



REPUBLIC OF KENYA



**Progressive Credit Limited & another v Odhiambo (Civil Appeal
E046 of 2025) [2026] KEHC 3981 (KLR) (25 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3981 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E046 OF 2025
A MABEYA, J
MARCH 25, 2026**

BETWEEN

PROGRESSIVE CREDIT LIMITED 1ST APPELLANT

DOMNIC O ODONGO T/A VALDOMS AUCTIONEERS 2ND APPELLANT

AND

DENNIS RABURU ODHIAMBO RESPONDENT

(Being an appeal from the judgment and decree of Hon. K. Cheruiyot SPM delivered on the 22/1/2025 in Kisumu CMCC No. E247 of 2023, Dennis Raburu Odhiambo v Progressive Credit Limited & Domnic O. Odongo T/A Valdoms Auctioneers)

JUDGMENT

1. The respondent sued the appellants jointly seeking an order for immediate and unconditional release of his motor vehicle registration number KCM 712H, special damages in the sum of Kshs. 72,000/-, Kshs. 39,232.75 in loan overpayments, general damages for wrongful attachment of his vehicle and costs of the suit. The appellants denied the claim and urged for its dismissal.
2. The matter proceeded to trial and by a judgment delivered on 27/11/2023, the trial court entered judgment against the appellants as follows: -
 - i. Special damages of auctioneer's fees of Kshs. 17,000/- and taxi hire of Kshs. 55,000/- all totaling to Kshs. 72,000/-.
 - ii. General damages (wrongful attachment & repossession) – Kshs. 30,000/-.
 - iii. Costs of the suit and interest on (i) & (ii) from the date of filing.
 - iv. Interest on general damages and costs of the suit from the date of the judgment until payment in full.



3. Being dissatisfied with the said Judgment/decreed, the appellants lodged this appeal vide the Memorandum of Appeal dated 21/02/2025 raising four (4) grounds of appeal as follows: -
 - a. The learned trial magistrate erred in law and in fact in failing to assess and evaluate the evidence before him, did not pay attention to the glaring discrepancies, contradictions and untruths in the respondent's case.
 - b. The learned trial magistrate erred in law and in fact by failing to find that the respondent had proved his case against the appellants on a balance of probabilities.
 - c. The learned trial magistrate misdirected herself by failing to appreciate that it is the respondent who failed to perform his contractual obligation as per the Letter of Offer dated 3rd February 2023.
 - d. The learned trial magistrate erred in law and in fact by holding that the repossession or attachment of motor vehicle registration number KCM 712H was against the law, illegal, negligent and in breach of the agreement between the 1st appellant and the respondent even the Letter of Offer dated 3rd February 2023 provided a right of immediate repossession, which crystallised with the respondent's default in making instalments payments.
4. The appeal was disposed off by way of written submissions which were highlighted on the 25/11/2006. The appellant submitted that it legally and lawfully impounded the suit vehicle as by the time of impounding it, the respondent was in arrears of the loan and had already been issued with demand notices.
5. That consequently, there was no basis upon which the trial court held that the repossession was done illegally or wrongfully to warrant compensation. That there was no evidence that the respondent had overpaid the loan to warrant the trial court's award of Kshs. 39,232.75/-. That the balance of the loan was only paid after repossession of the suit vehicle and the filing of the suit That the said vehicle was then released to the respondent.
6. On his part, the respondent submitted that having correctly analysed the evidence before it, the trial court had arrived at the correct decision and as such this appeal ought to be dismissed.
7. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions but at all times having in mind that it did not see the witnesses testify. See *Selles & Anor v Associated Motor Boat Co Ltd & Others* [1968] EA 123.
8. The respondent testified as Pw1. He adopted his statement dated 5/9/2023 as his evidence in chief and produced his bundle of documents as PExh1 – 4. He reiterated the averments made in his plaint stating that he obtained a loan of Kshs. 170,372/- vide an agreement dated 3/2/2023 that was to be paid at the rate of Kshs. 37,914/- per month for 6 months with the 1st installment being due on the 5/4/2023. That he offered his motor vehicle registration number KCM 712H as security.
9. That he further obtained a mobile loan dubbed "Nawiri Mobile Loan" of Kshs. 110,492.30 to be repaid within 3 months. That the 1st appellant started demanding repayment of the 1st installment in March 2023 insisting that he had defaulted by the 5/3/2023 prior to the loan becoming due.
10. That as at 25/7/2023 he had a balance of Kshs. 63,147.25 on the normal loan and Kshs. 77,720/- on the Nawiri loan. That he paid Kshs. 30,000/- on the normal loan on the 12/8/2023 bringing the total loan balance due from him to Kshs. 110,867.25/-.



