REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E620 OF 2023

LILY CHEPKEMOI RONO..... APPLICANT

-VERSUS-

JEFICS CREDIT LIMITED..... RESPONDENT

(Being an appeal from the judgment of Hon. G. Simatwo (Adjudicator/RM) in Nairobi SCCC No. E1053 of 2022 delivered on 3rd July, 2023)

JUDGMENT

1) The respondent in this appeal, JEFICS CREDIT LTD was the claimant in Nairobi SCCC no. E1053 of 2022 where it filed a claim seeking a sum of kshs.294,489 from the appellant being repayment of a loan advanced to the appellant in the year 2019.
2) The appellant filed a response to the claim refuting the same.
3) The case proceeded by way of documents and written submissions.
4) The trial court found that the loan advanced was not denied. The appellant did not dispute receipt of kshs.150,000.

5) Further that the singular contention was the interest levied which the appellant said was unconscionable and in breach of the in duplum rule.

6) The trial court found that the parties had agree on interest of 10% in case of default.

7) The trial court entered judgment in the sum of kshs.294,489 together costs from the date of the judgment until payment in full.

8) The appellant is aggrieved with the said judgment and has filed this appeal on the following grounds:

   i. ***THAT the learned trial magistrate erred in law and in fact in failing to fully analyze and evaluate the evidence on the record that the loan advanced to the appellant by way of a loan agreement dated 3rd October, 2019 was a total sum of Kenya Shillings one hundred and fifty thousand (kshs.150,000/=) and illegally unlawfully and contrary to the Banking Act allowed interest at 10% per month thus reaching the wrong decision.***

   ii. ***THAT the learned trial magistrate erred in law and in fact and abdicated his statutory duties in failing to address the DUPLUM RULE derived from a public policy and interest affecting a company other than a***

bank carrying on lending business and violated section 44(5) of the Banking Act Cap 488 and hence the learned trial magistrate failed totally to address substantial issues raised regarding pleadings by parties thus causing a miscarriage of justice.

iii. THAT the learned trial magistrate erred in law and in fact and misdirected her mind in making a finding that the duplum rule was not application in the instant suit including section 44 of the Banking Act exposing the appellant to manifesting excessive interest rates and morally wrong. Indeed, the trial magistrates court judgment will lead to exorbitant indebtness being unconscionable.

iv. THAT the learned trial magistrate abdicated his statutory duty in failing to address the substantial issues raised regarding pleadings by parties thus causing a miscarriage of justice.

v. THAT the learned trial magistrate erred in law and in fact and failed to make a finding that the terms and conditions of the loan agreement dated 3rd October, 2019 between the parties was harsh, unfair terms as the appellants burgaining power was agrievoulsy impaired by her own needs and hence manifestly excessive in the circumstances.

vi. THAT the learned trial magistrate erred in law and in fact and was evidently bias in failing to consider the appellant's trial issues.

9) The parties filed written submissions as follows; the appellant submitted that by way of a loan agreement dated 3rd October 2019 between the parties herein, the Respondent advanced to the Appellant a sum of Kshs. 150,000/ = as per the said agreement.

10) The appellant paid Kshs. 100,000 of the debt to the respondent on 12th October 2023.

11) It was the appellant's contention that the amount claimed by the respondent was disproportional to that adduced in the attached loan agreement.

12) The damages sought by the respondent breached the basic tenets of equity as they did not approach the court with clean hands.

13) The appellant further submitted that the respondent was in breach of the duplum rule derived from a public policy and interest affecting a company other than a bank carrying on lending business and violated Section 44(5) of the Banking Act Cap 488 and hence the learned trial magistrate failed

totally to address substantial issues raised regarding pleadings by parties thus causing a miscarriage of Justice.

14) The appellant relied on the case of **Margaret Njeri Muiruri v Bank of Baroda (Kenya) Limited [2014] eKLR**, where the Court of Appeal whilst upholding the trial court's decision to rescind the excessive interest charged by the Respondent held in part that;

> *"**We have found in the above discussion that there was no evidence that the interest rate charged by the respondent was in accordance with Section 44 of the Banking Act. We have found that it was manifestly excessive, and, in the words of the trial judge, morally wrong. We have further expressed the view that the clause relied on to charge the interest that led to this exorbitant indebtedness was not only unconscionable and without notice to the appellant, but was bad for failure to accord with the relevant provisions of the law.***"

The Appellate court further considered the aspect of unconscionable bargain by stating that;

> "***Even in the absence of duress of persons or undue influence, there has long been jurisdiction to interfere with harsh and unconscionable transactions in several different areas of the law: for instance, in respect of salvage agreements;***

or against contractual penalties, forfeiture of mortgages, extortionate loans or expectant heirs. The jurisdiction of the courts to set aside is based on unconscientious conduct by the stronger party;

It has been suggested that these various instances of protecting against weakness or vulnerability might be gathered together under a general doctrine of inequality of bargaining power: by virtue of it, English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other."

