



**Abubakar v Momentum Credit Limited & another (Commercial Appeal
E004 of 2025) [2026] KEHC 5810 (KLR) (4 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 5810 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
COMMERCIAL APPEAL E004 OF 2025**

RN NYAKUNDI, J

MAY 4, 2026

BETWEEN

AHMED ABUBAKAR APPELLANT

AND

MOMENTUM CREDIT LIMITED 1ST RESPONDENT

T/A ANTIQUE AUCTIONS AGENCIES 2ND RESPONDENT

*(Being an Appeal against the judgement and decree of the Hon. Rodgers Otieno (Adjudicator/
RM) dated and delivered on 14th March 2025 in Eldoret SCCCOMC NO. E358 OF 2024)*

JUDGMENT

1. The brief background of this appeal is that the Appellant herein who was the Claimant at the trial Court filed a Statement of Claim dated 26th March 2024 seeking the following orders: -
 - a. A declaration that the lending contract as entered into is vitiated by breach of the law and is unconscionable by the charging interest which is more than 2 times the sum disbursed as loan hence the Claimant is discharged from the contract and is only liable to pay the balance of sum advanced of Kshs. 147,740 after deduction of the amount paid of Kshs. 92,820/=.
 - b. A declaration that the Claimant is not liable to pay Kshs. 50,000/= as insurance premiums and Kshs. 48,000/= as fees for breach of sections 56 and 58 of the Consumer Protection Act.
 - c. A declaration that the exercise of post default-rights by the respondents was vitiated by breach of section 67 of the Movable Property Security Rights Act and Auctioneers Rules 1997 for failure to issue and serve a valid notification to the grantor and a notification of sale respectively.
 - d. An order for the release of the vehicle registration No. KCT 541A to the Claimant by the Respondents unconditionally.



- e. An assessment and an award of damages for loss of income at the rate of Kshs. 2,000/= as of 22nd March 2024 daily until release of the vehicle registration number KCT 541A, coupled with general damages for detinue and breach of the claimant's rights as a consumer under the *Consumer Protection Act*.
 - f. An assessment and an award of punitive and aggravated damages.
 - g. An order of injunction to restrain the respondents jointly and severally from attaching the motor vehicle registration No. KCT 541 A or selling and transferring the same perpetually.
 - h. An order discharging the charge on the vehicle registration no. KCT 541A and return of the original motor vehicle registration certificate to the Claimant unconditionally.
 - i. Costs and interests.
2. The facts of the case were that the Appellant averred that he had no arrears at the time his motor vehicle was attached by the 2nd Respondent on the instructions of the 1st Respondent. The 1st Respondent denied the allegations of the Appellant as laid out in the Statement and raised a Counter Claim for Kshs. 274,509/=. The 1st Respondent also averred that the Appellant had fell into arrears and that Clause 3 of the terms and conditions in the loan application form provided that both parties could call up the loan and seek all the monies payable in the case of default.
3. The trial Court in its judgement dated 14th March 2025 held as follows while dismissing the Appellant's Claim,
- “9. The Claimant has failed to prove his case and the same is hereby dismissed. This Court finds that the 1st Respondent was right to recall the entire loan balance upon default and the counter Claim succeeds.
 10. That being the case the Claimant should pay the Respondent Kshs 274,507/= plus the costs of the Counter Claim within ten days in order for his motor vehicle to be returned to him and the log Book be discharged and returned to him.
 11. in default, the 1st Respondent to sell the motor vehicle and recover its dues. No orders on the costs of the claim.”
4. The Appellant being aggrieved with the said judgment dated 14th March 2025 preferred an appeal to this Honourable Court vide a Memorandum of Appeal dated 4th April 2025 based on the following grounds: -
- a. That the Learned Adjudicator erred in law in failing to find that the 1st Respondent had breached section 56 of the *Consumer Protection Act*, Cap 501 by failing to disclose the cost of borrowing and thus the appellant was not liable to pay Kshs. 48,000 indicated in the loan schedule.
 - b. That the Learned Adjudicator erred in law in failing to find that the 1st Respondent breached section 58 of the *Consumer Protection Act* Cap 501 by failing to give the Appellant an option to find insurance from an insurer or agent or agent of his choice.
 - c. That the Learned Adjudicator erred in law in failing to find that the 1st Respondent in breach of section 65 of the *Consumer Protection Act*, Cap 501 as it failed to deliver the appellant an initial disclosure statement.



