

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CIVIL APPEAL CASE NO. E035 OF 2025

SIDIAN BANK LIMITED.....APPELLANT

VERSUS

ANN MWENDE NDEGWA.....RESPONDENT

JUDGEMENT

1. Before this Court is the Memorandum of Appeal dated **4th July 2025** by which the Appellant **SIDIAN BANK** seeks the following orders

“(a) THAT the judgement and decree of the Hon. Ismael Stanley Imoleit, Resident Magistrate at Nyeri on 3/07/2025 in Nyeri MCCC E016 of 2023 be set aside and substituted with an order dismissing the suit with costs to the Appellant.

(b) THAT this Honourable Court be pleased to award the costs of this appeal to the Appellant.”

2. The Respondent **ANNE MWENDE NDEGWA** opposed the appeal. The matter was canvassed by way of written

submissions. The Appellant filed the written submissions dated **12th January 2026**, whilst the Respondent relied upon their written submissions dated **28th January 2026**.

BACKGROUND

3. The Respondent told the Lower Court that she took out a loan facility from the Appellant bank of **Kshs. 875,000** to enable her purchase a motor vehicle. She states that the loan was cleared on **29th July 2022** and that the bank then closed the loan account and released the vehicle to her.
4. To the Respondents surprise the Bank later repossessed the said vehicle Registration **KCX 156B**. After the Respondent moved to court the Bank released the said vehicle back to her. However the Bank adamantly retained the logbook for the vehicle. The Respondent alleged that the Bank then proceeded to make illegal debits for costs amounting to **Kshs. 194, 464** granted to them in **CMCC No. E179 of 2021**. She claimed that the Bank unprocedurally opened another loan account without the Respondents knowledge and/or consent to facilitate said deductions.

5. The Respondent then filed **Nyeri MCC E106 of 2023** vide the plaint dated **15th May 2023**, seeking for the immediate release of the logbook to herself and also seeking regularization of her account with the bank to reflect the position as at **29th July 2022** that the loan had been cleared. The Respondent also prayed for the closure of the second account which was opened without her authority.
6. The Appellant (the Defendant in the suit before the Lower Court) filed a Defence dated **20th June 2023**. The witness for the Appellant confirmed that the Bank did indeed advance to the Respondent a loan facility of **Kshs. 875,000**. He explained that a client who has taken a loan must have two different accounts being a loan account from which loan repayments are credited and a transactional account.
7. **DW1** confirmed that by **29th July 2022** the Respondent had cleared the loan but states that the bank did not release the logbook to her because the legal fees incurred by the bank in defending the suit were still due and owing. **DW1** stated that he did not know when the second loan account was opened.

8. The matter was heard in the Lower Court and vide a judgement delivered on **3rd July 2025** **Hon. Imoleit, Resident Magistrate** allowed the Respondents claim and directed that the logbook be released to the Respondent. The trial court further directed the Bank to regularize the Respondents account to read as it did on **29th July 2022** when the loan facility had been cleared. Finally the trial court awarded costs to the Respondent.
9. Being aggrieved by this decision the Bank filed this appeal which is

premised upon the following grounds:-

“1. The Honourable trial court erred in law and fact by disregarding the evidence adduced by both parties on the running of accounts and by so doing the trial court arrived at a wrong conclusion as respects prayer number (b) in the Plaint.

2. The Honourable Trial Court erred in fact and law by

failing to appreciate that the scope of the obligation secured in favour of the appellant and by so doing arrived at a wrong conclusion as respects prayer number (a) in the Plaint.

- 3. The Honourable Trial Court erred in law and facts by awarding interest on costs without stating the grounds upon which that award was made.”**

ANALYSIS AND DETERMINATION

10. I have considered the appeal before this court, the Record of appeal as well as the written submissions filed by both parties.
11. This is a first appeal and in this regard I take cognizance of the holding in **Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR)** in which the Court of Appeal stated as follows:-

This being a first appeal it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which the Court acts in such an appeal is are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. See Selle and Another v Associated Motor Boat Company Limited and others [1968] EA 123 and Williamson Diamonds Ltd. V Brown [1970] E.A.L

As we discharge our mandate of evaluating the evidence

placed before the High Court, we keep in mind what the predecessor of this Court said in Peters -vs- Sunday Post Ltd [1958] EA 424. In its own words:-

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the

conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide....”

