



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wise Generations Limited v Moturi (Commercial Appeal E057 of 2022)  
[2025] KEHC 12050 (KLR) (Commercial and Tax) (14 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12050 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E057 OF 2022**

**PM MULWA, J**

**AUGUST 14, 2025**

**BETWEEN**

**WISE GENERATIONS LIMITED ..... APPELLANT**

**AND**

**CALEB MOTURI ..... RESPONDENT**

*(Appeal arising from the decision of Hon. J.W. Munene in Milimani  
Commercial Courts SCCOM No. E079 of 2022 delivered on 25th May 202)*

**JUDGMENT**

1. The Appellant has filed the memorandum of appeal dated 17<sup>th</sup> March 2022 seeking the following orders:
  - a. That the appeal be allowed
  - b. The ruling of the learned trial magistrate dated 25<sup>th</sup> May 2022 be set aside and the suit be remitted back to the trial court for hearing before another magistrate, and
  - c. That the costs of the appeal be borne by the Respondent.
2. The appeal is premised on the following grounds:
  - i. That the Honourable trial court erred in law and fact in that it misdirected and misapplied itself by proceeding to dismiss the Appellant's suit.
  - ii. That the Honourable trial court erred in law and fact and misdirected itself by finding that the Appellant had not proven its case for recovery.



- iii. The Honourable trial court erred in law and fact in deliberately ignoring the loan application form and electronic funds transfer advice, produced as evidence and dismissing the Appellant's case on failure to prove the amount borrowed and thereafter disbursed.
  - iv. The Honourable court erred in law and fact and misdirected itself, by failing to interrogate the Appellant's evidence on record, noting that the Respondent did not deny the claim nor call any witness or adduce evidence.
  - v. The Honourable trial court erred in law and fact by introducing new evidence from the bench, it relied on a non-existent cheque advice dated 18<sup>th</sup> March 2021 for Kshs. 550,000/-, allegedly drawn by the Respondent to the Claimant.
  - vi. The Honourable trial court erred in law and fact by misconstruing the evidence before it in arriving at its incoherent judgment.
  - vii. The Honourable trial court misapprehended the evidence and demonstrably acted on wrong principles in reaching the findings.
3. In its statement of claim dated 5<sup>th</sup> December 2021, the Appellant averred that on 11<sup>th</sup> February 2021, the Respondent borrowed a loan facility of Kshs. 500,000/- repayable within 30 days with interest at Kshs. 1,667/- per day. The Respondent allegedly defaulted, resulting in arrears. The Appellant sought judgment for the sum of Kshs. 983,835/- comprised of the principal amount plus interest Kshs. 889,167/-, administrative costs Kshs. 5300/- and debt collection fees Kshs. 88,917/-.
  4. The Respondent, though served, did not enter an appearance or participate in the trial, and an interlocutory judgment was entered on 7<sup>th</sup> April 2022. Upon formal proof, the trial court delivered judgment on 25<sup>th</sup> May 2022, dismissing the claim for want of proof and set aside the interlocutory judgment.
  5. The appeal was canvassed by way of written submissions. Only the Appellant filed submissions. It reiterated that it had produced a loan application form, remittance advice, and account statements proving the contractual relationship, citing National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR and Fina Bank Ltd v Spares & Industries Ltd to argue that courts cannot rewrite voluntary contracts. The Appellant also maintained that special damages of Kshs. 88,917/- incurred for debt recovery were specifically pleaded and proved by receipt.

### **Analysis and determination**

6. This court has considered the memorandum of appeal, the record of appeal as well as the submissions. The only issue for determination is whether the appeal is merited.
7. Being an appeal from the Small Claims Court, the provisions of Section 38 of the [Small Claims Court Act](#) apply, thus:

“ 38.

- (1) A person aggrieved by the decision or an order of the court may appeal against that decision or order to the High Court on matters of law.
- (2) An appeal from any decision or order referred to in subsection (1) shall be final.”



8. It therefore follows that appeals originating from the Small Claims Court to this court can only be on points of law. Accordingly, the question before this court is whether the trial court committed an error of law in dismissing the claim.
9. From the record, the trial court found that no evidence had been adduced to prove remittance of the loan sum to the Respondent. The court observed that while the loan application form indicated that the money was to be transmitted via bank transfer, no proof of such transfer was produced. I find no fault in the learned trial magistrate's appreciation of the burden of proof, for it is settled that under Sections 107–109 of the *Evidence Act*, the party who alleges must prove. In a money claim, the claimant must adduce credible evidence of the existence of the debt as well as proof of disbursement.
10. It is trite that a party who wishes the court to pronounce judgment in its favour or to declare any legal right dependent on the existence of particular facts has a legal duty to tender the best available evidence to prove those facts.
11. In the present case, the Appellant produced, inter alia, a loan application form, account statements, and a receipt for debt recovery charges. The account statements, on the face of it, were generated by the Appellant from its own records. While such documents may be admissible and form part of a claimant's evidence, they are not, without more, conclusive proof of indebtedness. They are essentially self-serving records of what the claimant asserts is owed, prepared for internal purposes.
12. The law is clear that self-prepared statements must be corroborated by independent evidence such as bank transfer slips issued by the remitting bank, signed acknowledgments of receipt, or other third-party confirmations. Without such corroboration, internal statements cannot, on their own, discharge the legal burden of proving disbursement.
13. That said, I am mindful of the principle that uncontroverted evidence, if credible, should be accepted. In *Karuru Munyororo v Joseph Ndumia Murage & Another Nyeri HCCC No. 95 of 1988*, Makhandia, J (as he then was) held:

“The plaintiff proved on a balance of probability that she was entitled to the orders sought in the plaint and in the absence of the defendants and or their counsel to cross-examine her on the evidence, the plaintiff's evidence remained unchallenged and uncontroverted. It was thus credible and it is the kind of evidence that a court of law should be able to act upon.”
14. In this case, the Respondent neither entered an appearance nor tendered any evidence in rebuttal. The Appellant's evidence therefore, remained unchallenged. The trial court was duty-bound to assess whether such evidence was credible and sufficient to meet the standard of proof.
15. I am of the view, that while the statements on record may be consistent with the Appellant's claim, they cannot, standing alone, discharge the legal burden of proof as to the actual remittance of the loan sum to the Respondent.
16. However, in its reasoning, the trial court made reference to a cheque advice for Kshs. 550,000/- allegedly drawn by the Respondent. Upon perusal of the record, I find that no such document was pleaded, produced, or admitted in evidence. By introducing and relying upon a matter extraneous to the record, the trial court acted on material not before it. This amounts to a misdirection in law, as a court is bound to determine a case strictly on the basis of the evidence on record.
17. Furthermore, the trial magistrate failed to consider that in the absence of any rebuttal from the Respondent, the Appellant's documentary evidence, ought to have been accepted as proof on a balance of probabilities.



18. On the claim for special damages, the Appellant specifically pleaded the sum of Kshs. 88,917/- for debt recovery fees and produced a receipt in support thereof. This satisfies the principle that special damages must be specifically pleaded and strictly proved.
19. In light of the foregoing, I find that the trial court's decision was based on a material error of law.
20. The upshot is that the appeal is merited. The judgment of the Small Claims Court delivered on 25<sup>th</sup> May 2022 is hereby set aside.
21. The matter is remitted back to the Small Claims Court for hearing and determination before an Adjudicator/Magistrate other than the one who delivered the impugned judgment.
22. The costs of this appeal shall be borne by the Respondent.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF AUGUST 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Ms. Muthie for Appellant

N/A for Respondent

Court Assistant: Godfrey