- d. That the Learned Adjudicator erred in law in failing to find that the 1st Respondent failed to comply with section 67 of the Movable Property Security Act Cap 499A by failing to issue the Appellant a proper notification of default.
 - e. That the Learned Adjudicator erred in law in failing to find that the 2nd Respondent in breach of rule 12 (1) (k) of the Auctioneers Rules 1997 failed to issue a valid notification of sale to the appellant before repossessing the vehicle.
 - f. That the Learned Adjudicator erred in law in failing to find that the repossession of the vehicle having been carried out without a notification of sale the appellant was entitled to an award of damages.
 - g. That the Learned Adjudicator erred in law in finding to find that the 1st Respondent had violated the rules on unfair bargain, unjust enrichment unconscionability by disbursing a loan of Kshs 147,740 to the appellant yet the loan schedule indicated the total payment sum of Kshs. 445,561 which breached section 13(2)(b), (d), (e) and (f) of the Consumer Protection Act, Cap 501.
 - h. That the Learned Adjudicator erred in law in failing to find that the appellant was not accorded by the 1st Respondent an opportunity to cool off and to seek independent legal advice prior to entering the contract.
 - i. That the Learned Adjudicator erred in law in allowing the counter-claim and in granting an order for the vehicle to be sold within 30 days in the event that payment was not made to the 1st Respondent while no such relief was pleaded for.
 - j. That the Learned Adjudicator erred in law in failing to determine the matter within 60 days and in not delivering the judgment within 3 days as provided for in section 34 (1) and (2) of the Small Claims Act, CAP 10A.
5. Reasons wherefore the Appellant prayed as follows: -
 - a. That the Appeal be allowed.
 - b. That the judgement of the Lower Court be set aside and substituted with an order allowing the appellant's claim and dismissing the counter-claim with costs.
 - c. An award of damages, costs and interests together with the costs of the appeal.
 6. The Appeal was canvassed by way of written submissions.

Appellant's Submissions Summary

7. The Appellant filed his written submissions dated 6th October 2025 in which the Learned Counsel on record Mr. Kiprop submitted that by dint of section 38(1) of the Small Claims Court Act, 2016, the jurisdiction of this court is limited to questions of law. He argued that the grounds raised in the memorandum of appeal indeed pose questions of law and although the court may refer to facts emerging from the pleadings and the evidence tendered before the trial court, such reference does not constitute hearing the appeal on questions of fact. Counsel submitted that based on the facts that can be ascertained from the pleadings and the hearing of witnesses, the main issues for determination were whether there was fraud and breach on the part of the respondent and whether the prayers sought by both parties were merited. He argued that the appellant faults the learned adjudicator for taking the wrong path in addressing the issues, thereby arriving at erroneous findings.



8. On grounds 1, 2, 3 and 4, counsel submitted that the learned adjudicator erred in law in failing to find that the 1st respondent had breached section 56 of the Consumer Protection Act, Cap 501, by failing to disclose the cost of borrowing, thereby rendering the appellant not liable to pay the Kshs. 48,000 indicated in the loan schedule. He noted that during the hearing, the respondent's witness stated she was not present during contracting, and the documents presented did not disclose the cost of borrowing amounting to a breach. He further submitted that the adjudicator erred in failing to find that the 1st respondent breached section 58 of the Consumer Protection Act by failing to give the appellant the option to find insurance from an insurer or agent of his choice. The appellant testified that he was never given such an option, and the 1st respondent tendered no evidence to rebut the assertion. Counsel argued that this omission remained uncontroverted and therefore constituted a breach. Counsel also submitted that the adjudicator erred in failing to find that the 1st respondent breached section 65 of the Consumer Protection Act by failing to deliver an initial disclosure statement. The appellant testified that none was issued and the respondent's witness confirmed she was unaware of any such disclosure. Despite the issue being raised in submissions, the adjudicator hardly addressed it.
9. On the fourth ground, counsel argued that the adjudicator failed to find and hold that the 1st respondent acted in breach of section 67 of the Movable Property Security Rights Act, Cap 499A, by issuing an improper notification of default. He pointed out that the letter dated 10th February 2024 did not meet the statutory requirements under section 67(2), as it omitted essential details such as the nature and extent of default, the specific amount due, timelines for rectification, and the consequences of non-compliance. Counsel submitted that the proclamation was therefore issued in breach of the law, as the sum of Kshs. 241,341 sought to be recovered was not yet due.
10. On grounds 5, 6, 7, 8, 9 and 10, counsel submitted that the adjudicator erred in failing to find that the 2nd respondent breached rule 12(1)(k) of the Auctioneers Rules, 1997, by failing to issue a valid notification of sale before repossessing the subject motor vehicle. The 2nd respondent tendered no evidence to rebut this claim, and the 1st respondent even issued a letter on 25th March 2024 indicating that the vehicle would be sold by public auction or private treaty, which confirmed that no notification of sale had been issued. Counsel argued that the repossession was therefore unlawful, entitling the appellant to general damages. Counsel further submitted that the adjudicator erred in failing to find that the 1st respondent violated the rules on unfair bargain, unjust enrichment, and unconscionability. The loan schedule indicated a total payment sum of Kshs. 445,561 while the amount disbursed was only Kshs. 147,740, more than twice the principal, thereby violating the in- duplum rule and amounting to unjust enrichment. Counsel relied on *Mugure & 2 others Vs Higher Education Loans Board*, Petition No E002 OF 2021 (2022) KLR.
11. He also faulted the adjudicator for granting an order allowing the 1st respondent to sell the vehicle within 30 days if payment was not made, noting that no such relief was sought by either party. The counterclaim only sought Kshs. 274,509 plus interest and costs. Counsel argued that it is trite law that parties are bound by their pleadings and the court cannot grant a relief not prayed for. In conclusion, counsel invited the court to find merit in the appeal and allow it as prayed.

