



**Diffu alias Junior v Omufwoko (Civil Appeal E176 of 2023)
[2024] KEHC 4830 (KLR) (Civ) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4830 (KLR)

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

CIVIL

CIVIL APPEAL E176 OF 2023

DAS MAJANJA, J

APRIL 24, 2024

BETWEEN

ANTHONY MASIBO DIFFU ALIAS JUNIOR APPELLANT

AND

MICHAEL ODEMBA OMUFWOKO RESPONDENT

*(eing an appeal from the Judgment and Decree of Hon. J.P. Omollo
SRM/Adjudicator dated 24th February 2023 at the Nairobi Small
Claims Court at Milimani in Nairobi SCCC No. E252 of 2021)*

JUDGMENT

1. The Respondent was awarded Kshs. 550,000.00 by the Small Claims Court thus precipitating this appeal by the Appellant. In his statement of claim dated 12.10.2021, the Respondent made a liquidated demand of Kshs. 570,000.00 on account of a loan advanced to the Appellant. The Appellant denied the loan and averred that the money advanced to him was rental fees for hire of a motor vehicle.
2. In resolving the matter, the Adjudicator found that the Appellant owed Kshs. 550,000.00 to the Respondent which he had failed to pay. The court observed that even though there was no loan agreement between the parties, the Whatsapp conversation between the parties, especially that of 08.11.2018 pointed out that the Kshs. 550,000.00 advanced to the Respondent was a loan and the motor vehicle KAC ****W was used as collateral.
3. In his memorandum of appeal dated 02.03.2023, the Appellant's appeal mainly challenges the subordinate court's appreciation of the evidence and factual dispositive findings. This court's jurisdiction in dealing with appeals from the Small Claims Court is limited by section 38(1) of the *Small Claims Court Act*, 2016 ("SCCA") which provides that '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.'



A court limited to matters of law is not permitted to substitute the Subordinate Court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them (John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others [2018] eKLR).

4. In light of its jurisdiction, what this court is called upon to determine is whether the trial court reached a determination supported by law and evidence. The flow of the Whatsapp conversation between the Appellant is a consistent request for repayment of money by the Respondent and a consistent promise by the Appellant to repay. The following excerpts of the Whatsapp communications between the parties support this finding.

On 2018/9/4 at 01:29pm, the Appellant expressly stated that he was also looking for money for the range rover so that he could take it back before the lapse of two years which they had agreed.

On 2018/11/8 at 06:40 the Appellant stated:

'The car is not for sale and its still not for sale. Our agreement lapses on 30th of March 2019 by which time I should have given you the money you gave me 550k and I take back the car....'

5. I have tried to glean some logic from the Appellant's argument that the money advanced to him was rental fees for hire of the motor vehicle but I am unable to find any. Why would the Appellant plead for more time to repay the money to the Respondent if the same was rental income for lease of the vehicle?
6. Whether there was a written loan agreement or not, there was acknowledgment on the part of the Appellant stating specific figures to be repaid. Having acknowledged that he owed money to the Respondent, the Appellant cannot escape liability simply because there was no written loan agreement. There was performance on the part of the parties in that money was advanced to the Appellant in exchange of motor vehicle KAC ****W as security.
7. Regarding the counter claim, parties took directions before the court on 11.07.2022 whereby the Appellant was directed to pursue the counter claim in a court of competent jurisdiction.
8. The Subordinate Court came to a conclusion supported by the evidence. The appeal lacks merit. It is dismissed with costs assessed at Kshs. 20,000.00.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL 2024.

D. S. MAJANJA

JUDGE

Ligami Onani & Associates Advocates for the Appellant.

Okwach & Company Advocates for the Respondent

