



**Incredo Access Solutions Limited v Njoroge (Commercial Appeal  
E002 of 2025) [2026] KEHC 4821 (KLR) (17 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4821 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
COMMERCIAL APPEAL E002 OF 2025**

**BM MUSYOKI, J**

**APRIL 17, 2026**

**BETWEEN**

**INCREDO ACCESS SOLUTIONS LIMITED ..... APPELLANT**

**AND**

**JASON KAMAU NJOROGE ..... RESPONDENT**

*(Being an appeal from judgement and decree of the Small Claims Court at Thika (Hon. Sylvia Wayodi Adjudicator/RM) in claim number E725 of 2024 dated 19th December 2024)*

**JUDGMENT**

1. The respondent was advanced a loan of Kshs 792,000.00 by the appellant on or about 23-03-2022 at which time he was its employee. In July 2023, the respondent left the employment and soon started defaulting payments upon which the loan became unperforming. When he was unable to repay the loan, the respondent surrendered his motor vehicle registration number KCK 272P to the appellant to be sold and proceeds therefrom utilized to reduce the loan liability.
2. The appellant instituted a claim of Kshs 667,002.02 in the trial court which it claimed was the outstanding loan liability. Upon hearing the parties, the trial court entered judgment for the appellant for Kshs 162,148.00 to be paid in three equal installments starting from 15<sup>th</sup> January 2025 and the 15<sup>th</sup> of each succeeding month until payment in full. This was after the court found that the appellant's statement of account showed a balance of Kshs 502,148.00 which should have been reduced by Kshs 340,000.00 being the proceeds of the sale of the respondent's motor vehicle.
3. The appellant being aggrieved by the said judgment has approached this court vide memorandum of appeal dated 15<sup>th</sup> January 2025 which cites the following grounds;
  1. That the learned Adjudicator erred in law and fact in finding that the amount of money realized from the sale of the motor vehicle was not factored in while computing the claim.



2. That the learned Adjudicator erred in law and fact in finding that the information on the proceeds realized from the sale of the motor vehicle was not availed to the respondent.
  3. That the learned Adjudicator misinterpreted the statement of account in finding the amount owed to the claimant.
  4. That the learned Adjudicator erred in fact and law by failing to consider that the loan advanced to the respondent was subject to interest which is still accruing to date.
  5. That the learned Adjudicator erred in fact and law by disregarding the testimony of the claimant's witness in making her finding.
  6. That the learned Adjudicator erred in fact and law by disregarding the fact that the respondent admitted to Kshs 272,000/= as due to the claimant.
  7. That the learned Adjudicator erred in fact and law in awarding the claimant the sum of Kshs 162,148/= to be paid in equal installments.
4. The appellant prays that the judgment of the trial court be set aside in its entirety and in the alternative an order for retrial of the primary suit be ordered. This is an appeal from the Small Claims Court and pursuant to Section 38(1) of the *Small Claims Court Act*, I will restrict myself to matters of law only which I have identified from the memorandum of appeal and submissions of the parties as follows;
- a. Whether the court should have entered judgement on admission.
  - b. Whether the court ignored the appellant's evidence that the proceeds of the sale of the motor vehicle was factored in the loan statement.
  - c. Whether the rate of interest was contractual and if so what was it.

#### **The appellant's case**

5. Emmanuel Koome, the only witness for the appellant told the court that on 23-03-2022, the appellant advanced the respondent a sum of Kshs 792,000.00 which the respondent defaulted leaving an outstanding amount of Kshs 667,002.02 which he had refused to pay despite numerous demands. He produced documents running to 23 pages which were neither described in a list of documents nor in the oral testimony. They included some demand letters, statement of accounts and a loan agreement.
6. On cross-examination, he admitted that the statement of account showed that the loan balance was Kshs 458,498.00. He added that the motor vehicle was disposed on 24-01-2024 and that the column for payment did not show the money realized from the sale of the motor vehicle. He however insisted that the amount is captured in the documents filed by the appellant.
7. When he was re-examined, he stuck to his testimony that the amount due was Kshs 667,002.00 which was in exclusion of the amount recovered from the sale of the motor vehicle. He added that when a staff left employment, the appellant applied interest at market rates. He confirmed that the sale of the motor vehicle realized Kshs 340,000.00.

