

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
[MILIMANI LAW COURTS]
THE CIVIL APPELLATE DIVISION
(Coram: A. C. Mrima, J.)
CIVIL APPEAL NO. E219 OF 2025

-between-

PLATINUM CREDIT LIMITED.....
APPELLANT

-versus-

ANTHONY KIBANDI WATUKU.....
.....RESPONDENT

[Being an appeal from the Judgement of Hon. Wamae, E.M. Muindi (Resident Magistrate/Adjudicator) delivered on 14th August 2025, in Nairobi SCCC No. E2517 of 2025]

JUDGMENT

Introduction and Background:

1. By a Plaint dated 22nd April 2025, *Anthony Kibandi Watuku*, the Respondent herein sought judgment against *Platinum Credit Limited* [hereinafter, the Appellant herein, in *Nairobi [Milimani] Small Claims Case Number E2517 of 2025* [hereinafter referred to as ***'the suit'***] in the following manner: -
 - a. *An order declaring the purported and intended auction of the Plaintiff's vehicle by the Defendant as unlawful and a nullity in law;*
 - b. *An order compelling and/or directed to the Defendant herein whether by itself, its employees, auctioneers, agents or otherwise to stop the Plaintiff's motor vehicle auction process allegedly started on 17th April 2025 and release it back to the plaintiff;*
 - c. *An order of permanent injunction against the Defendant, its employees, agents, auctioneers or otherwise from intimidating, harassing, blackmailing and/or threatening the plaintiff and/or the plaintiff's family during the*

pendency of the loan contract between the plaintiff and the Defendant;

- d. An order against the Defendant to pay the Plaintiff special damages as charges/penalties accrued from 15th April 2025 for having taken away the vehicle from the plaintiff illegally denying him the use of the vehicle at the rate of 6.27% per day based on the value of the vehicle as per the valuation in the valuation report dated 10th June 2024 being Kshs. 400,000 until the day/date the vehicle is handed back to the plaintiff;*
- e. An order against the Defendant to pay the Plaintiff general damages for causing the Plaintiff humiliation, embarrassment, mental distress and psychological stress where it was unnecessary to do so;*
- f. Costs of the suit; and*
- g. Any other order that the court may deem fit to grant.*

2. It was the Respondent's case that he took a loan facility worth Kshs. 120,000/= with the Appellant and used his motor vehicle Registration Number KAV 610E as collateral. As a result of the loan agreement, the Respondent received the sum of Kshs. 108,881/= on his Mpesa account instead of the sum of Kshs. 120,000/= agreed upon and which was approved by the Appellant. The Respondent also claimed that the Appellant increased the loan facility from Kshs. 120,000/= to Kshs. 135,950 without disclosing it to him and which affected his monthly instalments from Kshs.11,904.44/= to Kshs.13,102.73. He claimed that on 10th April 2025, he received an email from the Appellant demanding payment of an outstanding loan amounts within 7 days. That subsequent to this demand, on 11th April 2025, Auctioneers visited his house with the aim of repossessing the motor vehicle used as collateral or in the alternative make payment of the outstanding arrears in the sum of Kshs. 63,222.01/=. That further on 15th April 2025, the Respondent was informed by a different Auctioneer that the outstanding arrears

were in the sum of Kshs.63,570.36/= and who took away the motor vehicle registration Number KAV 610E.

3. That further on 17th April 2025, through his WhatsApp and email, he received a Notice of sale of the said motor vehicle with a demand that he pays the sum of Kshs. 209,775/=. In the end, the Respondent claimed that the Appellant demanded a total of Kshs.288,644.84/= whereas the money he received was Kshs.108,881/=. He emphasized that as at the time of taking away his motor vehicle, he was not in arrears and that it was absurd for the Appellant to demand for the said amounts in a span of 6 months from the time he had taken the loan facility. It was upon this backdrop that the Respondent instituted the suit.
4. The claim was strenuously defended. The Appellant filed a Response dated 5th June 2025 urging the Court to dismiss the claim with costs. Its case was that it entered into a loan agreement with the Respondent for Kshs.120,000/=. That, as a result of this agreement, the Respondent used his motor vehicle as collateral and further that he would make monthly instalments in the sum of Kshs.13,144/=. It further argued that pursuant to the loan form, the Respondent consented to the capitalization of the loan facility to include credit costs or loan processing fees hence bringing the cumulative amount to Kshs.135,950/=. It reiterated that the application of a monthly instalment of Kshs.13,144/= was accurate as depicted in the loan agreement.
5. The Appellant also averred that as at the 5th month from the date of the loan agreement, the Respondent was in arrears of Kshs.169,796.96/= having made repayments to the tune of Kshs. 63,825.91/=. It reiterated that it was as a result of these arrears that it instructed Auctioneers to recover the said sums. In the end, it emphasized that the Respondent was still in arrears of Kshs.210,790.46/= occasioned by the Respondent's failure to make payments and further that the Respondent had never made overpayments. The Appellant emphasized that the Respondent

