



**Syumwenzwa v Prudential Building Society (In Liquidation) (Civil Appeal E107 of 2021) [2026] KEHC 5852 (KLR) (4 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 5852 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E107 OF 2021**

**AN ONGERI, J**

**MAY 4, 2026**

**BETWEEN**

**MURTISYA MUTUA SYUMWENZWA ..... APPELLANT**

**AND**

**PRUDENTIAL BUILDING SOCIETY (IN LIQUIDATION) ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. P. Muholi (SRM)  
in Milimani CMCC No. 5146 of 2017 delivered on 15/1/2021)*

**JUDGMENT**

1. The Respondent in this appeal THE STATUTORY MANAGER PRUDENTIAL BUILDING sued the appellant MUTISYA MUTUA SYUMWENZWA in Milimani CMCC NO. 5146 OF 2017 seeking a sum of kshs.2,707,969.60 in respect of loan arrears for a loan facility that was granted to the appellant.
2. The appellant filed an amended statement of defence and counterclaim dated 31/1/2005.
3. In the counterclaim the appellant was seeking Kshs.2,211,787.50 in respect of severance pay and Kshs.757,000 being salary in lieu of notice.
4. The appellant was also seeking Kshs.700,000 in respect of his motor vehicle which the respondent repossessed and sold for kshs.500,000 when the appellant had secured a buyer who wanted to buy it at Ksh.1,200,000. The Kshs.700,000 being the difference between the throw away costs of ksh.500,000 and Kshs.1,200,000 being the value of the motor vehicle.
5. The respondent's evidence was that the appellant while working for the respondent, was advanced Ksh.3,500,000 at an interest of Ksh. 5% which was a staff rate.
6. Again on 13/8/1998 the appellant applied and was also granted a further special facility of kshs.500,000.



7. The appellant serviced the said loans to a certain point and he stopped servicing them and ran into arrears.
8. The respondent wrote demand letters dated 25/8/2003, 10/7/2003, 18/6/2003 but arrears were not paid.
9. The appellant contested the interest rate which the respondent had increased from 5% to 15%.
10. The respondent denied that the motor vehicle was undervalued and said that he same was not registered and no duty had been paid for it and the best price they could get was kshs.500,000.
11. The appellant said he was not paid his dues after his service was terminated by the respondent.
12. The trial court found that the appellant had defaulted in repayment of the loan and further, that the respondent had a right to vary the interest rate according to the offer letter signed by the appellant.
13. The trial court also found that the appellant's motor vehicle was not sold at a throw away price since it was not registered and no duty had been paid in respect of the said motor vehicle.
14. The trial court dismissed the counterclaim in respect of terminal benefits and stated that the appellant ought to have filed his suit in the Employment and Labour court (ELRC).
15. Further the trial court said that the appellant did not place before court material to help determine the claim or payment of his emoluments.
16. The trial court dismissed the counterclaim and entered judgment in favour of the respondent in the sum of kshs.2,707,969.60 together with interest at 15% and costs of the suit.
17. The appellant has filed this appeal against the said judgment on the following grounds;
  - i. That the learned trial magistrate erred in law and in fact in dismissing the counterclaim and entering judgment against the appellant.
  - ii. That the learned magistrate erred in fact in failing to analyze the evidence adduced on behalf of the appellant and the respective burden of proof for each party.
  - iii. That the learned trial magistrate erred in law and fact and misdirected himself in failing to consider the submissions by the appellant.
  - iv. That the learned trial magistrate erred in law and fact in holding that the respondent was blameless yet there was evidence to the contrary.
18. The parties filed written submissions as follows;The Appellant challenges the subordinate court's decision, which had entered judgment in favour of the Respondent and dismissed the Appellant's counterclaim.
19. The Appellant's case raised several key grievances. First, he argues that the interest rate on the initial loan of Kshs 3.5 million was unjustified.
20. The parties had contractually agreed on an interest rate of 5%, but after the Appellant was dismissed from employment, the Respondent unilaterally increased the rate to 15%, which the Appellant contends was arbitrary, not based on market rates or the central bank rate, and contrary to the parties' agreement.



21. The Appellant relies on case law, including Francis Joseph Kamau v Housing Finance Company of Kenya Limited and Givan Okallo Ingari & Another v Housing Finance Co. (K) Ltd, to support the position that a party cannot unilaterally mutate contractual terms to the detriment of the other party, and that any interest charged must be provided for in the contractual document.
22. Second, the Appellant denies ever applying for or receiving an additional loan of Kshs 500,000, and asserts that the Respondent failed to produce any signed loan application or other evidence demonstrating that such a loan was advanced.
23. The Appellant maintains that by the alleged time of that loan, he was no longer eligible for it.
24. Third, the Appellant contends that his motor vehicle, which was used as security for the Kshs 3.5 million loan, was undervalued.
25. At the time the loan was advanced, the vehicle was valued at Kshs 1.2 million, but the Respondent later claimed it was worth only Kshs 500,000 because duty had not been paid on it.
26. Fourth, the Appellant claims he was never paid his dues when his employment was terminated, and he also seeks compensation for loss of earning capacity, as his termination allegedly barred him from holding a similar office in the future.
27. The Appellant argues that the trial court erred in finding the Respondent's evidence plausible and in dismissing the counterclaim, and he asks the appellate court to set aside the trial court's judgment and allow his counterclaim as prayed.
28. The respondent on its part submitted that the appellant, a former employee had defaulted on two loans from the respondent and the trial court entered judgment in favor of the respondent for a balance of over Ksh. 2.7 million.
29. The respondent first contends that the record of appeal is fatally defective because it omits the lower court's judgment delivered on 15th January 2021 and the extracted decree, which are mandatory under the *Civil Procedure Act* and Order 42 of the Civil Procedure Rules.
30. Citing case law, the respondent urges the court to strike out the appeal on this ground alone.
31. On the merits, the respondent argues that the four grounds of appeal lack substance and that the first ground is too vague and lacks particulars.
32. Further, that the second ground of appeal is unfounded because the respondent discharged its burden of proof while the appellant failed to prove his counterclaim.
33. The respondent said that the third ground, that the magistrate ignored submissions, is misguided because submissions cannot replace evidence, and the magistrate did consider them.
34. They also submitted that the fourth ground is irrelevant since the case was about loan arrears, not apportionment of blame.
35. The respondent further maintains that the appellant contractually agreed to the interest rate and the additional loan, conceded receipt of the funds in cross-examination, and failed to produce any valuation report to support the claim that the vehicle was sold at an undervalue.
36. Therefore, the respondent asks the court to either strike out the appeal for incompetence or dismiss it on the merits with costs, allowing the respondent to enjoy the fruits of its judgment from 2005.
37. The issues for determination in this appeal are as follows;



