



**Achoki v Standard Chartered Bank (K) Limited (Civil Appeal  
E322 of 2019) [2024] KEHC 6119 (KLR) (Civ) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6119 (KLR)

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

**CIVIL  
CIVIL APPEAL E322 OF 2019**

**HI ONG'UDI, J**

**MAY 30, 2024**

**BETWEEN**

**ZADARACK OYARO ACHOKI ..... APPELLANT**

**AND**

**STANDARD CHARTERED BANK (K) LIMITED ..... RESPONDENT**

*(Being an appeal against the Judgment in Milimani CMCC No. 6440 of 2014  
delivered by Hon. A. N. Makau - Principal Magistrate on 17th May, 2019)*

**JUDGMENT**

1. The Standard Chartered Bank (K) Ltd the respondent was the plaintiff in the case before the lower court. Its claim was for repayment of the sum of Ksh 1,587,110/50 in respect of banking facilities it extended to the respondent. Interest charged varied but was at 19.0% p.a as at the date of filing of the plaint dated 1<sup>st</sup> October, 2014 on 28<sup>th</sup> October, 2014.
2. The appellant denied the claim by filing an amended statement of defence and counter claim dated 24<sup>th</sup> December, 2016. In it he blamed the respondent for his failure to clear the payment of the borrowed sums. The respondent filed a defence to the counter claim. After a full hearing the learned trial Magistrate rendered a Judgment in favour of the respondent.
3. Being aggrieved by the said Judgment the respondent filed this Appeal on the following grounds:
  - i. The learned trial magistrate erred both in law and fact in awarding the Respondent a sum of Ksh 1,587,110/90 and an interest at an illegal rate of 15% and costs of the suit.
  - ii. The learned trial magistrate erred both in law and fact in failing to find the respondent wholly contributed to the loan facility granted to the appellant falling into arrears owing to the



respondent's interference with his employment with Kenya Railways Corporation leading to his termination thereof.

- iii. The learned trial magistrate erred both in law and fact in failing to find that the respondent resorted to using unlawful means of recovery of amounts allegedly owned to it by the Appellant, blackmailing and embarrassing him and smearing his name in the eyes of his employer.
  - iv. The learned trial magistrate erred both in law and fact in failing to find that the respondent breached banker-customer confidentiality relationship between the appellant as customer and the respondent as banker in disclosing his banking data and particulars to a third party without any lawful justification whatsoever. The learned magistrate erred in law in failing to award the appellant damages for breach of contract as the respondent had acted recklessly and maliciously considering that it flatly rejected the appellant's plea for remedying of the situation by retracting its publication.
  - v. The learned trial magistrate erred both in law and fact in failing to find that the respondent's publication of the appellant's data and imputing lack of integrity against him tarnished his image in the eyes of the employer, seniors and colleagues and causing them as right-thinking members of the public to shun him, change their perception of him, perceive him as dishonest and ultimately dismiss him from his employment.
4. A brief summary of the case in the lower court as presented by PW1 (Boniface Machuki) the Manager Recovery Unit, is that the appellant applied for a loan (PEXB1) from it. As at 18/3/2014 an amount of Ksh 1,587,110/50 was owing as per the statement of accounts (PEXB2). The agreed rate of interest was 15% and the payment was to be through the employer. In 2012 the appellant left the employment and defaulted in repayment. A demand letter dated 19/03/2014 (PEXB 4) was served on him.
  5. In reference to the counterclaim, PW1 denied any malice when the bank did the letter dated 14/12/2014, he said the letter had been written to the Human Resource, Manager Kenya Railways when the appellant's remittances were not forthcoming and they learnt he had even changed his salary account. He denied having caused the appellant's termination.
  6. In cross examination he said the statement (PEXB 2) shows all the payments made. The letter was written after a verbal communication with the appellant. He denied causing the appellant's termination of work at KCC. He stated that the respondent had the freedom to increase interest rates.
  7. The appellant testified as DW1, and referred to conversations with the respondents on his failure to make remittances to the bank. Despite his pleas Kenya Railways Corporation remained adamant in relieving him of his duties. He produced his letter of appointment to them, letter from Standard Chartered Bank, letter of termination by Kenya Railways Corporation dated 26/6/2012 and his letter dated 28/6/2012 to Standard Chartered Bank (EXBD1-4). The appellant said the respondent did not indicate how the interest was calculated, and the change, of interest from 15% - 19%. He blamed the respondent for his loss of job at Kenya Railways Corporation.
  8. In cross examination he denied any indebtedness to the respondent. He however admitted having defaulted in payments to the bank. He claimed that the respondent contributed to the status of the loan arrears. He admitted having changed his salary account, but did not close it.
  9. The Appeal was canvassed by way of written submissions