was in breach of his contractual obligations under the loan agreement.

6. The suit proceeded under Section 30 of the Small Claims Court Act and the trial Court delivered its judgment on 14th August 2025 in favour of the Respondent in the following terms: -

- a. *Special damages for loss of use-Kshs.238,000/=;*
- b. *General damages for mental distress - Kshs.100,000/=;*
- c. *Costs of the suit at Kshs.20,000/=;*
- d. *Interest on (a) and (b) at Court rates from the date of judgement until payment in full; and*
- e. *The Respondent (the appellant herein) shall release motor vehicle registration number KAV 610E to the claimant (the Respondent herein) forthwith in its current state, without further interference.*

7. It was the said decision that prompted the institution of the instant appeal by the Appellant and a Cross-Appeal by the Respondent. However, the Cross-Appeal was later withdrawn by the consensus of the parties and as such, this judgment is in respect of the appeal.

The Appeal:

8. Through a Memorandum of Appeal dated 19th August 2025, the Appellant proffered the following grounds of appeal: -

1. *THAT the Learned Trial Adjudicator erred in law and fact by ordering that the security motor vehicle registration number KAV 610E be released to the Respondent forthwith without further interference, without paying due*

consideration to the fact that the vehicle is the only security that the Appellant has against the loan granted to the Respondent and which the Respondent has not in full. The court allowed the Respondent to have the collateral and not repay the loan at the same time, this is greatly prejudicial to the Appellant. The Respondent is in arrears of Kshs. 210,790.46/= as at 30th May 2025 sum of which continues to accrue interest and penalties.

2. THAT the Learned Trial Adjudicator erred in law and fact in failing to hold that the Respondent was in breach of the contract it had with the Respondent yet at no point did the Respondent pay the agreed instalment and on the agreed date. He was therefore in breach of the parties' contract.
3. THAT the Learned Trial Adjudicator erred in law and fact in holding that the difference of the amount admitted by the Respondent to have paid and the one that the Appellant is admitting to have been repaid is only Kshs. 22,099/= and which is not substantial amount. The court is rewriting for parties their contract because as per clause 1 of the loan agreement dated 30th September 2024, in the event of default, the Appellant will exercise its right to realize the collateral and recover any unpaid portion of the loan the amount notwithstanding.
4. THAT the Learned Trial Adjudicator erred in law and fact in holding that the Appellant failed to comply with court orders of 15th April 2025 yet the Appellant was dissatisfied with the said court orders and appealed against the ruling and the Order to the High Court and were granted stay of execution of the ruling and orders on 31st May 2025.
5. THAT the Learned Trial Adjudicator erred in law and fact in relying on extraneous reasons of the Respondent being a person living with disability to order the release of the security motor vehicle registration number KAV610E that had been repossessed by the Appellant as a result of nonpayment of the loan granted to the Respondent by the Appellant and in compliance with parties' contract. The Respondent further did not produce any evidence of his alleged disability yet the trial Court relied on his unsubstantiated statement that he was a person living with disability.

6. *THAT the Learned Trial Adjudicator erred in law and fact in re-writing contract for the parties they had signed instead of enforcing the same thereby awarding the Respondent herein special damages for loss of use and general damages for mental distress.*
 7. *THAT the Learned Trial Adjudicator erred in law and fact in holding that in duplum is applicable to all lenders thereby applicable to the Appellant, in contravention to the provisions law.*
 8. *THAT the Learned Trial Adjudicator erred in law and fact in awarding the Respondent herein special damages for loss of use which was not particularly pleaded for in his Plaint.*
 9. *THAT the Learned Trial Adjudicator erred in law by rendering judgment against the Appellant without regard to the documents, submissions and the evidence led on behalf of the Appellant in opposing the claim filed by the Respondent thereby leading to a miscarriage of justice.*
 10. *THAT in the circumstances of this case, justice was perverted.*
9. On the basis of the foregoing and the written submissions were dated 29th September 2025, the Appellant sought to set aside the judgment and have the suit dismissed with costs. Several decisions were referred to. The gist of the submissions will be ingrained in the later part of this judgment.
 10. The Respondent vehemently opposed the appeal through written submissions which were dated 15th October 2025. He also referred to various decisions in urging this Court to dismiss the appeal.

