

REPUBLIC OF KENYA

IN THE HIGH COURT OR KENYA AT NAROK

CIVIL APPEAL NO. E022 OF 2024

(CORAM: CHARLES KARIUKI – J

MAYANA CAPITAL LIMITED.....APPELLANT

-VERSUS-

JOEL KISENKE MPARRU.....1ST RESPONDENT

JANE KATETEI MPARRU.....2ND RESPONDENT

EMMANUEL SIMAT.....3RD RESPONDENT

**(In the Matter of Appeal from the Judgment of the Resident Court at Narok by
Honourable E.M. Mutuku dated 15th day of August, 2024.)**

RULING

13/02/2026

1. The Appellant/Claimant granted Respondent No. 1 loan facilities of Kshs. 100,000/= with terms that same would be payable in 4 instalments. The loan was to attract interest at a rate of 12% per month. In default, the unpaid amount to attract interest at 12% p.m. and to be calculated monthly on compounded basis.
2. The 1st Respondent defaulted payment thus facing the consequences in the agreement. The Appellant/Claimant eventually lodged suit to recover the amount unpaid plus interest rate of 12% compounded on monthly basis.
3. After hearing the case the court found that the only amount disbursed to the respondent no 1 was Ksh. 60,895 instead of Ksh. 100,000 agreed and that Kshs. 129,500/= had been paid from total of Kshs. 148,000/= payable thus a balance of Kshs. 18,500/= outstanding and payable, the court rejected to apply rate of 12% p.m. compounded but only applied simple interest rate of 12% and only for 4 months.

Thus, the Appellant being aggrieved lodged instant appeal.

4. The core issue in the appeal is whether the interest entrenched in the loan agreement was unconscionable to attract court's interference? Thus, the court directed the appeal to be canvassed via submissions; on Appellant filed but the Respondent's submissions were not on record.
5. **Appellant's Submissions:**
6. It is submitted that it is a longstanding principle of law that parties to a contract are bound by the terms and conditions thereof and that it is not the business of the courts to rewrite such contracts. *In South Nyanza Sugar Co. Ltd -vs- Leonard O. Arera (2020) e KLR* the Judge buttressed the holding in *National Bank of Kenya Ltd -vrs- Pipe Plastic Samkolit (K) Ltd (2002) 2 E.A. 503, (2011) e KLR.*
7. It is well recognized that the parties involved in a contract are legally obligated to abide by its terms and conditions, and court is not authorized to alter such contracts unless there is clear proof of coercion, fraud, or undue influence. In this case, there is no indication that the 1st Respondent was subjected to duress or undue influence. Both parties voluntarily entered into the loan agreement, willingly signing it with explicit terms, including a principal amount of Kshs. 100,00/= and an interest rate of 12%, as outlined in the contract.
8. In line with the terms of the loan agreement. Specifically, the Appellant asserts that the magistrate overlooked the fact that the 1st Respondent defaulted on the repayments, causing interest to accrue during the period of default.
9. The accrued interest by the 1st Respondent is a significant component of the amount owed under the contract, and the Magistrate's omission in considering this accrued interest resulted in an incomplete and incorrect assessment of the total debt liability. The interest rate was agreed upon by the parties in the load agreement, and the 1st Respondent did not provide evidence to demonstrate that the rate was exorbitant, illegal, or contrary to public policy.

10. It is argued that the Learned Magistrate blatantly failed to award the Appellant Kshs. 213,000/= being the outstanding amount and accrued interest as at the time the claim was filed. This Honourable Court should have awarded the Appellant Kshs. 213,000/= plus the accrued interest at the rate specified in the loan agreement to date. The Learned Magistrate overlooked this continued accrual of interest and instead entered judgment solely for the unpaid principal balance of Kshs. 18,500/= in favour of the Appellant, thereby failing to put into consideration the substantial interest accrued as per the loan agreement.

11. Issues, analysis and determination

12. After going through the proceedings and the entire trial record plus submissions filed, I find that the issues were that, whether the court justified in interfering on interest rates applied in the subject loan contract and costs? It is trite law and a principle of contract that, while courts acknowledge that court generally does not interfere in parties' contracts, the court will set aside unconscionable or unfair bargains where interest and penalties charged on clients is manifestly excessive.

13. Courts have never been shy to interfere with or refuse to enforce contracts which are unconscionable, unfair or oppressive due to the procedural abuse during formation of the contract, or due to contract terms that are unreasonably favourable to one party and would preclude meaningful choice for the other party. An unconscionable contract is one that is extremely unfair. Substantive unconscionability is that which results from actual contract terms that are unduly harsh, commercially unreasonable, and grossly unfair given the existing circumstances of the case (**See Black's Law Dictionary, 9th Edition, Gardner, Ed.**).

14. Under Consumer Protection Act, 2012 (CPA): Section 41 prohibits unconscionable conduct, including exploitative terms of contract.

15. Kenyan contract law is anchored in the principle of *pacta sunt servanda*, freedom of contracts, and the notion that parties are bound by their contracts and must honour their terms. However, courts retain equitable jurisdiction to intervene where a contract or clause is so unfair, oppressive, or one-sided that it offends the court's conscience. This is the essence of the **doctrine of unconscionability**, a common law principle recognised under the Law of Contract Act and applied through English common law via the Judicature Act.

16. The Court of Appeal's decision in *Kanwal Sarjit Singh Dhiman v Keshavji Jivraj Shah [2025] KECA 1264*, dated 11 July 2025, provides a landmark exposition of this doctrine, affirming that unconscionable contracts are voidable and subject to judicial scrutiny.

17. The trial court found that Kshs. 129,500/= had been paid from total of Kshs. 148,000/= payable thus a balance of Kshs. 18,500/= outstanding and payable, the court rejected to apply rate of 12% p.m. compounded but only applied simple interest rate of 12% and only for 4 months.

18. This court agrees with the reasoning and the finding of the trial court, save that since the respondent had not fully paid the loan per the trial court, the trial court ought to have awarded appellant/claimant costs in the lower court based of the amount outstanding Ksh. 18,500 and other disbursements under the Advocate Remuneration order:

- 1) **The upshot is that the appeal partially success as regards costs in trial court which are awarded to the appellant /claimant but no orders as to costs in the appeal**

DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS

THIS 13TH DAY OF FEBRUARY 2026.

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CHARLES KARIUKI

JUDGE