REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC APPEAL NUMBER E050 OF 2025
OMAR ALI …… ….. APPELLANT
VERSUS
HUSSEIN ABDULLAHI …… …… RESPONDENT

RULING

1. The present appeal is a unique appeal before this court which arises from the Small Claims Court judgment delivered by **Honorable Nkurruna Namunyak** on 6th August 2025 in *Malindi's Small Claims Court Case Number E105 Of 2025* in which the appellant Hussain Abdullahi sued Omar Ali the respondent vide a statement of claim lodged on 9th May 2025.
2. The stated value of the claim was Kenya Shillings 680,000/= but ultimately the sum claimed was lesser. The statement of claim alleged that the respondent promised to sell a piece of land knowingly that they said these of land does not belong to him and subsequently promised to refund the purchase price paid which he failed to do.
3. Judgment was sought in the sum of Kenya Shillings 530,000/=.
4. Attached to the claim was a copy of a document titled "*Sale Agreement And Cash Advance.*" In that document, Omar Ali is said to have acknowledged receipt of the total sum of Kenya Shillings 680,000/= on diverse dates from the respondent herein. The document states that the aforementioned monies were for the "*purchase of proposed subdivisions scheme for portion number*

7715 Malindi" of five plots, four of them measuring 0.048 hectares and one of them 0.87 hectares.

5. The agreement was witnessed by Abdullahi Adam and Yusuf Farah. The same was executed by both the appellant and the respondent at the bottom.
6. The response to the statement of claim is dated 13th June 2025 filed through Otara and Company Advocates. It is stated that Omar Ali is the registered owner of Portion Number 7715 (original number 302/32-Malindi); he subdivided it and the appellant showed interest in purchase of 5 plots for the sum of Kenya Shillings 1,200,000/= million each, but negotiations brought down the consideration to Kenya Shillings 800,000/= per plot. The appellant paid Kenya Shillings 136,000/= per plot to make a total deposit of Kenya Shillings 680,000/=, and the agreement titled cash advance was made as the proceeds were meant to facilitate the subdivision process. However, the process took long and the appellant was not ready to proceed with the purchase and he wanted his money back and he reported the matter to the Malindi Police Station. The respondent conceded to the request for a refund. He sought more time to get money and after one month, he paid back to the respondent Kenya Shillings 150,000 leaving a balance of 530,000/=. The respondent finally claimed that it is the appellant who was in breach of the agreement and that as such his claim ought to be dismissed by the trial court. He suggested that the appellant should wait for his titles and pay the balance of the purchase price.

7. The question before the court at this point is whether the appeal should be admitted for hearing and determination in this court.
8. The jurisdiction of this court is prescribed by Article 162(2)(b)_of the Constitution and Section 13(1) of the Environment And Land Court Act.

9. There is consensus that, whether the money claimed by the respondent was initially given as a soft loan or not, the same was later on applied for a proposed purchase of 5 plots from the appellant. Later, the deal fell through due to what the respondent felt was lack of title on the part of the seller who was the appellant. By the act of demand for a refund by the respondent and by the appellant's act of conceding to such refund, which resulted in the paying back of **Kenya Shillings 150,000/=** to the respondent, the dispute was downgraded from a land dispute and relegated back to the level of a dispute regarding a debt owed by the appellant to the respondent just as it was in initially. It came before the Small Claims Court in that status.
10. What was before the small claims court was therefore not a claim for *title to land or use or occupation of land* within the meaning of **Section 13(1)** of the Act and **Article 165(2)(b)** of the Constitution.
11. Consequently, this court lacks jurisdiction to handle the present appeal and the same is summarily struck out with costs to the respondent. The Small Claims Court original file record attached

to this appeal shall be returned to that court forthwith and the present file shall be closed.

Dated, signed and delivered at Malindi on this 23rd Day of April, 2026.

MWANGI NJOROGE,
JUDGE, ELC, MALINDI.