Analysis:

11. The jurisdiction of this Court on appeals from the Small Claims Court is provided for under Section 38 of the Small Claims Court Act and is limited to reconsideration of matters of law. 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.

12. 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 deduced 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.**

13. 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.

14. 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.**

15. 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.....**

16. 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].

17. 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 or conclusions are so perverse as to defeat the object of justice. In other words, where the findings or conclusions could not be reasonably derived from the primary facts, then such transcends to matters of law.
18. Turning back to the matter at hand, the record has it that the suit was heard on the basis of *Section 30* of the *Small Claims Court Act*. Therefore, the parties only relied on the documents filed and the Court eventually rendered a judgment. Whereas reliance on the said *Section 30* is highly encouraged for expediency, the approach may not be ideal in cases where the primary facts are highly contested and call for further interrogation. In such instances, such evidence ought to be tested through the testimony of witnesses. This is important for two reasons. The first reason is that it will accord the trial Court an opportunity to reconcile and decide on the primary facts, and the second reason being that it will enable an appellate Court to answer the question of law as to whether the conclusions derived from the primary facts by the trial Court were within the law.
19. In this matter, despite the diametrically opposed evidence by the parties marred with serious allegations of alteration of documents, making recoveries not supported by the Agreement, damages for loss of user, general damages for mental distress, there being no default as at the time the subject vehicle was repossessed, among others, the trial Court did not have the advantage of tested *viva voce* evidence which would have enabled it to make more informed conclusions on the primary

facts. As a result, this Court is unable to deduce whether the conclusions arrived at by the trial Court from the primary facts were within the law since, from the record, the said primary facts were not properly settled. It is, hence, this Court position that the suit was not a suitable one to be heard and determined on the basis of Section 30 of the Small Claims Court Act.

20. To, therefore, enable this Court to be properly seized of an appeal and to be able to accordingly discharge its appellate duty, it is prudent that the parties be accorded an opportunity to test the primary facts at trial by way of *viva voce* evidence. Once that happens, the trial Court will then be able to properly settle the primary facts as required. To that end, for fairness' sake and to enable a balanced way forward, this Court will issue appropriate orders and directions.

Conclusion:

21. As I come to the end of this judgment, I wish to apologize for the late delivery of this decision. The delay was occasioned by my engagement at the Judicial Service Commission where I serve as a Commissioner more so given that the Commission has been engaged in highly-intensive recruitments since late 2025 to date. Once again, apologies.
22. In the end, the following orders do hereby issue: -

[a] The judgment in *Nairobi [Milimani] Small Claims Case Number E2517 of 2025* delivered on 14th August 2025 be and is hereby set-aside.

[b] The suit shall be re-tried by any other competent Adjudicator other than *Hon. Wamae E. M. Muindi*.

- [c] Given the prevailing state of affairs, the Motor Vehicle registration number KAV 610E shall be released to the Respondent herein forthwith. However, the Respondent shall not transfer the ownership of the said vehicle pending further orders of Court and shall, if in possession of the vehicle's registration book [logbook], deposit it in the Small Claims Court within 5 days of this order.
- [d] The Hon. Deputy Registrar of the Small Claims Court shall issue and serve the National Transport and Safety Authority [NTSA] with an order that the Motor Vehicle registration number KAV 610E shall not be transferred pending further orders from Court.
- [e] The parties shall bear their respective costs of this appeal save that the Auctioneer costs and/or any other execution costs incurred in the suit shall abide the outcome of the suit.
- [f] In view of the time taken in this matter since the filing of the suit, the re-hearing of the suit shall be expedited.

DELIVERED, DATED and SIGNED at NAIROBI this 10th day of February, 2026.

**A. C. MRIMA
JUDGE**

Judgment virtually delivered in the presence of:

Miss Kogai, Learned Counsel for the Appellant.

Michael/Amina - Court Assistants.