#### **The respondent's case**

8. When the respondent took the witness stand, he told the court that he was advanced the said loan and offered his motor vehicle registration number KCK 272P as security for it. He faithfully honoured his obligation until sometime in July 2023 when he left employment and sought indulgence from the appellant since he was not in a position to pay the agreed installments.



9. He added that, he subsequently surrendered his motor vehicle which the appellant was supposed to dispose to recover the loan which it did but failed to account for the same. The respondent believed that the proceeds of the sale were sufficient to offset the loan since the market value of the motor vehicle was Kshs 430,000 and cost value was Kshs 390,000.00. The respondent added that after taking into account the proceeds of the sale, the amount due and owing ought to have been Kshs 272,000.00 as claimed by the appellant. He pleaded that he be allowed to pay the loan balance at Kshs 10,000.00 per month. He produced a copy of a valuation report dated 18-09-2023 and copies of emails correspondence between the parties as exhibits.
10. In cross-examination, he maintained that he had a loan of Kshs 792,000/- at interest rate of 10 per cent per annum on reducing balance and that he paid about Kshs 462,024.00 as per the statement dated 29-09-2024 produced by the appellant. He insisted that the amount due was Kshs 272,000/= and that the vehicle was sold at under value and admitted that the interest was still accruing.

### **Analysis and determination**

11. I wish to state first that the manner in which the appellant's exhibits were produced was wanting in that they were neither marked nor described. I can only believe that the exhibits are the same documents running from page 6 to 29 of the record of appeal as the record does not have description. This leaves me in confusion as to which documents was which exhibit unless one compares them to the list in paragraph 5 of the statement of claim.
12. Where a party is producing a bundle of documents whether as one or separate exhibits, it is desirable for the court to mark them appropriately so that the proceedings do not look jumbled. The court should be able to distinguish which document was meant to prove which issues. Leaving the bundle without distinct description and marking does not only confuse the court on the sequence of the evidence but also makes it difficult to verify the authenticity of the exhibits. Having said the above, I will proceed to determine the issues identified above as hereinbelow

### **Whether the court should have entered judgement on admission.**

13. I have gone through the response to the claim dated 17<sup>th</sup> July 2024 which states as follows at paragraph 6; 'that taking into consideration the value of the motor vehicle and the money due and owing the balance ought to be Kshs 277,000.00'. Again, the response states in bulletin number 8 of the same paragraph that; 'the respondent is committing to repaying the loan at Kshs 10,000 payable on a monthly basis.'
14. The respondent's witness statement which he adopted as his evidence in chief stated at paragraph 10 that; 'upon loan repayment from the proceeds of the sale, the money due and owing ought to be Kshs 277,000.00 and not Kshs 667,000.00,' Again at paragraph 12, the respondent states that; 'I am a family man with several financial obligations and relying on contracts as they come but nevertheless, I am committed to repaying the loan now at Kshs 277,000.00 at Kshs 10,000.00 payable on a monthly basis.'
15. During cross examination, the respondent is recorded as stating that the amount due was Kshs 272,000.00. I do not know whether this is a slip of the pen by the trial court as it recorded the testimony or a confusion by the respondent. However, I will take the figure stated in the witness statement and the response to the claim.
16. The appellant has submitted that the trial court ought to have entered judgement on this admitted sum then proceed to make decision on the balance. Instead, the court entered judgment at Kshs 162,148.00. On the other hand, the respondent submits that jurisdiction to enter judgement is discretionary and



not automatic and the trial court exercised its discretion correctly in failing to enter judgement for the alleged admitted sum. He argues further that based on the evidence and documents produced by the parties, the court was well guided by not entering judgment on admission.

17. Whereas it is true that the court has the discretion while considering issues before it, the said discretion must be exercised judiciously and based on the pleadings of the parties and the evidence before the court. The court cannot depart from what the parties have pleaded and what they have said in their testimony. The case belongs to the parties and the court has no business in patching up the loose ends of the evidence produced by the parties. It was held by the Court of Appeal in *Moriaria v Darbar & another* [2000] KECA 5 (KLR) that;

‘A party is bound by his or her pleadings and must either succeed or fail within those pleadings. He is in law forbidden from shifting his case from that he had set out in his pleadings.’

