

REPUBLIC OF KENYA

IN THE HIGH COURT OR KENYA AT NAROK

CIVIL APPEAL NO. E021 OF 2024

(CORAM: CHARLES KARIUKI – J

MAYANA CAPITAL LIMITED.....APPELLANT

-VERSUS-

DANIEL OLE TAKI.....1ST RESPONDENT

SUSAN WANJIRU MURAGE.....2ND RESPONDENT

HARON MBURU NJOKI.....3RD RESPONDENT

**(In the Matter of Appeal from the Judgment of the Adjudicator Small Claims Court
at Narok by Honourable E.M. Mutuku dated 26th day of September, 2024.)**

RULING

13/02/2026

1. The Appellant entered to an agreement for loan facility with the Respondent in which it stated that Kshs. 100,000/= was advanced with interest compoundable at rate of 12% per month. It turned out the only disbursed amount was Kshs. 60,895/=.
2. The trial court in hearing the matter established that the amount payable plus interest of the amount in 4 months was Kshs. 90,124/=. However, the Respondent paid Kshs. 100,000/= towards settlement of the loan.
3. The court found that compounded interest of 12% per month was unconscionable as it violated the law but usurious which according to the binding authorities cited invites courts to interfere in such contracts without

violating the principle that court should not interfere with the terms of contract by parties i.e. should not write the terms of contract. This attracted the instant appeal in which the appellant raised core issue as to whether the trial court erred in law in failing to consider the interest accrued from the Respondent defaulting servicing of the loan and costs of claim.

4. The parties were directed to canvass appeal by submissions.

5. Appellant Submissions:

6. It is submitted that the parties to a contract are bound by its terms and conditions, and that courts do not have the mandate to rewrite such contracts unless there is proven coercion, fraud, or undue influence. In the resent matter, there is no evidence that either 1st Respondent was subjected to duress or undue influence. The parties entered into the loan agreement which they executed voluntarily and out of their own free will, with clear terms on the principal amount of Kshs. 100,000/=, the disbursed amount of Kshs. 60,000/= after agreed deductions and the applicable interest rate.

7. **It is argued that** the magistrate overlooked the fact that the 1st Respondent defaulted on the loan repayments, which led to an accumulation of interest over the default period. Thus the omission in considering this accrued interest resulted in an incomplete and incorrect assessment of the total debt liability.

8. The principal sum, as per the loan agreement, was Kshs. 100,000/=, with deductions made for agreed fees or charges. The Respondent's payment

of Kshs. 90,000/= cannot be deemed full repayment when the agreement explicitly provided for interest obligations beyond the disbursed amount.

9. The trial magistrate is faulted for granting recovery of the title deed to the 1st Respondent as 1st Respondent had not pleaded for the relief concerning the recovery of the title from the Appellant in the formal pleading filed in court.

10. Further trial court denied appellant costs of the suit against the dictates of Section 27 of the Civil Procedure Act which provides that; cost should follow events Reliance is made on the case of *Cecilia Karuru Ngayu -vrs- Barclays Bank of Kenya & another (2016) e KLR.*

11. Respondent did not really do what submission, but what he called reply. He argues that, in paragraph No. 14 of the reply form to claim, the he petitioned the Court to order the Appellant to release the said title deed that was being held as a security since the respondent had cleared the loan.

12. ISSUES, ANALYSIS AND DETERMINATION after going through the record of trial court and submissions filed, I find issues to be;-

13. That the respondent borrowed, the interest charge conscionableness and whether appellant deserved costs.

14. The respondent did not rebut that the principal sum, as per the loan agreement, was Kshs. 100,000/=, with deductions made for agreed fees or charges. That the Respondent's payments was of Kshs. 90,000/= thus could not be deemed to

be full repayment when the provided what principle was advanced including deductions made for agreed fees or charges.

15. Thus, as by time of lodging of suit there was thus Kshs. 10,000 un paid on the part of principle 'As for the interest, though explicitly provided for as an obligation, on and beyond the disbursed amount and it being 12 % compounded would imply it will over shot the lending rates allowed by the law thus trending on the train of what in law is labled as Predatory in lending in Kenya which involves exorbitant, unconscionable interest rates, hidden fees, and debt-shaming by unregulated lenders, often violating the *in duplum* rule (interest cannot exceed the principal).

16. This allows Borrowers to seek legal recourse, as courts are increasingly declaring such oppressive, high-cost loans illegal.

17. **The *In Duplum* Rule:** This crucial legal principle, recognized by Kenyan **Key Aspects of Predatory Lending in Kenya** courts, dictates that total interest and fees cannot exceed the original principal amount. **Common Tactics:** Shylocks and some digital lenders apply exorbitant interest rates, hidden charges, and penalties. **Legal Protections:** The *Consumer Protection Act* and *Banking Act* protect borrowers, allowing courts to invalidate loan agreements with oppressive terms and order refunds.

18. The appellant insistence on recovering interest on compounded interest rates cannot be lawful by any measure as it violated the principles and law affirmed by our law courts.

19. The appellant can only recover 12% interest un-compounded for the un-paid amount when it fell due to date of payment and default committed. The respondent has to satisfy his obligation by paying tabulated unpaid principle and simple interest of 12% per Annum and on top of that he pays costs of suit based on un-paid amount. Thereafter he will be entitled to get title documents tendered as security.

20. Thus, the court make orders. Thus, the parties will have 30 days to work out an account jointly or separately and present to the court by the lapse of 30 days.

FINAL ORDERS:

- i) Interest charged adjusted to 12 % per annum simple and un-compounded.**
- ii) To be paid on outstanding balance of the principle from the date of default to date of payment.**
- iii) The title document to be paid upon payment of the entire un-paid amount.**
- iv) Costs of the suit to the appellant to be based on unpaid principle.**
- v) The parties will have 30 days to work out an account jointly or separately and present to the court by the lapse of 30 days.**
- vi) Mention date thus fixed on 13.3.2026.**

**DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS
THIS 13TH DAY OF FEBRUARY 2026.**

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**CHARLES KARIUKI
JUDGE**