1st Respondent's Submissions Summary

12. The 1st Respondent filed its written submissions dated 13th October 2025 in which the Learned Counsel on record Mr. Oyunge submitted on 5 issues of determination as follows: -
 - a. Whether the Appeal raises Matters of law as required under section 38 of the Small Claims Court Act, 2016.



- b. Whether the Learned Adjudicator erred in law and fact in finding that the 1st Respondent acted lawfully in the loan transaction.
 - c. Whether there was any breach of the *Consumer Protection Act*, Cap 501.
 - d. Whether the repossession of the Appellant’s vehicle was lawful.
 - e. Whether the Adjudicator erred in allowing the counter-claim and granting orders of sale.
 - f. Whether the procedural irregularities alleged by the Appellant warrant setting aside of the judgment.
13. The learned Counsel for the 1st Respondent submitted that before delving into the merits of the appeal, it is essential to determine whether the appeal meets the threshold under Section 38(1) of the *Small Claims Court Act*, 2016, which limits appeals to the High Court strictly to matters of law. Counsel emphasized that this provision preserves the finality of factual findings of the trial court. Reliance was placed on *Mogonchi Vs Ombiro* (Civil Appeal E130 of 2024) [2025] KEHC 4096 (KLR), where the High Court clarified that an appeal from the Small Claims Court lies only on points of law. It was argued that the Appellant’s memorandum of appeal challenges factual findings, such as whether the vehicle was lawfully attached and whether proper notices were issued—issues grounded in evidence, not law. Consequently, Counsel argued that the appeal does not meet the jurisdictional threshold and should be dismissed.
 14. Regarding the second issue, Counsel contended that the Learned Adjudicator correctly found that the loan transaction between the Appellant and the 1st Respondent was lawful and binding. The Appellant had admitted applying for and receiving a loan facility of Kshs. 180,000, together with Insurance Premium Financing of Kshs. 42,731, secured by Motor Vehicle KCT 541A. Counsel reiterated the principle that courts do not rewrite contracts unless vitiated by fraud, coercion, or undue influence, citing *Pius Kimaiyo Langat Vs Co-operative Bank of Kenya Ltd* (2017) eKLR. Clause 20 of the Loan Application gave the Appellant a one-month period to review the terms independently, negating claims of lack of advice or cooling-off period. It was therefore submitted that the loan transaction was lawful and the 1st Respondent was entitled to realize the collateral upon default.
 15. On whether there was a breach of the *Consumer Protection Act*, Cap. 501, Counsel submitted that Sections 56 and 65 were fully complied with. The Appellant had been issued with a loan details confirmation disclosing all material terms, including interest, loan amount, and instalments. Claims that the insurer was imposed were dismissed, as the Appellant signed the Insurance Premium Financing form. The 1st Respondent, being a non-deposit-taking micro-lender, is not regulated by the *Banking Act* and its interest rates are contractual. Counsel relied on *Momentum Credit Limited Vs Kabuiya* [2022] KEHC 13705 (KLR), noting that courts only interfere with interest terms where contracts are unconscionable something not demonstrated by the Appellant. Accordingly, it was the counsel’s opinion that no breach of the *Consumer Protection Act* was established.
 16. On the lawfulness of repossession, Counsel submitted that Section 67 of the *Movable Property Security Rights Act* was fully complied with. The Appellant was served with a notification of default, a Proclamation dated 13th March 2024 and a Disposition Notice dated 25th March 2024, each giving adequate time to rectify the default. The trial court correctly found that these notices were duly served. The submission that Rule 12(1)(k) of the Auctioneers Rules applied was dismissed since the rule does not exist. It was maintained that both the 1st and 2nd Respondents complied with statutory requirements and the repossession was lawful. On the counter-claim, Counsel submitted that the Adjudicator rightly allowed the claim of Kshs. 274,509 and ordered sale of the motor vehicle as the



Appellant had admitted default. Clause 3 of the loan agreement entitled the 1st Respondent to call up the entire loan upon default. Section 65 of the *Movable Property Security Rights Act* further empowered the secured creditor to sell the secured asset. The order for sale was therefore ancillary and properly granted, notwithstanding that it was not expressly pleaded.

17. As to whether procedural irregularities warranted setting aside the judgment, Counsel conceded that the matter exceeded the statutory timelines under Section 34 of the *Small Claims Court Act*. However, Counsel argued that delay does not nullify proceedings, as held in *Wekesa Vs Karumbu* [2024] KEHC 8283 (KLR). The Appellant participated fully in the proceedings and suffered no prejudice. Non-compliance with timelines is an administrative issue and does not invalidate the judgment. In conclusion, Counsel urged the Court to dismiss the appeal with costs.

Analysis and Determination

18. The instrument which governed the contractual relationship between the Appellant and the 1st Respondent is one dated 21/08/2023. This was a grant of credit facilities to the Appellant for the purchase of the motor registration No. KCT 541A. A dispute arose between the Appellant and the 1st Respondent and the same found its way to the Small Claims Court in which the session Learned Resident Magistrate upon hearing both parties ruled as follows:

- “7. The Claimant admitted that he defaulted in paying the agreed monthly instalments. He admitted that he applied for and was given a loan facility by the 1st Respondent. This Court finds that the Claimant having defaulted, was correctly served with the proclamation notice and the notice of intention to sell the security.
8. The law is that parties are bound by the terms of their agreement. The Court cannot rewrite a contract for parties. That is what the Respondent is implying by citing several provisions of statute in aid of his case by contending that the 1st Respondent failed to comply with the said provisions of the law.
9. The claimant has failed to prove his case and the same is hereby dismissed. This Court finds that the 1st Respondent was right to recall the entire balance upon default and the Counter Claim succeeds.
10. That being the case the Claimant should pay the Respondent Kshs 274,507/ = plus the costs of the Counter Claim within ten days in order for this motor vehicle to be returned to him and the Log Book be discharged and returned to him.
11. In default, the 1st Respondent to sell the motor vehicle and recover its dues. No orders as to costs of the claim.”