## The Appellant's submissions

10. These were filed by Nyamweya Mamboleo and are dated 24<sup>th</sup> November 2023. Counsel submitted that PW1 in the lower court did not show how the figure of Ksh 1,587,110/50 was arrived at. That he did not clearly state how much the principal was and how much the interest was. Further that the witness did not have first hand information on the operation of the appellant's account.
11. He challenged the variation of interest rates without following the correct process under section 44 of the Banking Act, then, which required the approval of the Minister for Finance. He objected to the unsupported interest rate of 15% ordered by the trial court. Instead he suggested a rate of 14.5%.
12. Secondly, he blamed the respondent for contributing to the appellant's fall into arrears. He termed the respondents letter dated 8/6/2012 to Kenya Railways Corporation as being defamatory thus costing him his job. Counsel submitted that the said letter portrayed the appellant as a defaulter in meeting his financial obligations; uncreditworthy; dishonest and lacked integrity and so should be shunned by the right – thinking members of society. Further it was not proved that the appellant was unwilling to continue paying his loan. His account is still open and active.
13. Counsel argued that the respondent's letter was thus defamatory. He referred to the Defamation Act Cap 56 Laws of Kenya which defines defamation as:

“ a publication without justification, lawful excuse calculated to injure reputation, contempt or ridicule”.
14. He further cited the Columbia Court of Appeal decision of *Murphy V LaMarsh* (1970), 73 W.W. R. 114 where the said court stated:

“(Defamation is where) a shameful action is attributed to a man (he stole my purse), a shameful character (he is dishonest), a shameful course of action (he lives on the avails of prostitution), (or) a shameful condition (he has smallpox). Such words are considered defamatory because they tend to bring the man named into hatred, contempt, or ridicule. The more modern definition (of defamation) is words tending to lower the respondent in the estimation of right-thinking members of society generally”.
15. Counsel additionally submitted that the respondents letter dated 8/6/2012 to Kenya Railway Corporation especially at reason No. 2 was the cause of the termination of his job with his employer. The said matter was addressed by the court in Nairobi ELRC Cause No. 865 of 2013. Zadarack Oyar Achoki V Kenya Railway Corporation which vindicated him. A copy of the said Judgment is part of the Record of Appeal. He thus submitted that the disclosure of his banking data and information to a 3<sup>rd</sup> party led to a lot of suffering by him.
16. Relying on the cases of Nicholas Ombija Vs Kenya Commercial Bank Ltd [2009] eKLR, and John V MGN Ltd [1997] QB 586 counsel prayed for general aggravated damages for the appellant. He proposed a sum of Ksh 2,000,000/= for general damages and Ksh 1,000,000/= for aggravated damages.



### **The respondent's submissions**

17. These were filed by Mucheru Law LLP and are dated 12<sup>th</sup> February, 2024. Counsel raised one issue for determination being:

“Whether the learned Magistrate erred both in law and fact in awarding the respondent a sum of Ksh 1,587,110/90 and an interest rate of 15%.

He thus submitted that this court has the power to re-open the case and consider it afresh. Reliance was placed on the case of *China Zhongxing Construction Company Ltd V AnnAkuru Sophia* [2020] eKLR.

18. Referring to the evidence before court, counsel submitted that the respondent had fully proved its case supported by the appellant. That the appellant admitted owing the money. Further that the loan was a preferential scheme predicated on the tripartite relationship between the Appellant, the Respondent and his employer Kenya Civil Aviation Authority. The loan was to be serviced through the appellant's salary account with the respondents. It was on this basis that the interest rate was agreed at 15% while the appellant was still in employment.
19. It's counsel's submission that the appellant never notified the respondent of his leaving Kenya Civil Aviation Authority. Further he stopped servicing the loan, and the respondent had to protect its interests.