15) In **Mugure & 2 others v Higher Education Loans Board (Petition E002 of 2021) [2022] KEHC 11951 (KLR) (Civ) (19 August 2022) (Judgment)**, the court held that: -

"***In my view, the rule was introduced in our Laws to tame the appetite of Lenders who had made recovery of interest on advances a cash cow. Simply put, the Legislature was expressing its displeasure with lenders who left amounts of advances to go over the roof due to interest before pouncing on the hapless borrowers. It was intended to protect borrowers from exorbitant***

***interest accumulation on loans and limit the amount recoverable by a lender on a defaulted facility to no more than double the principal owing when the loan has become non-performing plus recovery expenses. In this regard, I hold that being of public interest, the in duplum rule will be applicable for those lending monies as it does to banks*"**

16) **The issues for determination in this appeal are as follows;**

(i) Whether the in duplum rule, codified under Section 44A of the Banking Act (Cap 488), applies to the Respondent, JEFICS CREDIT LIMITED, a non-deposit-taking microfinance lender, and

(ii) Whether the trial court erred in failing to invoke this rule to cap the interest on the Appellant's defaulted loan.

17) The appellant's contention that the in duplum rule and Section 44A of the Banking Act apply to the respondent, a credit company, is a matter of significant legal weight in Kenya.

18) While the Banking Act technically governs institutions licensed under it, Kenyan jurisprudence has evolved to recognize the in duplum rule as a principle of public policy applicable to all

money-lending transactions to prevent the exploitation of borrowers.

19) In the case of **Mugure & 2 others v Higher Education Loans Board (Petition E002 of 2021) [2022] KEHC 11951 (KLR),** the court explicitly stated that the rule is intended to protect borrowers from exorbitant interest accumulation and that, being a matter of public interest, it applies to those lending monies just as it does to banks.

20) Therefore, the trial court erred in finding the rule inapplicable.

21) The essence of the rule is that interest stops running when the unpaid interest equals the outstanding principal at the time of default.

22) By allowing a claim of Kshs. 294,489 on a principal sum which the appellant claims was significantly lower (and partially repaid), the trial court permitted the interest to exceed the statutory and common law limits established by the in duplum principle.

23) Furthermore, the interest rate of 10% per month, totaling 120% per annum, is manifestly excessive and unconscionable.

24) Courts have the jurisdiction to interfere with transactions where the bargaining power is so lopsided that the resulting terms are harsh and oppressive.

25) A rate of 10% per month on a credit facility, often entered into by borrowers in moments of dire need, offends the conscience of the court and violates the principles of equity.

26) The respondent, having the stronger bargaining position, imposed terms that led to an exorbitant indebtedness that is morally and legally indefensible.

27) Regarding the evaluation of evidence, the trial magistrate appears to have overlooked the appellant's assertions concerning the repayment of Kshs. 100,000.

28) It is a fundamental duty of the court to analyze the evidence on record to determine the precise outstanding principal before applying interest.

29) In **Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123,** it was established that an appellate court must reconsider the evidence and draw its own

conclusions, though it must keep in mind that it has not seen the witnesses.

30) In this instance, the mismatch between the advanced sum and the final judgment amount suggests a failure to properly credit the appellant's repayments or a failure to scrutinize the respondent's ledger for compliance with the in duplum rule.

31) Consequently, this court finds that the appeal has merit and the judgment of the trial court in Nairobi SCCC No. E1053 of 2022 is hereby set aside.

32) The matter is remitted back to the trial court for a proper accounting of the loan facility.

33) In this accounting, the adjudicator must apply the in duplum rule, ensuring that the total interest charged does not exceed the principal amount outstanding at the time of default.

34) Since the 10% monthly interest is found to be unconscionable and struck down, the adjudicator to replace it the court rate of 12% per annum.

35) Each party shall bear their own costs of this appeal.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 7th day of May, 2026.

A. N. ONGERI

JUDGE

In the presence of:

Mr Wachakana for the Applicant

Miss Njoroge for the Respondent