19. It is from this Judgment the Appellant is aggrieved and moved to exercise his right of appeal as premised in the Memorandum of Appeal dated 4th April 2025 grounded as follows:

- a. That the Learned Adjudicator erred in law in failing to find that the 1st.respondent had breached section 56 of the *Consumer Protection Act*, Cap.501 by failing to disclose the cost of borrowing and thus the appellant was not liable to pay sh. 48,000 indicated in the loan schedule.



- b. That the Learned Adjudicator erred in law in failing to find that the 1st.respondent breached section 58 of the *Consumer Protection Act*, Cap.501 by failing to give the appellant an option to find insurance from an insurer or agent of his choice.
- c. That the Learned Adjudicator erred in law in failing to find that the 1st.respondent in breach of section 65 of the *Consumer Protection Act*, Cap. 501 as it failed to deliver to the appellant an initial disclosure statement.
- d. That the Learned Adjudicator erred in law in failing to find that the 1st.respondent failed to comply with section 67 of the *Movable Property Security Rights Act*, Cap. 499A by failing to issue to the appellant a proper notification of default.
- e. That the Learned Adjudicator erred in law in failing to find that the 2nd.respondent in breach of rule 12 (1) (k) of the Auctioneers Rules, 1997 failed to issue a valid notification of sale to the appellant before repossessing the vehicle.
- f. That the Learned Adjudicator erred1 in law in failing to find that their possession of the vehicle having been carried out without a notification of sale the appellant was entitled to an award of damages.
- g. That the Learned Adjudicator erred in law in failing to find that the 1st.respondent had violated the rules on unfair bargain, unjust enrichment, unconscionability by disbursing a loan of sh. 147,740 to the appellant yet the loan schedule indicated the total payment sum was sh. 445,561 which breached section 13 (2) (b), (d), (e) and (f) of the *Consumer Protection Act*, Cap. 501
- h. That the Learned Adjudicator erred in law in failing to find that the appellant was not accorded by the 1st. respondent an opportunity to cool off and to seek independent legal advice prior to entering into the contract.
- i. That the Learned Adjudicator erred in law in allowing the counter-claim and in granting an order for the vehicle to be sold within 30 days in the event that payment was not made to the 1st. respondent while no such relief was pleaded for.
- j. That the Learned Adjudicator erred in law in failing to determine the matter within 60 days and in not delivering judgment within 3 days as provided for in section 34 (1) and (2) of the *Small Claims Court Act*, Cap. 10A.

Reasons Wherefore the appellant prays that the appeal be allowed, the judgment of the lower court be set aside and substituted thereof an order allowing the appellant's claim and dismissing the counter-claim with costs. The appellant also prays for an award of damages, costs and interests together with costs of the appeal.

20. From the above grievances there are many issues being raised which follow within the forum of the Small Claims Court. The fundamental question here is whether the Appellant and the 1st Respondent entered into a contract governed by the laws of Kenya. This is not a trial Court to ventilate issues of fact with regard to the performance or non-performance of the contract in question as inked by both parties that the intention be put into effect. The doctrine of privity of contract refers to a fundamental contract of law that limits the enforceability of contractual rights and obligations to those who legitimately entered into a contract.



21. This Court is guided by the scope of the jurisdiction as stated in the case of African Airlines International Ltd. V Eastern & Southern Africa Trade and Development Bank [2003] KLR 140 at 143:

For the Court to interfere with the discretion of a single Judge it must be shown that the single Judge acted on matters which he should not have acted or he failed to take into consideration matters which he should have taken into consideration and in doing so he arrived at a wrong conclusion or that he was plainly wrong in his decision.

22. In the instant appeal, the 1st, 2nd and 3rd grounds in the memorandum of appeal touch on the Consumer Protection Act No. 46 of 2012 which is the primary Kenya legislation safeguarding consumer rights, preventing unfair trade practices and enforcing standards for goods and services. It empowers consumers against false representation, unconscionable conduct and unsafe products, providing rights to compensation. This is a Statute whose purpose is to protect consumer safety, economic interest and ensure access to information regarding goods and services. It also provides for the rights to goods of reasonable quality, clear information and the right to rescind a contract or agreement involving unfair practices. The Act generally applies to all consumer transactions including E-commerce transactions and traditional marketing. It also mandates that any ambiguous clauses in consumer agreement are interpreted in favour of the consumer. For purposes of this appeal Section 56, 58 and 65 of the Act provides as follows:

56. A borrower under a credit agreement is not liable to pay the lender, (a) the cost of borrowing under a credit agreement if the borrower receives no statements required by this Part; or (b) as part of the cost of borrowing, any amount in excess of the amounts specified in the statements that this Part requires to be delivered to the borrower in respect of the agreement.

