Molyn Credit Limited v Njeru & another (Civil Appeal E556 of 2022) [2025] KEHC 10937 (KLR) (Civ) (24 June 2025) (Judgment)

Neutral citation: [2025] KEHC 10937 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E556 OF 2022

JM OMIDO, J

JUNE 24, 2025

BETWEEN

MOLYN CREDIT LIMITED .... APPELLANT

AND

CHRISTINE MURUGI NJERU .... 1ST RESPONDENT

SOFIA RUKIA MOHAMED .... 2ND RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. D.W. Mburu, Senior Principal Magistrate delivered on 24th June, 2022 in Milimani CMCC No. 5185 of 2018 Molyn Credit Limited v Christine Murugi Njeru & another)

JUDGMENT

1. This appeal emanates from the judgement and decree of Hon. D.W. Mburu, Senior Principal Magistrate, delivered on 24th June, 2022 in Milimani CMCC No. 5185 of 2018 Molyn Credit Limited v Christine Murugi Njeru & another.
2. The suit before the lower court was one based on contract whereby the Appellant (the Plaintiff before the trial court), vide a plaint dated 31st May, 2018, pleaded and alleged that the Respondents (the Defendants before the trial court) jointly and severally owed the Appellant Ksh.513,372/- being the outstanding loan balance amount as at 4th December, 2017 arising from a loan agreement made on the 29th March, 2012 between the Appellant and the 1st Respondent, in which, vide a guarantee dated 29th August, 2012 the 2nd Respondent agreed to stand as guarantor for the 1st Respondent.
3. The reliefs that the Appellant sought before the trial court against the Respondents jointly and severally, were as follows:

a. Ksh.513,372/- being the total outstanding loan balance as at 4th December, 2017 together with contractual interest at 5.75% per month on this outstanding loan balance as from 4th December, 2017 plus a further contractual penalty of 5% per month on this outstanding amount until payment in full.

b. Costs of this suit and any other reliefs the Honourable Court may deem fit to grant.

4. The Respondents resisted wholly the Appellant's claim by filing a joint statement of defence dated 14th August, 2018 and sought that the Appellant's suit before the lower court be dismissed with costs.

5. In the judgement delivered on 24th June, 2022, the learned trial Magistrate reached a finding that the Appellant's claim lacked merit and proceeded to dismiss the suit with costs to the Respondents.

6. Aggrieved by the judgement and decree of the trial court, the Appellant has now presented the following grounds vide the Memorandum of Appeal dated 22nd July, 2022, upon which it seeks to upset the judgement and decree of the lower court:

a. The learned Magistrate erred in law and in fact in failing to properly evaluate the evidence presented thus reaching at a wrong decision and findings.

b. The learned Magistrate erred in law and in fact in either failing to appreciate or in disregarding the paramount and cogent evidence presented by the Appellant relating to the breach of contract by the 1st Respondent by way of defaulting in repaying the admitted loan in question.

c. The learned Magistrate erred in law and in fact in failing to appreciate that the contractual sum of Ksh.238,932/- was to be paid within certain timelines and failure to pay as such as per the contract duly attracted interest and penalties and thus failing to find that the claim by the Appellant was valid and lawful.

d. The learned Magistrate erred in law and in fact in considering extraneous matters and irrelevant case law thus reaching at a wrong decision.

e. The learned Magistrate erred in law and in fact in awarding costs to the Respondents in the circumstances of this case.

7. The Appellant proposes that the appeal be allowed with costs to the Appellant and that the judgement of the trial court be set aside and that in its place judgement be entered in favour of the Appellant against the Respondent as was prayed in the plaint.

8. This being the first appellate court, I am required under Section 78 of the *Civil Procedure Act* and as was espoused in the case of Sielle v Associated Motor Boat Co. Ltd [1969] E.A. 123 to reassess, reanalyze and reevaluate the evidence adduced in the Magistrate's Court and draw my conclusions while bearing in mind that I did not see or hear the witnesses when they testified.