18. Section 61 of the *Evidence Act* provides that admitted facts need not be proved. It states as follows;

‘No fact need be proved in any civil proceeding which the parties thereto or their agents agree to admit at the hearing, or which before the hearing they agree, by writing under their hands, to admit, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may in its discretion require the facts admitted to be proved otherwise than by such admissions.’

19. The respondent’s response to the claim was categorical and acknowledged that a sum of Kshs 277,000.00 was owing. The respondent repeated the same twice in his witness statement and again during cross-examination. At that point, the burden of proof was offloaded from the shoulders of the appellant and actually no further evidence was necessary for the court to find in favour of the appellant to that extent.

20. The respondent has cited the authority of *Express Automobile Kenya Limited v Kenya Farmers Association Limited* which has no full citation and I was unable to get it. He has also cited *Cassam v Sachania* [1982] KLR 191 where the court held that;

‘Granting judgment on admission of facts is a discretionary power which must be exercised sparingly and only in plain cases where the admissions clear and unequivocal.’

21. I am alive to the fact that the above decision was on an application for judgement on admission while in this matter, the admission was made clear not only in the pleadings but by the witness on oath. This was not an application for judgement on admission but a final judgement which followed testimony and evidence of the parties which evidence was clear that the respondent admitted being indebted to the appellant.

22. I am conscious of the principle that admission must be clear and unequivocal which has been repeated many times in judicial authorities one of them being *Guardian Bank Limited v Jambo Biscuits Kenya Limited* [2014] KEHC 1796 (KLR) where the court held that;

‘Back to the main course of things. The principle applicable in judgment on admission is that the admission must be very clear and unequivocal on a plain perusal of the admission. The admission in the sense of Order 13 Rule 2 of the Civil Procedure Rules is not one



which requires copious interpretations or material to discern. It must be plainly and readily discernible.’

23. In my view, this was unequivocal and clear case of admission and the court had no choice of denying the appellant what the respondent had admitted. There cannot be clearer admission than where the same is made in the pleadings in plain language and admitted and repeated twice in evidence given on oath.

**Whether the court ignored the appellant’s evidence that the proceeds of the sale of the motor vehicle was factored in the loan statement.**

24. The trial court went through the documents produced before it and made analysis of what was contained therein. This in my view is a matter of fact and unless there is clear indication that the court ignored material and clear evidence that led it to make a perverse decision, I have no jurisdiction to interfere with the its factual finding. The court stated clearly in its judgment that the statement produced by the appellant did not show the sale proceeds which is an indication that it did not ignore the evidence placed before it. Further, in his testimony, the appellant’s witness is on record saying that the proceeds of sale were not factored in the statement.
25. When it came to submissions before me, the appellant stated that the appellant was entitled to repayment of Kshs 667,000.02 being the balance of the loan amount less Kshs 340,000.00 being the proceeds of the sale of the motor vehicle plus interest. It has completely avoided contestation on whether this amount was factored in the statement of account or not. The appellant has not pointed out to this court the entry which shows the factoring of the proceeds. In that regard, I see no basis for faulting the Adjudicator on the basis that she ignored that part of evidence.

**Whether the court should have awarded interest**

26. The trial court was silent on the issue of interest meaning that it did not award it. In the statement of claim, the appellant had claimed for the following; Judgment in the sum of Kshs 667,002.02. Compensation (to be determined by the court). Costs of the claim (to be assessed by the court). Other appropriate relief.
27. Perhaps the court did not award interest because the appellant did not claim for it. I however note that in its submissions before the trial court, the appellant prayed for interest. Section 26(2) of the *Civil Procedure Act* provides that;

‘Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.’

28. I do understand that the decision on whether or not to award interest is at the discretion of the court but such discretion must be exercised judiciously and where the court finds it fit to deny a party interest especially where the same is contractual, it is duty bound to give reasons for that decision. In *Jane Wanjiku Wambu v Anthony Kigamba hato & 3 others* [2017] KEHC 398 (KLR), it was held that;

‘First, at all times a trial court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial Court with utmost respect and should refrain from interference with it unless it is satisfied that the Lower Court proceeded upon some erroneous principle or was plainly and obviously wrong.’