58.

- (1) A borrower who is required under a credit Required agreement to purchase insurance may purchase it from insurance. any insurer who may lawfully provide that type of insurance, except that the lender may reserve the right to disapprove, on reasonable grounds, an insurer selected by the borrower. (2) A lender who offers to provide or to arrange insurance required under a credit agreement shall at the same time disclose to the borrower in writing that the borrower may purchase the insurance through an agent or an insurer of the borrower's choice.

60.

- (1) If the lender under a credit agreement invites the borrower to defer making a payment that would otherwise be due under the agreement, the invitation must disclose whether or not interest will accrue on the unpaid amount during the period of the deferral and, if interest will accrue, the invitation must also disclose the interest rate. (2) If the lender does not comply with subsection (1), the lender shall be deemed to have waived the interest that would otherwise accrue during the period.

65.

- (1) Every lender shall deliver an initial disclosure statement for a credit agreement to the borrower at or before the time that the borrower enters into the agreement, unless the lender has adopted the loan broker's initial disclosure statement as his, her or its own. (2) The initial disclosure statement for a credit agreement for fixed credit shall, disclose the prescribed information. (3) The initial disclosure statement for a credit agreement for open credit shall disclose the prescribed information.



- (4) If a loan broker assists in arranging a credit agreement, the initial disclosure statement shall disclose the prescribed information.

23. In answer to some of the critical issues there is on record savings account statement of the Applicant/ Appellant domiciled at Cooperative Bank Uganda Road Eldoret Branch and the Mpesa statement with details of the transactions carried out including payments made to Momentum Credit Limited the lender of the loan advanced as agreed with the Applicant/ Appellant to this appeal. The operative instrument with loan details is dated 22nd August 2023 with key terms negotiated and agreed by both parties inter alia as follows:

Loan Facility for Kes one hundred eighty thousand (Kes 180000.00)

It is our pleasure in confirming that we have granted you a loan of KES for a maximum period of twenty four (24) month (s) subject to the following terms and condition.

Terms and Conditions

1. The facility is be secured by:
 - i. Joint registration and chattel mortgage over motor vehicle registration number KCT541A
 - ii. Repayment through post-dated cheques, in which the first cheque will be banked on 28-09-2023, and every thirty (30) days thereafter.
2. The following are the conditions of sanction:
 - i. The borrower has provided collateral to secure the loan whereby the loan amount includes any fees and charges Momentum Credit Limited (hereinafter referred to as MCL') opts to capitalize. In the event of default, MCL will exercise its right to realize the collateral and recover any unpaid portion for the loan plus all costs including but not limited to loan charges, legal fees and any other costs. Default is deemed if the borrower fails to remit the instalment on the due date.
 - ii. The borrower's right to realize the collateral shall be conducted via MCL's pre-approved auctioneer after issuance of relevant statutory notices. These notices include and are not limited to: demand notice, proclamation notice and disposition notice, as guided by law. The Auctioneer's fee shall be as follows: Kshs. 5,000/=Borrower and Kshs. 10,000/= once repossession of the motor vehicle has been be other variable costs depending on the surrounding circumstances during their possession process.
 - iii. The borrower should ensure that he/she has taken due care to enable the tracking of the motor vehicle used as security through a tracking device which in the case it develops a technical fault within the course of the loan agreement, MCL and the service provider will contact the borrower. The leased tracker shall be uninstalled upon loan closure. It is the borrower's responsibility to cooperate with MCL and the service provider for issue resolution, and restoration of the transmission signal to normal status. In the event a borrower fails to cooperate, MCL will institute repossession procedures of the affected motor vehicle after 24 hours from notification for storage at a designated yard at the customers cost.
 - iv. The loan settlement shall be calculated in accordance with the loan schedule as shown below:



