



REPUBLIC OF KENYA



KENYA LAW
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**Milhan Access Capital Limited v Masika (Civil Appeal E010 of 2024)
[2025] KEHC 12065 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 12065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E010 OF 2024**

**F WANGARI, J
MAY 29, 2025**

BETWEEN

MILHAN ACCESS CAPITAL LIMITED APPELLANT

AND

GEORGE SIKUKU MASIKA RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. D.O. Mbeja,
PM delivered on 16/11/2023 in Mombasa CMCC No. E661 of 2022)*

JUDGMENT

1. The Respondent vide an amended plaint dated 18/08/2022 prayed for payment of Kshs. 700,000 being the difference in actual value and sale by auction proceeds of his motor vehicle registration no. KCK 545T. the Respondent averred that he had obtained a loan facility of Kshs. 430,000 from the Appellant and his vehicle was the security.
2. The Respondent admits to have undergone through financial challenges and fell in arrears of repaying the loan. His motor vehicle was attached and he pleaded with the Appellant to allow him pay the outstanding arrears then continue with the payment of the loan by instalments. The Respondent also sought to be issued with the loan statement to enable him make the payments.
3. The Appellant failed to do as requested by the Respondent, and went ahead to sell the vehicle by way of public auction at Kshs. 600,000/=. The Respondent stated that the vehicle was undervalued having been valued at Kshs 1,050,000/= 8 months before the auction.
4. The Appellant in the Statement of Defence dated 14/11/2022 denied the allegations by the Respondent and put him to strict proof thereof. It was stated that the loan disbursed was Kshs. 473,000/=. The Respondent defaulted in making the loan repayment and notice of breach was issued.



5. Due to the failure of the Respondent to repay the loan, the vehicle which was the loan security was attached and sold by way of public auction to the highest bidder at Kshs. 600,000/=.
6. The matter was heard and judgment was entered in favour of the Respondent as prayed in the Plaint. The Appellant having been dissatisfied with the said judgment, filed this appeal seeking to have the lower court judgment set aside and the suit be dismissed with costs, or in the alternative, be heard by another court.

Analysis

7. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (See *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123)
8. I have perused through the evidence both oral and documentary by both parties. Of importance, is that the Appellant never produced the loan account statement. It was pleaded by the Respondent that despite several demands to have the Appellant issue him with the loan statement, the same was declined. It is expected that one of the documents to be relied on by the respondent was the loan statement that would have guided both the lower court and this court how much was due and owing to the Appellant from the Respondent.
9. The Respondent being a financial institution bound by the provisions of the [Central Bank of Kenya Act](#) and the CBK Prudential Guidelines 2013, Guidelines on Consumer Protection. Clause 3.2.8 (a) and (e) of the Guidelines provides as follows;
 - “ a) Where a consumer has a deposit or loan account with an institution, the institution shall provide the consumer with periodic statements of his deposit or loan account showing what transpired since the last statement that affected the account of the consumer, including balance changes, payments, withdrawals, disbursements and costs.
 - (e) Consumers have a duty to ensure that they frequently establish from the institutions their loan repayment status and promptly notify the institutions in case of any discrepancy on the repayment records kept by themselves and those kept by the institutions.”
10. From the above, it was mandatory for the Appellant to issue the Respondent with the loan statement. On the other hand, the Respondent as the consumer had the duty to establish their loan repayment status from the Appellant. The Appellant abdicated the said statutory duty by refusing to provide the Respondent with the loan statement.
11. It raises suspicions as to whether the Appellant could be concealing certain transactions in respect to the loan account. It is not uncommon for financial institutions to enrich themselves unjustly through inflated interest rates and penalties to the detriment of their customers. The Respondent’s right to access information under Art. 35 of [the Constitution](#) was curtailed by the Appellant.
12. I have perused through the reasoning of the trial magistrate in granting the relief prayed for by the Respondent. The main issue was that the vehicle was sold way below the market price. The value of the vehicle was said to be Kshs. 1,050,000 at the time of loan disbursement. The Respondent stated that the value could not have reduced to Kshs. 700,000/= as per the value during auction.



13. The Respondent further stated that he had a ready buyer for Kshs. 1,350,000/= but he was frustrated by the Appellant who kept him in the dark. Even though the vehicle had to be sold by way of auction, the Appellant had a duty to ensure that they get the best value for the property under auction. There is no evidence that the Respondent was served with the valuation report prior to the auction. If that was done, the Respondent would have had a leeway to apply for a fresh valuation report under Rule 10 of the Auctioneer Rules, 1997.
14. I have perused through the valuation report at page 47 of the Record of Appeal, and which was the basis of the auction. The one paged report is undated, it has no name of the author and is not signed. It does not pass the test of a proper valuation report hence lacking both probative and evidential value.
15. I therefore agree with the findings of the trial court that the Respondent's vehicle was sold at a throw away price, thus the Appellant was indebted to the Respondent in the sums claimed.
16. In *Mbogo and Another v Shah* [1968] EA 93 where the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
17. Therefore, I do not find merit in the Appeal.

Determination

18. The upshot of the foregoing is that I find no merit in this appeal and make the following orders: -
 - a. The Appeal has got no merits and is hereby dismissed.
 - b. The judgment of the lower court upheld.
 - c. Costs to the Respondent.It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF MAY, 2025.

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F. WANGARI

JUDGE.

In the presence of:

Morang'a Advocate h/b for Ondabu Advocate for Appellant

Wanyonyi Advocate for the Respondent

M/S Norah, Court Assistant