- i. Whether the appeal is fatally defective and incompetent due to the omission of the certified lower court judgment and decree;
  - ii. Whether the Respondent was legally entitled to unilaterally vary the interest rate from 5% to 15% upon the Appellant's termination;
  - iii. Whether the Respondent proved that a further special facility of Kshs 500,000 was advanced to the Appellant;
  - iv. Whether the motor vehicle used as security was sold at an undervalue; and
  - v. Whether the trial court was correct in dismissing the Appellant's counterclaim for terminal benefits on the grounds of jurisdiction and lack of evidence.
38. The preliminary issue of the competence of the appeal must be addressed first. The trial court's file was availed and this court had access to the trial court's judgment.
39. The Respondent raised a preliminary objection concerning the omission of the certified judgment and decree, this court, guided by the principle of substantive justice over technicalities, finds the appeal competent as the lower court file was made available for review.
40. On the merits of the appeal, the central controversy involves the Respondent's unilateral increase of the interest rate from 5% to 15% following the Appellant's termination.
41. The Respondent argued that the offer letter granted them the discretion to vary rates.
42. However, this court is bound by the landmark decision of the Supreme Court of Kenya in *Stanbic Bank Kenya Limited v Santowels Limited* [2024] KESC 34 (KLR).
43. In *Stanbic Bank v Santowels* case (supra), the Supreme Court definitively interpreted Section 44 of the *Banking Act*, holding that the term "rate of banking" includes interest rates on loans.
44. The Supreme Court ruled that no financial institution may increase its interest rates without the prior written approval of the Cabinet Secretary for Finance.
45. The Supreme Court further clarified that even where a contract grants a bank the discretion to vary interest rates, such discretion is not absolute and remains subject to this statutory regulatory oversight to prevent consumer exploitation.
46. The Supreme Court stated at paragraph 57 of the *Stanbic Bank v Santowels* case (supra) as follows;
- “..loans and facilities advanced by banks fall within the banking business. The word ‘rate’ is defined in the Black’s Law Dictionary 8th Edition (2004) at p. 3956 as, “An amount paid or charged for a good or service <the rate for a business...” It follows therefore, that the rate of banking relates to charges for the banking business/service offered by a bank/ financial institution. As we noted earlier, banking business includes the advancement of loans/facilities”.
47. Applying this to the present case, the Respondent provided no evidence that the jump from 5% to 15% was sanctioned by the Cabinet Secretary.
48. At paragraph 75 of the *Stanbic Bank v Santowels* case(supra) Supreme Court gave the following declaratory order;
49. “In the premise, we issue the following orders:



- a. A declaration do hereby issue that interest rates on loans and facilities advanced by banks/ financial institutions are subject to the regulatory process under Section 44 of the Banking Act. In that, such banks/financial institutions are required to seek the approval of the Cabinet Secretary responsible for matters relating to Finance prior to increasing interest rates on loans and facilities advanced”.
50. Consequently, the unilateral increase is illegal and unenforceable.
51. Regarding the remaining issues, the court finds that the Respondent failed to provide sufficient documentary evidence, such as a signed loan application, to prove the advancement of the additional Kshs 500,000 facility.
52. Furthermore, the sale of the Appellant’s motor vehicle for Kshs 500,000, despite a previous valuation and potential buyer at Kshs 1.2 million, constituted a breach of the mortgagee’s duty to obtain the best price reasonably possible.
53. The Respondent’s justification regarding the lack of duty payment does not absolve it of the requirement to conduct a proper valuation at the time of sale.
54. Finally, while the trial court correctly noted that claims for terminal benefits generally fall under the Employment and Labour Relations Court (ELRC), the dismissal of the counterclaim in its entirety was erroneous given the overlapping financial disputes and considering that the initial suit was filed in the year 2005 before the establishment of the ELRC.
55. The appeal is hereby allowed. The judgment of the trial court is set aside and orders are issued as follows;
- i. That the interest rate on the initial loan is capped at the contractually agreed 5% per annum.
  - ii. That the Respondent’s claim for the additional Kshs 500,000 is dismissed for lack of proof.
  - iii. That the Appellant is awarded Kshs 700,000 being the difference in the undervalued sale of his motor vehicle, to be set off against any verified outstanding loan balance.
56. Each party shall bear their own costs of this appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 4<sup>TH</sup> DAY OF MAY, 2026.**

.....

**A. N. ONGERI**

**JUDGE**

In the presence of:

No appearance for the Applicant

Mr. Wanjohi for the Respondent