Date Principal Interest Fees Payment Due Balance

| | | | | | | |
|--------|------------|------------|------------|-----------|------------|------------|
| 1. | 28-09-2023 | 3,850.00 | 12,714.00 | 2,000.00 | 18,564.00 | 198,980.00 |
| 2. | 30-10-2023 | 4,091.00 | 12,473.00 | 2,000.00 | 18,564.00 | 194,889.00 |
| 3. | 28-11-2023 | 4,347.00 | 12,217.00 | 2,000.00 | 18,564.00 | 190,542.00 |
| 4. | 28-12-2023 | 4,620.00 | 11,944.00 | 2,000.00 | 18,564.00 | 185,922.00 |
| 5. | 29-01-2024 | 4,909.00 | 11,655.00 | 2,000.00 | 18,564.00 | 181,013.00 |
| 6. | 29-02-2024 | 5,217.00 | 11,347.00 | 2,000.00 | 18,564.00 | 175,796.00 |
| 7. | 28-03-2024 | 5,544.00 | 11,020.00 | 2,000.00 | 18,564.00 | 170,252.00 |
| 8. | 29-04-2024 | 5,892.00 | 10,672.00 | 2,000.00 | 18,564.00 | 164,360.00 |
| 9. | 28-05-2024 | 6,261.00 | 10,303.00 | 2,000.00 | 18,564.00 | 158,099.00 |
| 10. | 28-06-2024 | 6,654.00 | 9,910.00 | 2,000.00 | 18,564.00 | 151,445.00 |
| 11. | 29-07-2024 | 7,071.00 | 9,493.00 | 2,000.00 | 18,564.00 | 144,374.00 |
| 12. | 28-08-2024 | 7,514.00 | 9,050.00 | 2,000.00 | 18,564.00 | 136,860.00 |
| 13. | 30-09-2024 | 7,985.00 | 8,579.00 | 2,000.00 | 18,564.00 | 128,875.00 |
| 14. | 28-10-2024 | 8,485.00 | 8,079.00 | 2,000.00 | 18,564.00 | 120,390.00 |
| 15. | 28-11-2024 | 9,017.00 | 7,547.00 | 2,000.00 | 18,564.00 | 111,373.00 |
| 16. | 30-12-2024 | 9,583.00 | 6,981.00 | 2,000.00 | 18,564.00 | 101,790.00 |
| 17. | 28-01-2025 | 10,183.00 | 6,381.00 | 2,000.00 | 18,564.00 | 91,607.00 |
| 18. | 28-02-2025 | 10,822.00 | 5,742.00 | 2,000.00 | 18,564.00 | 80,785.00 |
| 19. | 28-03-2025 | 11,500.00 | 5,064.00 | 2,000.00 | 18,564.00 | 69,285.00 |
| 20. | 28-04-2025 | 12,221.00 | 4,343.00 | 2,000.00 | 18,564.00 | 57,064.00 |
| 21. | 28-05-2025 | 12,987.00 | 3,577.00 | 2,000.00 | 18,564.00 | 44,077.00 |
| 22. | 30-06-2025 | 13,801.00 | 2,763.00 | 2,000.00 | 18,564.00 | 30,276.00 |
| 23. | 28-07-2025 | 14,666.00 | 1,898.00 | 2,000.00 | 18,564.00 | 15,610.00 |
| 24. | 28-08-2025 | 15,610.00 | 979.00 | 2,000.00 | 18,589.00 | 0.00 |
| Totals | | 202,830.00 | 194,731.00 | 48,000.00 | 445,561.00 | |

Contact Information

In case of any queries at any moment in time during the course of your loan, kindly contact our Customer Service Team on (+254) 709 434 900 or cx@momentumcredit.co.ke Thank you for choosing Momentum Credit, we exist to Expand Your Possibilities.

24. This contract is akin to the chattels agreements regulatory framework as between the lender and the loanee. In this respect there is what we call hypothecation, pledge and higher purchase upon



- which the agreement is crafted. As for this relationship the agreement between the Appellant and the 1st Respondent was conditioned on the motor vehicle KCT 541A. This asset was registered jointly between the Appellant and the 1st Respondent focusing on balancing the lenders right to recover the loan due and owing with the loanee's right to equity and fair treatment. The Court elsewhere in this judgment has outlined the terms of the letter of offer which was duly signed between the Appellant and 1st Respondent. The instrument thus demonstrate the sum total of the money loaned out to the Appellant, terms of the repayment schedule, interest chargeable and any tariffs or fees expected to be paid within the statutory provision upon which the contract was agreed upon.
25. My readings of this appeal as pleaded by the Appellant there is a complaint about non-compliance with the [Consumer Protection Act 2012](#). I have laid out the primary provisions which the Appellant urged this Court to apply so that the judgment of the trial Court can be set aside. In my view the letter of offer displayed in this ruling is crystal clear as to what the two parties had agreed when sealing the contract involving the purchase and sale of motor vehicle KCT 541A. This letter of offer was not the only legal instrument endorsed by the Appellant and the 1st Respondent. There is a further primary instrument dated 22/8/2023. It was prepared by the Sales Agent of the 1st Respondent namely Isaac Angwenyi and soon thereafter the 1st Appellant also acknowledged its contents by endorsing his signature to effectuate the terms of the lender-loanee agreement.
 26. The answers to the Appellant on the concerns he raised about adequate notice before seizure of the asset for it to be subjected to a public auction, secondly the demand notice and subsequently issues surrounding the interest chargeable and other tariffs are all on point in the replying affidavit of Sheila Imali Legal Officer of the 1st Defendant dated 24th August 2025. This kind of contracts and obligations set therein in the operating legal agreements envisages where the rights of the asset in question is secured by a joint registration by the National Transport and Safety Authority.
 27. The predominant question is, at the trial court, did the Appellant discharge the standard and burden of proof that he repaid the total loan advanced by the 1st Respondent with both interest and other tariffs chargeable under the agreement? To the best of my recollection of the evidence there is still an outstanding loan amount and apparently this is an admitted fact. The Court need not subject it to the standard and burden of proof of Section 107(1), 108, 109 and 112 of the [Evidence Act](#). The loanee, the Appellant on receipt of any communication by the 1st Respondent had a right to redeem the charge chattel being motor vehicle Registration KCT 541A at any time before the actual sale by paying the debt and reasonable expenses.
 28. It is not lost for this Court to emphasize that in Kenya freedom of contract is embodied in any of such agreements between private citizens who have the intention to transact in some kind of business, investment or in our case the hirer's agreement for purchase of motor vehicle or land. The principle is that parties are free to negotiate and bind themselves to terms without judicial or government interference. It is the cornerstone of the Kenyan commercial law rooted in the [Law of Contract Act](#) Cap 2023. However, there is a rider that this freedom is not absolute and is restricted by Statute, Public Policy and [the Constitution](#) 2010 particularly in consumer protection and land transactions. In the case of *Timau Agro Industries Limited v National Oil Corporation of Kenya* [2025] eKLR the Court observed and emphasized the necessity of consensus ad idem (meeting of the minds). This is specific contract in contestation before the trial Court and now on appeal both parties were in full agreement on the specific terms as embodied in the letter of offer dated 22/08/2023 and the corresponding other agreement of even date.
 29. In this appeal both from the memorandum of appeal filed by the Appellant and subsequently accompanied with submissions on points of law to support the factual synthesis of the case has



