



REPUBLIC OF KENYA



**Midas East Africa Limited v Mukiri (Civil Appeal E012 of 2022)
[2025] KEHC 11989 (KLR) (Civ) (12 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11989 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E012 OF 2022**

**AM MUTETI, J
AUGUST 12, 2025**

BETWEEN

MIDAS EAST AFRICA LIMITED APPELLANT

AND

SIMON NGICHIRI MUKIRI RESPONDENT

(Being an Appeal against the entire Judgement and Decree of the Chief Magistrate Court made on 18th January, 2022 by Hon. H.M Nyaberi (C.M) in CMCC No. 6949 of 2012)

JUDGMENT

Introduction

1. The appellant dissatisfied with the judgement of the learned Honorable magistrate delivered on the 18th January 2022 in Milimani CMCC No. 6949 of 2012 has appealed to this court against the entire judgement and decree on the following grounds ;-
 - i. The Learned Magistrate erred in law and in fact by delivering a Judgement which was inconsistent with the law, pleadings and framed issues for consideration reaching an erroneous conclusion in law and occasioning a serious miscarriage of justice to the Appellant.
 - ii. The Learned Magistrate erred in law and in fact and misdirected himself in his reasoning to the effect that Sumac Credit Limited and or Sumac Holding Limited was an agent or assignee of the Defendant despite the fact that the three Companies were separate legal entities distinct from their directors and shareholders thereby occasioning a serious miscarriage of justice to the Appellant.



- iii. That the Learned Magistrate erred in law and in fact and totally misdirected himself in his matters thereby reaching an erroneous conclusion in law and causing a serious miscarriage of justice to the Appellant.
- iv. The Learned Magistrate erred in law and in fact and misdirected himself when he determined the issue of whether or not Sumac Credit Limited and/or Sumac Holdings Limited were assignees and/or agents which issue had not been pleaded by the Respondent thereby occasioning a serious miscarriage of justice on the part of the Appellant.
- v. The Learned Magistrate's appreciation of the law of agency and Company law was fatally flawed and contrary to the facts and the law placed before him.
- vi. The Learned Magistrate erred in law and in fact and misdirected himself when he held and found that the Respondent had proved his case on a balance of probabilities against the Appellant that they owe him Kshs. 1,300,000/- despite the fact that there was no relationship between the Appellant and the Respondent thereby occasioning a serious miscarriage of justice on the part of the Appellant.
- vii. The Learned Magistrate erred in law and in fact and misdirected himself by failing to take cognizance of the fact that the Respondent upon receipt of the sum of Kenya Shillings One Million and Three Hundred Thousand from Sumac Credit Limited, he willingly and voluntarily returned the same to Sumac Credit Limited which funds were used to offset a Loan he had guaranteed thereby occasioning a serious miscarriage of justice on the part Appellant.
- viii. The entire Judgement and Decree of the learned Magistrate made on 18th January, 2022 and the entire reasoning was fatally flawed and/or erroneous in law.

Factual Background

2. The respondent in this appeal filed a suit Number 6949 of 2012 before the Milimani commercial courts claiming the sum of Kshs. 1,300,000/= which amount the he claimed to have paid to the Appellant back in October, 2011.
3. The amount was for purposes of the purchase of land title number Galu/Kinondo/550 by the Appellant Company.
4. The respondent further alleged that a disagreement arose regarding the purchase of the land and the appellants returned cheques to him for the sum of ksh 1,300,000.
5. The respondent returned the cheques to the appellant for reason that he was still interested in the land.
6. According to the respondent the appellant refused to refund the money and introduced extraneous matters prompting the filing of the suit for recovery.
7. The appellant in his amended statement of defense stated “ the defendant further avers that the plaintiff was duly issued and or refunded his deposits but voluntarily remitted and or returned the same to the defendant.”
8. The defense however at the hearing sought to distance itself from the respondent's claim.

Evidence Analysis And The Law

9. The duty of this court as a first appellate court is to review the evidence and draw independent conclusions on the same appreciating that unlike the trial court this court did not have the advantage of



hearing the witnesses. In the case of *Selle & Another v Associated Motor Boat Co. Ltd. & Others* (1968) EA at paragraph 123 the honourable court pronounced itself on the duty of a first appellate court in the following terms:

“I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal 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. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has 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 (*Abdul Hammed Saif v Ali Mohamed Sholan* (1955), 22 E.A.C.A. 270).”