9. In Sielle, Sir Clement De Lestang observed that:

> "This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.
>
> However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular

circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."

10. The Appellant's case before the trial court as was presented by its witness, Moses Anyagi, who described himself as the Appellant's finance manager, was that the Appellant and the 1st Respondent entered into and executed an agreement dated 29th March, 2012 whereby the Appellant agreed to lend the 1st Respondent Ksh.100,000/-, and that the 1st Respondent agreed to repay the said amount by equal monthly instalments of Ksh.6,637/-, effective 30th April, 2012, over a period of 36 months, that would eventually make a total repaid amount of Ksh.238,932/- inclusive of interest at the rate of 5.75%, on a reducing balance basis.

11. The Appellant's case was further that the agreement had a clause that any defaulted amount would attract a penalty of Ksh.2,000/- or 5% of the defaulted amount of the outstanding loan balance, whichever was higher.

12. The Appellant evidence was further that the 2nd Respondent executed a written guarantee dated 29th March, 2012 whereby she committed to stand guarantor for the 1st Respondent for the loan, to the extent of the 1st Respondent's liability in the terms of the loan agreement.

13. Upon being cross examined, the Appellant's witness was neither a bank that was authorized to carry on banking business nor a microfinance that had the authority to carry on microfinance business. The witness further confirmed on being questioned that the 1st Respondent paid 28 instalments out of the agreed 36.

14. On her part, the 1st Respondent admitted that she took a loan from the Appellant and that she executed the loan agreement dated 29th March, 2012.She however stated that at the time that she executed the agreement, the interest and penalty clause at section 10 of the loan agreement were blank and that it was therefore not within her knowledge that interest and penalties would be levied.

15. The 1st Respondent admitted that she paid 28 instalments instead of 36. She added that she paid Ksh.96,166/- to the Appellant when she received a demand in the year 2017 that indicated that she was in arrears. Thus, the 1st Respondent told the trial court that she paid a total of Ksh.282,002/-, an amount that was way higher than that in the agreement of Ksh.238,932/-. She told the court that she asked her employer to stop remitting more money to the Appellant as she took the position that she was she had in any event made an overpayment.

16. The 2nd Respondent did not testify but it is clear from the from the submissions that were filed before the trial court that she wholly relied on the evidence of the 1st Respondent.

17. Upon analyzing the evidence that was before him, the learned trial Magistrate rendered himself as follows in his judgement:

    10. Respective Counsel on record for the parties filed written submissions which I have carefully considered. The Plaintiff's Advocate urged the court to find that the Plaintiff had proved his case to the required standard and enter judgement in its favour as prayed in the plaint. The Defendants' Counsel submitted that the 1st Defendant had already repaid an amount in excess of the agreed amount and that the Plaintiff's claim for a usurious amount of Ksh.513,372/= which is more than five times of the amount advanced flies in the face of the in duplum rule.

11. In the case of Molyn Credit Limited v Adam Katana Shahenza [2018] eKLR, the court stated as follows:

17. In the case at hand, it is not disputed that the Respondent paid a total of Ksh.98,964/= inclusive of interest and penalties. This payment is over two times the total loan amount of Ksh.43,536/=. The Ksh.434,309/= demanded by the Appellant is about ten times the loan amount. I am in agreement with the finding by the trial magistrate that the said demand was excessive, oppressive and unconscionable. The Respondent should be relieved of the burden of making any further repayments. (See for example Anjeline Akinyi Otieno v Malaba Malakisi Farmers Co-op Union Ltd [1988] eKLR.)

12. Similarly, in our case, the court is satisfied that the claim by the Plaintiff which is for a sum about five times of the loan amount is excessive, oppressive and unconscionable. Further, the 1st Defendant has already repaid a total of Ksh.282,002/- which is way above the contractual Ksh.238,932/-.

13. In the result, I do not find any merit in the Plaintiff's suit and the same is hereby dismissed with costs to the Defendants. Orders accordingly."