been reviewed and appreciated but the Appellant under the Consumer Protection Act 2012 of Kenya has failed to point out the specific terms in the contract that are deemed unfair, unconscionable or deceptive. It was the duty of the Appellant to demonstrate by way of concrete evidence that the financial services rendered by the 1st Respondent failed to meet the standards of the law on consumer rights.

30. What the Appellant seems to be asking this Court to do is to rewrite the contract of lender-loanee agreement as entered with the 1st Respondent on 22nd August 2023 by invoking the Consumer Protection Act and the issues of interest chargeable as demonstrated in the letter of offer. There is no evidence as of now that following the signing of the letter of offer and the other instruments the interest chargeable on the loan was unconscionable, punitive and excessive for the Court to interfere with those terms of the contract. See the principles in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* (2001) eKLR, *Margaret Njeri Muiruri v Bank of Baroda (Kenya) Ltd* [2014] eKLR and *Kenya Commercial Financial Company Ltd v Ngeny* [2002 1 KLR).
31. The other issue in this appeal falls within the Moveable Properties Security Rights Act Cap 499A of Kenya. The Appellant has invoked Section 67:
67. Relief for non-compliance (1) If there is a default with respect to any obligation, the secured creditor shall serve on the grantor a notification, in writing or in other form agreed between the parties, to pay the money owing or perform and observe the agreement as the case may be. (2) The notification required under subsection (1) shall adequately inform the recipient of the following matters—
- (a) the nature and extent of default;
 - (b) if the default consists of non-payment, the actual amount and the time by the end of which payment must be completed;
 - (c) if the default consists of the failure to perform or observe any covenant, express or implied, in the agreement, the act the grantor must do or desist from doing so as to rectify the default and the time by the end of which the default must have been rectified;
 - (d) the consequence that if the default is not rectified within the time specified in the notification, the secured creditor will proceed to exercise any of the remedies referred to in section 65; and
 - (e) the right of the grantor in respect of certain remedies to apply to the court for relief against those remedies.
- (3) If the grantor does not comply within the time period indicated in the notification after the date of service of the notification, the secured creditor may—
- (a) sue the grantor for any payment due and owing under the agreement;
 - (b) appoint a receiver of the movable asset;
 - (c) lease the movable asset;
 - (d) take possession of the movable asset;
 - (e) sell the movable asset; or



- (f) pursue any of the remedies under section 65. (4) The Cabinet Secretary may prescribe the form and content of a notification to be served under this section.
32. Based on the Movable Property Security Act 2017 No. 13 of 2017 of Kenya, the Statute primarily aims to facilitate the use of movable property as collateral for credit. While specific detailed, guiding principles for Section 67 are not highlighted in the available text the legislation focuses on enabling legal frameworks for secured transactions. The key principles of the Act include inter alia: Access to Credit: Enhances the ability of individuals and entities to access credit using movable assets. Consistency and Certainty: Promotes consistency in secured financing. Registry Establishment: Establishes the office of the Registrar and a Registry to facilitate the registration of security rights. Security Rights Enforcement: Creditors can enforce rights (repossession, sale, leasing) without extinguishing the right to pursue the grantor. Application: Generally covers security rights created by a security agreement in movable property.
33. There is no dispute that this movable asset registration No. KCT 541A was jointly owned by the Appellant and the 1st Respondent. If the NTSA records is anything to go by to demonstrate that the interest of the lender had been secured as per the law established. The Appellant cannot be allowed to apply Section 67 of the Act to defeat the rights and beneficial interest of the 1st Respondent. It would also be unconscionable if this Court was to allow the loanee to abdicate his responsibilities of repaying the loan amount to the 1st Respondent so that he can be discharged and the asset be freed for his own use under Article 40 of *the Constitution*. This ground of appeal also fails.
34. The Appellant is also aggrieved with the learned Adjudicator that he did not rule on non-compliance by the 2nd Respondent of Rule 12(1) (k) of the Auctioneer Rules which states as follows:
12. Movable other than perishable goods and livestock
- (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.