10. The matter came for hearing before the lower court on the 17th July 2018 and the respondent testified as the only witness. He produced his witness statement and the documents in support of his claim.
11. The statement of the respondent dated 2nd November 2012 basically reiterated the contents of the plaint that he paid money to the appellant company for purposes of investment and that the deal collapsed and he did not get the refund nor his share of land.
12. The respondent also produced a shareholders agreement which was undated and unsigned. The document is thus of no evidential value for it is a mere sheet of paper.
13. However, the respondent produced a letter dated the 18th January 2012 bearing the appellants letterhead which communicated that his sum of Ksh 1.3 million was to be refunded to him.
14. It is clear to this court that there was indeed some exchange of funds between the appellant company and the respondent.
15. The funds were meant for the purchase of land title GALU/ KINONDO/550 the appellant company having expelled the respondent from the company was duty bound to refund his funds.
16. The appellants in their amended statement of defence dated 24th August 2020 stated : “the defendant further averse that the plaintiff was duly issued and or refunded his deposits but voluntarily remitted and or returned the same to the defendant.”
17. In this court's view, that statement by the appellant is an admission that the appellant owed the respondent the sum claimed.
18. This court has considered submissions filed by both parties however, the attempt by the appellant to claim that the sum was appropriated to settle an outstanding loan of Kshs. 1208350.00 is a matter that this court finds untenable in the face of the agreement of the parties.
19. The sum of Kshs. 1,300,000 was paid to the appellants for a specific purpose. The appellants could not therefore appropriate the same for purposes of settling a loan with the express consent of the respondent. It is an uncontested fact from the pleadings that the sum of Kshs. 1,300,000 was meant for purposes of purchase of land. It follows therefore upon the collapse of that arrangement the respondent was entitled to recover his funds from the appellants.



20. The appellant cannot therefore avoid liability for the same by attempting to hide behind the claim of an outstanding loan which was not the subject of litigation before the learned honorable magistrate. The appellant would have succeeded on that score by way of advancing a case of a counter claim and set off before the trial magistrate.
21. The appellant has further attempted to avoid liability by claiming that funds claimed by the respondent were paid to Sumac Credit limited therefore there was no privity of contract between the appellant and the respondent.
22. It is completely strange that the appellant sought to avoid liability in face of a defense of admission. The relationship between Sumac Credit limited and the appellant was an internal matter and the court would not veer into the internal affairs of the company as per the Turquands rule.
23. It has been held that a court cannot interfere with the internal affairs of a company except for limited circumstances. In *Martin Lemaiyan Mokoosio & another v Resbma* Petition No. 18 (E020) of 2022 Page 32 of 39

Praful Chandra Vadera & 3 others [2021] eKLR, Odunga J (as he then was) held as follows:

" 13. Whereas disputes regarding internal affairs of a company ought to be resolved in accordance with the constitution of the company, where it was alleged that the company was not acting in accordance with its company and therefore the court was entitled to intervene."

24. The circumstances under which money was being refunded using the letter head of Midas E.A limited is a matter that would only be explained by the appellant. That cannot have been possible if the appellant had no relationship with Sumac Credit ltd. The agency relationship between Sumac Credit Ltd and the appellant is clearly discernible from the evidence of the respondent and as such the appellant cannot avoid liability for the sum.
25. The Court of Appeal in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] eKLR, the court of Appeal was of the considered position that: -

"In our view, is a serious misdirection on the part of the learned judge. A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge. As was stated by Shah JA in the case of *Fina Bank Limited v Spares & Industries Limited* (Civil Appeal No 51 of 2000) (unreported): "It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain"

26. The appellant knew the terms of their engagement thus accepted to acknowledge the debt by getting involved in the botched refund process. The court cannot avoid taking cognizance of that fact which clearly is evidence of their agency relationship with Sumac ltd. The funds of the respondent received and held by Sumac Ltd acting in concert with the appellant.

Determination

27. The appellant cannot be released from liability for the sum of Ksh 1,300,000 on account of settling an outstanding loan. On the one hand the appellant claimed that he had no relationship with the respondent and on the other he sought to justify the failure to refund by claiming that it was intended



to settle an outstanding loan. The two positions cannot hold. The appellant is simply avoiding liability to settle the sum.

28. The appellant having failed to sufficiently make a case for a set off or counterclaim, he must refund the respondents money.
29. In view of the above this court finds that the appeal has no merit and the same is hereby dismissed with costs.
30. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF AUGUST 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Ms Ngure the Appellant

Wamae h/b Githongori for Respondent