11. That on 24/8/2023, the 1st appellant instructed the 2nd appellant to reposes the security on the pretext that he had arrears of Kshs. 150,076/- and that the 2nd appellant proceeded to proclaim the said car without giving him notice. That this amounted to malice on the part of the appellants and the repossession was unlawful and contrary to auctioneering rules.
12. That he subsequently obtained another loan from a microfinance, Zazipay, who were willing to settle the appellants' claims but the appellants maliciously declined the offer. That on the 30/8/2023 he was forced to pay a total of Kshs. 150,100/- by Mpesa to clear the erroneous amount claimed by the appellants and was further forced to pay another Kshs. 17,000/- in auctioneer fees to secure release of the security but the same was not released to him. That he therefore incurred a further loss of Kshs. 5,000/- per day from the 24/8/2023 to 5/9/2023 in taxi fees which amounted to a total of Kshs. 55,000/-.
13. In cross-examination, he told the court that he secured 2 different loans. That he had not fully repaid the loans and that the appellant wrote 2 different demand letters. That before coming to court, he had paid all the balance and that the vehicle was released to him after he came to court.
14. In re-examination, he clarified that he obtained 2 loans, a normal loan and a mobile loan. That there was no security for the mobile loan. That he had cleared the normal loan by the time the 1st appellant moved to repossess the subject vehicle. That they attached the vehicle on the basis of the mobile loan which was not secured by the vehicle. That he repaid the entire loan and overpaid by Kshs. 39,232.75/-.
15. On their part, the appellants called one witness. Mikal Charlie, the 1st appellant's legal officer who testified as Dw1. He adopted his witness statement dated 13/7/2024 as his evidence in chief and produced the documents as DExh1 – 8.
16. In cross-examination, he told the court that they made a demand for Kshs. 110,152/- and another Kshs. 170,372/- though he failed to provide the letter. That the total was Kshs. 140,800/- and this was the amount they sent the auctioneer to collect. That the respondent had made payments though he could not tell how much.
17. That the respondent paid the arrears on a without prejudice basis and cleared the loans. That they demanded auctioneer fees of Kshs. 17,000/- before releasing the logbook to the respondent.
18. It is based on this evidence that the trial court rendered its decision. From the foregoing, the grounds of appeal may be summarized into one, viz, Whether the respondent proved his case before the trial court to warrant the grant of the reliefs sought.
19. The law is settled, that, he who alleges must prove. Section 107 of the *Evidence Act* (cap 80) of the laws of Kenya provides: -
 - “ 1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - 2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
20. The respondent's case before the trial court was, simply, that the appellants wrongfully attached his vehicle which he had used as security for a loan for an alleged balance of Kshs. 150,076/- which was not the actual balance due. That they proclaimed his vehicle for both loans whereas the vehicle had only been used as security for one loan. That he subsequently went on to clear the balance as demanded



by the appellants as well as the auctioneer fees but still the appellants refused to release the suit vehicle until he filed the suit before the trial court.

21. The respondent's evidence was detailed and supported by exhibits. However, when called upon to answer that claim, the appellants through their witness were not clear on the amount allegedly owed by the respondent. Dw1 testified that the total due from the respondent was Kshs. 140,800/-, which was a completely different amount from that which the purported proclamation was undertaken. Dw1 further testified that he could not ascertain the amount due but that they sent the auctioneer on the basis of the outstanding arrears.
22. Despite the appellants' submission that the proclamation of the suit vehicle was lawful, the evidence is clear that the appellants lumped together both loans and sought to proclaim the suit vehicle as security for both. Clearly this was unlawful. Further, the evidence on record clearly shows that the appellants retained the appellants' vehicle even after he had cleared the loans thereby forcing him to incur extra expenses of hiring taxis, which expenses were specified, quantified and proved by the respondent.
23. Under the Movable Property Rights Act, any party that wishes to dispose of a movable asset in which it holds a lien, must first avail to the registered owner the first opportunity to redeem it. This is well elaborated by sections 68-75 of the said Act. Failure to do so renders any act done by the seller illegal and a violation of the law.
24. Under the Auctioneers Act, repossession happens in two folds. One, from a court order directing the attachment to satisfy a debt or from a jointly registered owner claiming an interest recognizable by law. In the present case, there was no order for repossession. Further, it was not demonstrated that Regulation 12(1) of the Auctioneers Rules was complied with. The said Regulation provides as follows: -

- “(1) Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of movables other than goods of a perishable nature and livestock—
- (a) record the court warrant or letter of instruction in the register;
 - (b) prepare a proclamation in Sale Form 2 of the Schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory, the auctioneer shall sign a certificate to that effect;
 - (c) in writing, give to the owner of the goods seven days' notice in Sale Form 3 of the Schedule within which the owner may redeem the goods by payment of the amount set forth in the court warrant or letter of instruction;
 - (d) on expiry of the period of notice without payment and if the goods are not to be sold in situ, remove the goods to safe premises for auction;
 - (e) ensure safe storage of the goods pending their auction;
 - (f) arrange advertisement within seven days from the date of removal of the goods and arrange sale not earlier than seven days after the



first newspaper advertisement and not later than fourteen days thereafter;

- (g) not remove any goods under the proclamation until the expiry of the grace period.”

25. From the foregoing, the attachment and removal of the suit vehicle was undertaken at the time of proclamation. The 7 days notice was not given. It is therefore evident that the respondent proved his case to the required standard. The evidence presented by the appellants did not controvert the respondent’s case.

26. That being the case, the appeal lacks merit and is hereby dismissed with costs to the respondent.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF MARCH, 2026.

A. MABEYA, FCI Arb

JUDGE