- (2) If on the expiry of the period of notice, the auctioneer finds that there are other goods belonging to the judgement debtor—
 - (a) which were not pointed out by the decree holder and proclaimed earlier in his proclamation; or
 - (b) which have been removed by the judgment debtor, or cannot be found, the auctioneer shall file an application in court seeking leave of the court to be allowed to attach any other movable properties of the judgement debtor pointed out by the decree holder.
- (3) An application under paragraph (2) shall be by motion by way of a miscellaneous application supported by an affidavit in a competent court, and in the case of distress for rent, repossession and attachment, may be heard ex parte.
- (4) Where orders obtained by a judgement debtor staying execution and served on an auctioneer are subsequently vacated, the auctioneer shall—
 - (a) where the warrants of attachment and sale, or letter of instruction, are still valid, proceed with execution in compliance with these Rules;
 - (b) where the warrants of attachment and sale have expired, apply for extension of the warrants for a period not exceeding forty-five days, within which he shall finalize execution;
 - (c) where fresh warrants of attachment and sale or letter of instructions are issued with new figures, proceed in the manner provided in these Rules in respect of a fresh warrant.

35. The law on *Auctioneers Act* and Rules and its applicability is very clear. A person can sue an auctioneer for wrongful attachment if they fail to follow the strict procedures set out in the *Auctioneers Act* and Rules 1997. The law envisages such grounds for such suits to include seizing of goods without a proclamation notice, selling goods too quickly or seizing property belonging to a 3rd party. The following cases speak to some of the issues which are being raised in this appeal: Wrongful Attachment of Third-Party Goods: Kuronya Auctioneers v Maurice O. Odhoch & another [2003] eKLR The Court of Appeal ruled that an auctioneer is liable for damages if they attach goods belonging to a third party (a non-debtor) while executing a decree. The auctioneer argued they were protected under the *Judicature Act*, but the court held this protection does not extend to illegal actions or negligence, such as seizing the wrong person's property. Failure to Follow Procedure (Proclamation/Notice): Wanjala v Walukhuchi & 3 Others [2023] eKLR The court found the attachment and sale of a person's livestock unlawful because the auctioneers did not issue a proclamation of attachment and failed to give the legally required notice (7-day statutory notice) before removing and selling the property. The court emphasized that proclamation, attachment, and auction must be on separate dates. Irregular Sale of Motor Vehicle: Kamau & another v Wasike (Civil Appeal E070 of 2021) [2024] eKLR The court declared the attachment and sale of a motor vehicle null and void because the vehicle was not listed in the initial proclamation, and the auctioneer did not follow the procedures regarding notice and redemption periods under the Auctioneers Rules 1997. Failure to Proclaim and Value Assets: John Gachau Gitonga v Nduta Mbile [2016] eKLR This case established that an auctioneer must follow the 7-day notice requirement and accurately account for the value of the goods. It also affirmed that actions against auctioneers for damages should be filed as a separate civil suit



- 36. From the facts of this appeal, any breach of the rule by the Auctioneer cannot be used by the Appellant to rewrite the primary contract duly signed on 22nd August 2023. He however has a recourse if he feels very strongly that he has sufficient evidence to warrant an assessment of damages for any irregularity, impropriety and illegality of the process executed by the Auctioneer under the *Auctioneers Act* as read with the Auctioneers Rules. As a ground for this substantive appeal based on Rule 12(1) (k) of the Auctioneers Rules the same is moot.
- 37. Finally, in this appeal the Appellant raised the issue of non-compliance of Section 34(1) & (2) of the *Small Claims Court Act* by the Learned Adjudicator. This is a growth area jurisprudentially in Kenya and the law is yet to be settled whether the calculation of the sixty days’ statutory period from the date of filing to the decision making can actually be sustained given the multiplicity of actors whom may need to be notified of the claim by the Claimant so that the process of pretrial can take place in compliance with Article 27, 47, 48 and 50 of *the Constitution*. This jurisdictional cut-off issue of sixty days cannot oust the constitutional provisions on fair trial rights. As of now, I say no more as this debate on the purposive interpretation of Section 34 is still raging in Kenya fast and furious. It is therefore high time that a constitutional bench be put together to co-relate the ongoing conflicting jurisprudence so that the matter can be taken up by the Superior Courts including the Supreme Court to settle the sixty days’ deadline for dispute resolution before the Small Claims Court. I consider this ground of appeal as more collateral than primary to the impugned decision of the trial court arising out of the interpretation of the lender-loanee agreement. I am unconvinced by the Appellant to render the decision of the Learned Adjudicator as a nullity and void so that the Appellant can sing amazing grace and run away from his contractual obligations.
- 38. As an appeal’s Court to interfere with the decision of the trial Court the Appellant must satisfy this Court that the Learned Adjudicator acted on wrong principles of law or misapprehended the facts on the statement of claim and for those reasons he wholly arrived at a wrongful decision. It in this realm I find no reason to fault the Learned Trial Adjudicator tracing this process of adjudication from the filing of the statement of claim, the responses filed by the 1st Respondent and the synthesis of the evidence to establish whether a case has been made out on a balance of probabilities for the 1st Respondent to secure judgment in his favor. My conclusion is that the appeal as filed and argued by way of written submissions continue to be standing on sinking sand and for that basis it is swept away by the waves of the law with costs to the Respondents.

DELIVERED, DATED AND SIGNED AT ELDORET VIA CTS THIS 4TH MAY 2026

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R. NYAKUNDI
JUDGE

