



**Faulu Microfinance Bank Limited v Matagaro (Civil Appeal E1431 of 2024)
[2026] KEHC 1642 (KLR) (Civ) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1642 (KLR)

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

CIVIL

CIVIL APPEAL E1431 OF 2024

WA OKWANY, J

FEBRUARY 12, 2026

BETWEEN

FAULU MICROFINANCE BANK LIMITED APPELLANT

AND

CHARLES MATAGARO RESPONDENT

*(Being an appeal from the judgment delivered on 6th November 2024 by
Hon. Zena A. Rashid (CM) Milimani in Civil Case No. MCCC/E12464/2021)*

JUDGMENT

1. The Respondent herein was the Plaintiff before the trial court where he sued the Appellant for negligence and defamation arising from wrongful listing in Credit Reference Bureau (CRB) over an alleged default in loan repayments.
2. A summary of the Respondent's case was that he applied for a check-off loan of Kshs. 650,000 from the Appellant on 19th November 2020 which loan was repayable through payroll deductions. The Appellant disbursed Kshs. 607,100 on 25th November 2020, after deductions of credit-life fees. The Appellant did not however effect any deductions through the Respondent's employer from December 2020, resulting in arrears accumulation for eight months.
3. Sometime in July 2021, the Appellant discovered that the loan had never been booked in its system and subsequently rectified the error but as of 29th November 2021, arrears had accumulated to Kshs. 723,804.89. The Appellant listed the Respondent with CRB for default thereby precipitating the institution of the suit before the trial court.



4. After hearing the case, the trial court found the Appellant negligent in failing to properly process the Respondent's check-off loan, leading to erroneous arrears and unlawful listing with the Credit Reference Bureau (CRB), and awarded the Respondent Kshs. 600,000 in general damages plus costs.
5. The Appellant was dissatisfied with the trial court's decision and instituted the instant appeal wherein it contends that the Learned Magistrate erred in both law and fact by failing to properly evaluate the pleadings, evidence, and submissions on record thereby leading to findings that were not supported by the material before the court. In particular, the court is faulted for misapprehending the terms of the Loan Agreement and the check-off arrangement, despite clear evidence that the Respondent bore the responsibility for repayment through his employer. The Appellant further maintains that it had fully discharged its contractual obligations by disbursing the loan to the Respondent's bank account and could not lawfully be held liable for the employer's failure to implement deductions.
6. It is further argued that the Learned Magistrate misdirected herself by attributing negligence and liability to the Appellant where no such duty existed, including an alleged obligation to issue or enforce a deduction order. The Appellant also challenges the finding that reporting the Respondent's non-performing loan to the Credit Reference Bureau was defamatory, asserting that such reporting was lawful and conducted in compliance with the Banking (Credit Reference Bureau) Regulations.
7. The Appellant further states that the award of damages was erroneous, excessive, and unsupported by evidence, as no proof of loss or causal connection between the Appellant's conduct and the alleged damage was established. The Appellant argued that the award of Kshs. 600,000/=-, almost equivalent to the loan amount disbursed, had no legal or factual justification thus rendering the entire decision against the weight of the evidence on record.
8. The Respondent opposed the appeal and raised a preliminary objection contending that the Appellant's record of appeal is defective for omitting certain proceedings allegedly conducted before Hon. Zena Rashid. He argued that this omission renders the appeal fatally defective.
9. The Appellant, on the other hand, maintained that the record is proper and adequate for determination of the appeal.
10. The Court will address this objection within the main analysis.
11. The Appeal was canvassed by way of written submissions which I have considered.

Appellant's Submissions

12. The Appellant submitted that it fully discharged its contractual duty by disbursing the loan and that the Respondent bore the primary obligation to ensure repayment if employer deductions failed. For this argument, reliance was placed on the decision in *Khisa v Kenya Commercial Bank* (Petition E006 of 2022) [2025] where it was held that the obligation to repay the loan remained with the borrower and that failure, by the employer, to effect check-off deductions does not absolve the borrower.
13. It was the Appellant's case that listing with CRB was lawful, factual, and done in good faith in line with the provisions of Section 22 of the CRB Regulations. Reference was made to the case of *Maina v CRB Africa Ltd & Another* (CA E195 of 2022) [2024] eKLR where it was held that malice must be proved for a claim of defamation based on CRB listing to stand.
14. The Appellant also cited the case of *Munoru v Equity Bank* [2023] eKLR where the court held that truthful reporting of arrears cannot constitute defamation.



15. It was further submitted that no damages were proved and that general damages are not recoverable for breach of contract. The Appellant cited the case of Kenya Tourist Development Corporation v Sundowner Lodge [2018] eKLR where it was held that general damages are not awardable for breach of contract.

Respondent's Submissions

16. The Respondent argued that the Appellant owed him both contractual and statutory duties of care under the check-off system. He noted that the Appellant's own witness, DW1, admitted during trial that "it is the bank's duty to ensure the loan was booked." Reference was made to the case of Karak Brothers Co Ltd v Burden [1972] All ER 1210 where it was held that banks owe customers a duty of skill and care.
17. It was submitted that the Appellant's failures, to wit, failure to book the loan, failure to forward deduction orders, failure to communicate arrears, and failure to conduct due diligence constituted negligence for which damages were payable.
18. According to the Respondent, CRB listing was wrongful because he was not in actual default as the default was caused solely by the Appellant's systemic failures. He maintained that his claim for damages was justified given the financial, reputational, and emotional harm that he suffered following the wrongful CRB listing. Reliance was placed on the case of Namalwa Christine Masinde v National Bank of Kenya Ltd [2016] eKLR where it was held that improper CRB listing causes compensable reputational damage and the case of Platinum Credit Ltd v Ruth Nkirote [2022] eKLR where the court upheld an award of Kshs. 1,000,000 general damages for wrongful listing.