29. In this matter, the trial court was silent on interest and giving a purposive interpretation of the law as stipulated above would mean that interest was deemed as awarded at a rate of 6 per cent. The respondent is on record confirming that the loan agreement provided for interest and the same was still accruing. Where parties had agreed on the rate of interest payable on loans or advances, the court has no discretion to depart from that unless there is demonstration that factors which are capable of vitiating that agreement exists. In *CFC Stanbic Limited v John Maina Githaiga & another* [2013] KECA 461 (KLR), the Court of Appeal held that;

‘On the issue of interest, the respondents compounded the same at 15per cent monthly yet there was no computation of figures. Sections 26 and 27 of the *Civil Procedure Act*, [CPA], lay down the law relating to the grant of interest and the setting of effective dates thereof. The said provisions provide that the court has a wide discretion to grant interest and to determine the effective dates of payment of such interests.

30. In *Shah V Guilders International Bank Ltd*, [2003] KLR, the Court of Appeal regarding S 26 (1) of the CPA held:

“This section, in our understanding, confers upon the court the discretion to award and fix the rate of interest to cover three stages, namely:

- (1) the period before the suit is filed;
- (2) the period from the date the suit is filed to the date when the court gives its judgment; and
- (3) from the date of judgment to the date of payment of the sum adjudged due or such earlier date as the court may, in its discretion, fix.

We further understand these provisions to be applicable only where the parties to a dispute have not, by their agreement, fixed the rate of interest payable. If by their agreement the parties have fixed the rate of interest payable, then the court has not discretion in the matter and must enforce the agreed rate unless it be shown in the usual way either that the agreed rate is illegal or unconscionable, or fraudulent.”

31. Based on the above, I hold the view that the appellant was entitled to the construal interest of 10 per cent per annum. Although there was contractual interest rate of 0.03 per cent per day upon default which translates to about 10.8 per cent per annum, I find it difficult and unfair to load it on the respondent noting that the appellant delayed in taking into account the proceeds of sale of the motor vehicle which amount was substantial. I would in the circumstances award interest at 10 per cent per annum to be calculated from the date of filing the claim in the lower court until payment in full.

## Conclusion

32. As I conclude the judgment, I have noted that the appellant has in its submissions asked this court to award general damages for breach of contract. It was not litigated before the trial court and no basis for the same was laid before the said court and this court. It was held in *Musilili Kilonzo v Josphine Selle Juma* (Suing on behalf of Mbithe Mutyambai (Deceased) [2022] KEELC 1642 (KLR) that;

‘It ought to be borne in mind that the main purpose of the first appellate court is to re-evaluate the evidence of the trial court and ascertain whether the conclusions arrived at were justified, and consequently make its independent decision. Its role is not to provide an avenue or a platform for a party who had a weak case in the lower court to patch up the weak



areas of their case by bringing fresh facts to the case; as this would amount to enabling the party who lost in the court below, to have an undeserved second bite at the cherry.’

33. Further I note that none of the grounds of appeal covers this argument. This court will not entertain arguments outside what is contained in the memorandum of appeal as there was no leave was sought to do so neither has the respondent been given opportunity to submit on the same. Doing so will be violating the provisions of Order 42 Rule 1 of the Civil Procedure Rules which provides that;

‘The appellant shall not, except with leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the High Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule:

34. Provided that the High Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.’

35. The conclusion of what is discussed above is that, I find that the appeal partly succeeds and I proceed to give the following final orders;

1. The judgment of the trial court is hereby set aside and substituted for an order entering judgment for the appellant against the respondent for a sum of Kshs 277,000.00.
2. The decretal sum shall attract interest at 10 per cent per annum from the date of filing the claim in the lower court until payment in full.
3. The appellant shall have the costs of this appeal.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF APRIL 2026.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Mr. Kungu holding brie for Miss Musyoka for the respondent and Mr. Kaburu for the appellant.

