of law. [See also *Twaher Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others*, (2014) eKLR].



20. From the foregoing, an appeal on matters of law calls upon the appellate Court to steer clear of findings of fact derived from primary evidence and to also restrain itself from treating findings of fact as holdings of law or mixed findings of fact and law unless the findings are so perverse as to defeat the object of justice.
21. In discharging its appellate role in matters from the Small Claims Court, the High Court should remain alive to the rationale behind the establishment of the Small Claims Court as a special and unique Court which is different from the mainstream civil Courts. It must always be remembered that the focal point of the Small Claims Courts is expeditious disposal of cases and that is why the Court is not bound by the strict rules of evidence [Section 32 of the *Small Claims Court Act*] and further the Court has power to control of its own procedure in determining any claim before it subject to regard to the principles of natural justice [Section 17 of the Act]. The High Court, therefore, is duty-bound to assist the Small Claims Court realize its said objective and it ought to consider appeals from the said Court through those special lenses in view of the various decisions referred to above.
22. Having said so and upon careful perusal of the Memorandum of Appeal which raises 5 grounds of appeal, this Court finds that the appeal raises some issues of law as delineated above. Further to a consideration of the said issues, this Court is also at liberty to determine whether the impugned decision is so perverse that no reasonable Court or Tribunal would have reached that conclusion.
23. This Court is, therefore, properly seized of jurisdiction over this appeal. With such a finding, the Court will now deal with the issues isolated above at once.
24. Whereas the issue as to whether the Loan Agreement was unilaterally amended appears to be a factual one, the manner in which the trial Court exercised its discretion into arriving at its decision that the agreement was indeed unilaterally amended has been severely challenged. To that end, this Court will consider that aspect from the lenses of a matter of law in view of the various decisions referred to above.
25. The trial Court dealt with this issue in the last two paragraphs of the analysis section of the judgment. Despite the parties having filed pleadings and written submissions on the issue, the Court, with utmost respect, did not refer to any of the clauses of the Loan Agreement and the General Provisions prior to arriving at the finding. Clauses 17 and 18 of the Loan Agreement as well as Clause 3.1 of the General Provisions crucially provided for the loan repayments. For instance, Clause 3.1 of the General Provisions stated as follows;
 3. 1. The Borrower borrows in USD and repays KES equivalent of USD according to the Repayment Schedule. In case of Monthly Instalments, Mogo Auto will fix foreign exchange rate between USD and KES 14 days before the due date and will inform the Borrower about the due amount in KES by text message...
26. Therefore, the finding that the Appellant unilaterally changed the terms of the Agreement and called upon the Respondent to instead make the repayments in USD instead of KSHS and that the Respondent had fully repaid the loan and was entitled to a refund was not reached on the basis of a proper consideration of the evidence on record and the law. Further, the issue as to whether the Insurance Premium Financing Agreement was duly signed by the Respondent as well as the issue as to whether the Respondent personally requested for the Amendment AM5469260 were not determined by the Court at all.
27. Therefore, without a consideration of the relevant repayment clauses of the Loan Agreement and the General Provisions and without resolving the issue as to whether the Respondent signed the insurance agreement and whether he also personally requested for an amendment, the Court could not have safely arrived at the decision that the suit was proved. To that end, the decision must be impugned



so that the matter may be accorded a proper consideration before the trial Court. In arriving at this position, this Court is alive to the need for expeditious determination of disputes under Article 159 of *the Constitution* and it would have determined the issues highlighted above at once save that this Court is limited to dealing only with matters of law, hence, the need for a retrial.

28. It is on the foregoing basis that this Court finds the appeal merited.

Disposition:

29. The upshot is that the following final orders issue: -

- (a) The appeal is hereby allowed. The judgment in Nairobi [Milimani] SCCCOMM E4921 of 2024 delivered on 10th January 2025 is hereby set-aside accordingly.
- (b) The suit shall be re-tried before another Learned Adjudicator other than Hon. Hon. Philomena Makokha.
- (c) The Respondent shall bear the costs of this appeal assessed at Kshs. 30,000/= [Thirty Thousand Only].

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Maingi, Learned Counsel for the Appellant.

Mr. Ochanda, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