18. Back to this appeal, this court directed that the same proceeds by way of written submissions and gave the parties herein timelines for filing their submissions. Both parties filed their respective submissions.

19. I have considered the grounds of appeal as set out in the Memorandum of Appeal, the submissions by the parties herein and the record of the lower court. The single issue for determination, as discernible from the material before me is whether the learned trial Magistrate reached the proper finding that the Respondents were not indebted to the Appellant pursuant to the repayment of Ksh.282,002/- by the 1st Respondent to the Appellant and pursuant to the operation and/or application of the in duplum rule.

20. While admitting that she was advanced a loan of Ksh.100,000/- by the Appellant, the 1st Respondent's evidence was that she paid to the Appellant 28 instalments of Ksh.6,637/-, which made a total amount of Ksh.185,836/-. The Appellant admitted that it received the 28 instalments. The loan document provided for payment of 36 instalments which would have made the total amount payable (as per the agreement) to be Ksh.238,932/-, an amount that is more than double the loan amount of Ksh.100,000/-.

21. The 1st Respondent's evidence was that she remitted to the Appellant a further Ksh.96,166/-, which amount was admitted as having been received by the Appellant's witness in paragraph 13 of his witness statement, contents whereof were adopted as his evidence.

22. In total thus, as correctly noted by the learned trial Magistrate, the total amount that the 1st Respondent remitted to the Appellant towards repayment of the loan was Ksh.282,002/-, which was way above the amount of Ksh.238,932/- that would have been payable over the 36 months that the agreement provided for. That said, it is important to recall that the amount that was loaned to the 1st Respondent by the Appellant was Ksh.100,000/-.

23. That then brings me to address the applicability of the in duplum rule in this case.

24. The in duplum rule limits the amount a lender can recover from a borrower when a loan becomes non-performing. It essentially caps the recoverable amount to the principal owed plus the interest accrued, which interest must not exceed the principal amount.

25. The rule stipulates that once the accumulated interest on a loan equals the principal amount owed, no further interest may accrue. Reasonable recovery expenses may however apply. This is a public interest measure that is intended to prevent excessive interest accumulation and protect borrowers from exploitation by lenders.

26. While the rule, enshrined under Section 44A of the *Banking Act*, Cap 488 Laws of Kenya, was initially confined to institutions regulated under the said statute, its application extends to other lenders.

27. In the case of Mugure & 2 others v Higher Education Loans Board (Petition E002 of 2021) [2022] KEHC 11951 (KLR) (Civ) (19 August 2022) (Judgment) this court (Mabeya J.) held that the rule applies to all lenders, including those not regulated under the *Banking Act*. The court emphasized that the rule serves a public interest by protecting borrowers from excessive interests and penalties.

28. The present case, in which more than double the loaned amount had already been repaid by the 1st Respondent to the Appellant, is one in which the in duplum rule had to be resolutely applied, to protect the Respondents from the Appellant entity that was despite the overpayment, still demanding from the Respondents a further sum that would have been about five times of the initial loaned amount.

29. The interest and penalties in the agreement were in the premises not only excessive, oppressive and unconscionable but also exploitative and resulted in demands of an amount that clearly violated the in duplum rule.

30. The learned trial Magistrate reached the correct findings in his well-reasoned judgement. He cannot in the premises be faulted for the stand that he took and the findings that he reached on the matter.

31. Being of the foregoing persuasion, I reach the result that the appeal against the judgement of the lower court is without merit. I proceed to dismiss it.

32. On costs of the appeal, Section 27 of the *Civil Procedure Act* dictates that costs ought to follow the event. To that end then, the Appellant will bear the Respondents' costs of the appeal, which I will proceed to assess at Ksh.70,000/-.

DELIVERED (virtually), DATED & SIGNED this 24th day of June, 2025.

JOE M. OMIDO

JUDGE

For Appellant: Mr. Njagi.

For Respondent: Ms. Nkirote.

Court Assistants: Mr. Ngoge & Mr. Juma.