

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E004 OF 2024

BETWEEN
PREMIER CREDIT LIMITED
APPELLANT
AND
PURITY LOMONG'OLE ATABO.....
RESPONDENT

*(Being an appeal from the Judgement of Hon. B.A. Luova at the
Small
Claims Court at Machakos delivered by Hon M.Thibaru on 23rd
June, 2023 in SCCOMM E282 of 2022)*

JUDGMENT

Background

1. The appellant seeks to overturn the decision rendered in the Small Claims Court (SCC) No. E282 of 2022. The case originated from a Statement of Claim filed on 29th September 2022 by the respondent. She alleged that she received a loan of Kshs.259,000/- from the appellant herein and was verbally informed that deductions of Kshs.21, 282/- would be made from her salary for a period of 14 months.

2. The respondent claimed that she later wrote to the appellant requesting clearance, having repaid the principal amount together with interest of Kshs.38,948/-, totalling Kshs.297,948/-. To her surprise, a loan statement issued by the appellant indicated that she still had an outstanding balance of Kshs.203,375.66 as at 21st June 2022. The statement further reflected a loan period of 27 months at a monthly repayment rate of Kshs.21,282/-. Upon seeking clarification, she was informed that she was required to pay a total of Kshs.573,837/= as principal plus interest. She maintained that she was neither issued with an offer letter nor did she execute a loan agreement, and that the entire transaction was shrouded in secrecy. It was only after the lapse of 14 months that further details were disclosed to her. Consequently, she sought an order stopping further deductions from her salary and a refund of all monies deducted from July 2022 to the date of judgment. In its response dated 21st November 2022, the appellant denied the claim and counterclaimed Kshs.156,629.84 as loan arrears allegedly owed by the respondent.
3. The respondent filed a reply to the counterclaim on 11th January 2023, denying it in its entirety. She argued that the interest rate of 66% had never been disclosed at the time of disbursement, that there was no meeting of minds to constitute a valid contract, and that the interest rate applied was illegal and unlawful.

4. The trial court found that the respondent proved her case on a balance of probability. It granted orders stopping further monthly loan deductions from the her payslip in favour of the appellant and directed the refund of all monies deducted from the respondent's payslip from the month of July 2022 to the date of the judgment.

The appeal

5. It is this decision that triggered the present appeal. The appellant filed a Memorandum of Appeal dated 15th September 2023 raising six (6) grounds reproduced verbatim as follows. That:-

1. The Honourable Court erred in law and fact by holding that the interest rates charged were exorbitant despite both parties entered into the contract willingly.

2. The Honourable Court erred in fact and law by stopping the monthly deductions despite the same being guided by the contract entered into by both parties.

3. The Honourable Court erred in fact and law in ordering the refund of monies deducted without any lawful and legal justifications given by the Honourable Court.

4. The Honourable Court erred in law and fact by solely relying on the testimony of the Claimant despite lack of documentary evidence and corroboration.

5. The Honourable Court erred in law and fact by dismissing the appellant's Counterclaim without any legal reasons and justifications despite provision of documentations supporting the counterclaim.

6. The Honourable Court erred in law and fact by failing to consider the submissions filed in support of the appellant's case.

6. Consequently, the appellant seeks orders that appeal be allowed the judgment delivered on 23rd June, 2023 be set aside, the counterclaim as filed by the appellant be allowed, that the cost of this appeal and of the Trial Court be borne by the respondent. The appellant also prays for any other alternative order/relief this Honourable Court may deem fit to grant.

7. The appeal was canvassed by way of written submissions. A summary of these submissions is set out below.

Appellant's Submissions

8. The appellant submits that the issues for determination in this appeal are: a) whether the court erred in law by holding that the interest rate was exorbitant, b) whether the court erred in law by interfering with the contract terms by stopping deductions, c) whether the court had any lawful basis for ordering a refund of monies paid, d) whether the court erred in law by dismissing the counterclaim and e) who bears the cost of the appeal.