### **Analysis and determination**

20. I have carefully considered the grounds of appeal, record of appeal, both parties submissions and the law. I find two issues falling for determination and these are:
- i. Whether the respondent proved its case against the appellant
  - ii. Whether the appellant was defamed by the respondent as claimed
21. This being a first appeal this court has a duty to re-evaluate and re-consider the evidence on record and arrive at its own conclusion. It must bear in mind that it did not hear nor see the witnesses and given an allowance for that: see
- i. *Selle & another V Associated Motor Boat Co. Ltd & others* [1968] E.A 123
  - ii. *Peters V Sunday Post Limited* [1958] E.A 424
  - iii. *China Zhongxing Construction Company Ltd (supra)*

### **Issue No (i) Whether the respondent proved its case against the appellant**

22. A reading of the evidence adduced by both parties confirms that:

The appellant was an employee of Kenya Civil Aviation Authority (KCAA) when an arrangement for a loan facility for the staff of KCAA was entered into with the respondent. The appellant benefited from the same.

23. In March, 2011 the appellant took a top up loan of Ksh 1,850,000/= at an interest rate of 15% to be paid over a period of 60 months. The loan was to be serviced through his salary account, which was done up to January, 2012 when the appellant moved to Kenya Railways Corporation (KRC) as



an employee. He therefore moved his salary account to Kenya Commercial Bank (KCB) due to the benefits the said bank was offering.

24. All this was unknown to the respondent which was expecting a monthly payment from him. It was only in June 2012 when he went to see the respondent's Loan Recoveries Manager that his having left KCAA was known. This was after defaulting for six (6) months with no explanation. After some arrangements he repaid the loan for some time. PW1 produced the appellant's account (PEXB2) showing the amounts paid and the outstanding amounts.
25. The appellant claims that he has paid all the outstanding sums and owes the respondent no money. Besides making the blanket statement he did not produce any statements or documents to show that indeed he had repaid the loan. It is therefore his word against that of the respondent. The difference is that the respondent's word is backed by evidence while that of the appellant is not. I therefore find that the respondent proved its claim against the appellant.
26. I agree with the appellant that the increment of interest should not be arbitrary. The client must be informed of any such changes. The interest of 15% remains as correctly found by the learned trial magistrate as that was the rate at the time of default.

#### **Issue No (ii) Whether the appellant was defamed by the respondent as claimed**

27. The appellant claims to have been defamed. How was he defamed? The *Black's Law dictionary 10<sup>th</sup> Edition* at Pg 506 defines defamation as follows:
  - “ 1. Malicious or groundless harm to the reputation or name of another by making of a false statement to a third person. If the alleged defamation involved a matter of public concern, the plaintiff is constitutionally required to prove both the statements falsity and the defendant's fault
  2. A false written or oral statement that damages another's reputation”
28. It is true there is the letter dated 8/6/2012 written by the respondent to the appellant's new employer Kenya Railways Corporation. The letter was written to its Human Resource Manager and copied to the appellant only. It was not copied to any other person or party.
29. The respondent took this action for three reasons:
  - i. The appellant was not repaying the loan.
  - ii. He had changed his salary account.
  - iii. He was not communicating with the respondent whom he owed money
30. From the contents of the said letter the respondent wished to be assisted in recovering its money and what is indicated in the letter was the truth and nothing but the truth. What had been so difficult for the appellant to notify the respondent of what was going on?
31. Secondly, the appellant did not adduce any evidence to show that besides the Human Resource Manager and himself there are other people who had been served with the letter dated 8/6/2012.
32. I find the issue of defamation not proved and so the counterclaim fails. The upshot is that the Appeal lacks merit and is dismissed with costs. The Judgment of the lower court is upheld.
33. Orders accordingly



**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF MAY, 2024 IN OPEN COURT AT NAKURU**

**H. I. ONG'UDI**

**JUDGE**