Issues for Determination

19. Having carefully considered the pleadings, the evidence, and the parties' submissions, I find that the following issues arise for my determination: -
 - a. Whether the appeal is incompetent for defective record of appeal.
 - b. Whether the Appellant owed the Respondent a contractual and statutory duty of care under the check-off loan arrangement.
 - c. Whether the Appellant was negligent in handling the Respondent's loan account.
 - d. Whether the CRB listing was wrongful, unlawful, or defamatory.
 - e. Whether the award of Kshs. 600,000 in damages was justified.

Analysis and Determination

Defective Record of Appeal

20. This court notes that while the Respondent argued that the record is incomplete, he did not demonstrate which portions of the said record are missing or how they prejudice the appeal. I find that the appeal is competently before this court as it contains all the essential documents necessary as required under Order 42 Rule 13(4) of the Civil Procedure Rules which provides that: -

Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—



- (a) the memorandum of appeal; (b) the pleadings; (c) the notes of the trial magistrate made at the hearing; (d) the transcript of any official shorthand, typist notes or electronic recording taken at the hearing; (e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate; (f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal.

Duty of Care under the Check-Off Loan Arrangement

21. The Respondent asserted that the Appellant owed both contractual and statutory duties to ensure booking of the loan, issuance of a deduction order, communication with the Respondent's employer and monitoring of deductions.
22. The Appellant, on its part, asserted that its duty ended upon disbursement of the loan.
23. The well-hackneyed principle that was established in the case of *Donoghue v Stevenson* (1932) AC 562 is that a party must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure their neighbour. It is also trite that banks owe their customers professional duties of care. (See *Karak Brothers Co Ltd vs Burden* (supra).
24. Regulation 28(1)(a) of the CRB Regulations imposes statutory obligations on the bank by requiring that notice be issued to the customer within 30 days of listing.
25. In the present case, the Appellant's witness (DW1) admitted that it was the bank's duty to ensure that the loan was booked. It was however not disputed that the loan was not booked for eight months and that the deduction order was "forgotten" by the bank. My take is that these admissions establish foreseeability of harm.
26. It is therefore my finding that the Appellant owed the Respondent both contractual and statutory duties of care.

Negligence

27. In order to establish that there was negligence, a claimant is required to prove duty of care, breach, causation and damage.
28. In the present case, I note that the Respondent demonstrated that the Appellant failed to forward the deduction order to his employer, failed to book the loan for eight months, failed to notify the Respondent of the arrears and did not conduct due diligence before listing.
29. Indeed, DW1 confirmed that due diligence was not done and that the loan was discovered only after 6 months.
30. I find that the Appellant breached its duty of care and was negligent.

Whether the CRB Listing Was Wrongful or Defamatory

31. The Appellant argued that the Respondent's CRB listing was lawful as he was in arrears with the loan repayments. I have already found that the Respondent's alleged "default" was caused solely by the Appellant's negligence and failure to forward the deduction order to the Respondent's employer, book the loan for eight months and notify the Respondent of the arrears.
32. I find that in the circumstances of this case, it cannot be said that the CRB listing was justified or that the Respondent was in actual default. The reporting was inaccurate and based on the Appellant's own admitted error. I therefore find that the CRB listing was wrongful and defamatory in nature as



it had the effect of portraying the Respondent as a person who is not credit-worthy. It is my finding that the trial court was justified in awarding compensation for the injury caused to the Respondent's reputation. In *Namalwa Christine Masinde v National Bank of Kenya Ltd* [2016] eKLR the court observed that improper CRB listing causes compensable injury to a borrower's reputation. In the said case, the court rendered itself as follows:

“The plaintiff was not notified of the action by the bank of listing her at CRB. The bank did not communicate to the plaintiff over the same not even a notice to show cause why she should not be listed as a loan defaulter.

From the evidence on record, the bank does not demonstrate it was diligent in enlisting the plaintiff with CRB as a loan defaulter. The Bank prima facie acted negligently. It is common sense and good practice to notify customer in default of an intention to enlist the customer as a loan payment defaulter so that if there was an error or mistake, the same can be rectified. The court thus finds the defendant liable for the unlawful listing of the plaintiff as a loan defaulter with the CRB.”

Whether the Award of Kshs. 600,000 Was Justified

33. The Appellant argued that general damages are not awardable in contract claims. I however note that this case was not founded on a claim of breach of contract per se but on negligence and breach of duty of care. The evidence presented before the trial court revealed that as a result of the CRB listing, the Respondent was denied credit by Co-operative Bank thus occasioning him emotional distress, reputational damage and financial inconvenience.
34. I am satisfied that the award of Kshs. 600,000 general damages was reasonable and justified. I am guided by the following authorities which show awards ranging between Kshs. 500,000 to 2,000,000 for wrongful CRB listing.
 - a. In *Crissam Acres Ltd v CFC Stanbic Bank & Another* (2025) KEHC 2439 the court awarded Kshs. 2,000,000 for wrongful CRB listing.
 - b. In *Dr. Teddy Amwago v EcoBank* (2025) KEHC 3477 Kshs. 500,000 was awarded. within acceptable range.

Disposition

35. For the reasons that I have stated in this judgment, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondent.

DATED, DELIVERED VIRTUALLY AND SIGNED THIS 12TH DAY OF FEBRUARY, 2026

HON W. A. OKWANY

JUDGE

In the presence of

No appearance for the Appellant

No appearance for the Respondent

Abdirzak - Court Assistant