12. It is not in dispute that the Respondent took out a loan facility with the Appellant Bank. A copy of the letter of Offer dated **21st November 2019** appears at **page 85** of the Record of Appeal.
13. The Respondent confirms that she did use the loan advanced to her to purchase a motor vehicle make Toyota Axio Registration **KCX 156B** which vehicle was registered in the joint names of herself and **Sidian Bank**. A copy of the log-book appears at **Page 99** of the Record of Appeal.

14. The Respondent and the bank are both in agreement that the loan

facility was cleared on **29th July 2022** at which point the Bank proceeded to close the loan account being Account No. **01005000612030** leaving only the Respondents transactional Account Number operational.

15. Surprisingly another transactional account number **01005150037411** was later opened without the Respondents knowledge and/or consent to cater for the **Kshs.194,464/=** legal fees incurred by the Bank. Equally puzzling is the fact that **DW1** who was the bank manager told the court that he did not know when this second account was opened. Their denial is suspicious.

16. Only the Bank would be expected to know and to produce evidence on

how and when this second account was opened. Neither the Respondent nor any other person would have had the capacity and/or authority to open an account at **Sidian Bank**. The fact that no account opening documents for this account second were produced by the bank is very telling.

17. The fact that the bank closed the Respondents original loan account is

clear proof that the loan had been fully repaid to their satisfaction.

If not they would have kept this account open and running. Closing of the initial loan account brought to an end the contract under the letter of offer dated **21st November 2019**. The original loan account was the one from which the loan and all costs were to be recovered. Its closure meant that all contractual obligations had been satisfied.

18. In that letter of offer **Paragraph 4 (Page 90** of the record) under the

heading '**Other Conditions**' provides as follows:

“You agree that any other costs that Sidian Bank may be required to incur in respect of preserving its rights under this agreement or over securities or recovering the loan herein i.e costs for lawyers auctioneers and insurance etc will be on your account and the Bank is authorized by you to

debit your account or to recover from you in any other manner.”

19. **Paragraph 4** implies that any additional costs were to be recovered

from the Respondents loan account. It was not open to the bank to clandestinely open a second account without informing the Respondent to facilitate recovery of legal costs.

20. In the case of **NAHASHON NJAGE NYAGAH -VS- SAVINGS &**

LOAN KENYA LIMITED & Another [2017] eKLR it was held that

.....When the bank issues different sets of accounts or statements which are conflicting on the same issue, it is difficult to know where the truth lies. This has the effect of creating a doubt as to who is telling the truth. Wherever such a doubt exists between a bank and its customer, the court will naturally give the benefit of the doubt to the customer.....

21. Likewise in this case the opening of a second transactional account without the knowledge of the Respondent was irregular cannot be sanctioned.

22. In their written submissions the Appellant sought to rely on the repayment clause (**Page 85** of the record) which reads as follows

“The loan shall be repaid together with interest by 36 consecutive monthly installments of Kshs. 29,482.21 from the date of drawdown by debit to the borrowers account.” [Own emphasis]

23. This means that the amount due was to be recovered by debiting an account ‘owned and operated’ by the Respondent. This second account was neither ‘owned’ nor ‘operated’ by the Respondent as the same was opened without her knowledge and/or consent. As such this second account does not

comply with the repayment clause referred to by the Appellants.

24. The Appellants have also challenged the award of costs to the plaintiff

(Respondent) by the trial court. Costs follow the event. [See *Section 27, Civil procedure Act, Cap 21 Laws of Kenya*] The Respondent was successful at trial and as such was entitled to the award of costs. I find no merit in this ground of the appeal.

25. Finally I find no merit in this appeal. The same is dismissed in its

entirety. Costs of this appeal to be met by the Appellant.

26. The Appellant remain at liberty to file a Bill of costs for taxation of any legal costs they deem due to the bank.

Dated in Nyeri this 8th day of May 2026

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MAUREEN A. ODERO
JUDGE