9. It is submitted that the trial court erred in its finding on while not carefully holding that the interest rate of 66% was annual interest, clearly indicated to the respondent through her application via USSD code.
10. The appellant maintains that the interest rate was neither exorbitant nor was it illegal or unlawful. It contends that both parties voluntarily entered into the loan agreement and the respondent was fully aware of the terms.
11. It is the appellant further submission that the doctrine of estoppel applies as the respondent consistently made monthly payments religiously beyond the alleged 14 months period, thereby affirming her acceptance of the contract terms.
12. In support of its case, the appellant relies on the decisions in **Jopa Villas LLC Vs Private Investment Corp & 2 Others, Ali Abid Mohammed versus Kenya Shell & Company Limited (2017) eKLR.**
13. The appellant argues that where an interest rate is found to be illegal or unconscionable, the court may invalidate that provision but lacks jurisdiction to substitute or fix a new interest rate, as this amounts to re-writing the contract. It cites **Ngoru & another v African Banking Corporation Ltd & another [2024] KEHC 8589 (KLR), David Wafula Nyongesa v National Bank of Kenya [2020] eKLR, Nest Manor Residence & Suites Ltd & another v African Banking Corporation Ltd & another [2021] eKLR, National Bank of Kenya Ltd v Pipeplastic Samkol Ltd &**

Another [2001] eKLR and Court of Appeal in Nguruman Limited v Shompole Group Ranch & 3 others [2014] eKLR to buttress this submission.

14. On the issue of the counterclaim, the appellant contends that it produced sufficient evidence showing that the respondent was aware of the loan terms and is therefore, liable to clear the outstanding balance of Ksh 156,629.84
15. The appellant concluded by urging this court to allow the appeal and award it costs.

Respondent's Submissions

16. The respondent submits that she accepted the loan on an understanding that it was to be repaid within 14 months with interest of Kshs.38,948/- over and above the principal sum. She maintains that the 66% interest rate applied on the loan was never disclosed to her beforehand.
17. She argues that the circumstances demonstrate she only accepted the loan believing it was repayable within 14 months. Consequently, there was no true meeting of minds between the parties in this transaction as evidenced by her oral testimony and that of the appellant's witness.
18. The respondent further contends that the trial court had a duty to protect her from predatory lending practices. In support, she relies on **Kenya Commercial Finance Company Ltd vs Ngeny & Another (2002) 1 KLR**, and

Margaret Njeri Muiruri vs Bank of Baroda (Kenya) Limited (2014) eKLR,

19. The respondent concludes by urging this court to dismiss the appeal with costs.

Analysis and Determination

20. I have considered the grounds of appeal, the record of appeal and the submissions of both parties.

21. The sole issue for determination is whether this appeal falls within the ambit of Section 38 of the Small Claims Court Act. The provision states:

38. Appeals

(1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.

(2) An appeal from any decision or order referred to in subsection (1) shall be final.

22. The High Court in **Wachira v Mwai (Civil Appeal E022 of 2023) [2024] KEHC 3173 (KLR) (15 March 2024)** sitting on appeal on a SCC matter, affirmed that appeals from small claims court lie only on points of law. It held that at paragraph 4:

“The jurisdiction of the Small Claims Court is set out in the Small Claims Court Act. Ipso facto,

there is only one chance of Appeal to this court. It is an Appeal on points of law.”

23. Black’s Law Dictionary defines matters of fact and matters of law as: -

“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.”

The Supreme Court in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others, Petition 2B of 2014 [2014] eKLR**, clarifies that matters of law encompass three elements as follows; “

(a)the technical element: involving the interpretation of a constitutional or statutory provision;

(b)the practical element: involving the application of the Constitution and the law to a set of facts or evidence on record;

(c)the evidentiary element: involving the evaluation of the conclusions of a trial Court on the basis of the evidence on record.

24. Thus, the appellate court must first determine whether the memorandum of appeal conforms to these principles before admitting it for hearing. Appeals that merely invite the court

to re-examine the probative value of evidence or credibility of witnesses are not appeals on matters of law.

25. Guided by these authorities, I have carefully examined the appellant's memorandum of appeal. All six grounds raised relate primarily to questions of fact—whether the interest rate was exorbitant, whether deductions were lawful, whether a refund was justified, whether the counterclaim was properly dismissed, and whether the trial court considered submissions. These grounds essentially invite this court to re-evaluate the evidence and credibility of witnesses, which is outside the jurisdiction conferred by Section 38 of the Act. They do not raise questions of law. Accordingly, the grounds must fail and are dismissed in limine.
26. The upshot is that I find no reason to interfere with the judgment of the trial court. The appeal is devoid of merit and is hereby dismissed.
27. Each party shall bear its own costs.

It is so ordered.

Dated, signed and delivered at Machakos this 9th day of April, 2026.

RHODA RUTTO
JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

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