

KENYA / JUDGMENT

Makhanu v Muchiri

[2026] KEHC 13533 (KLR)

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COURT

High Court

BEFORE

DO Onyango

CASE / FILE NUMBER

Civil Appeal E870 of 2024

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Makhanu v Muchiri (Civil Appeal E870 of 2024) [2026] KEHC 13533 (KLR) (20 July 2026)
(Judgment) Neutral citation:

[2026] KEHC 13533 (KLR) Republic of Kenya In the High Court at Nairobi (Milimani Commercial Courts) Civil Appeal E870 of 2024 DO Onyango, J July 20, 2026 Between Titus Barasa Makhanu Appellant and Charles Kariuki Muchiri Respondent (Being an appeal against judgement in small claims court by Hon. K Kagenyo, dated 23.7.24 in SCCCOM No. E3751/24)

Judgment

1. On the 5 th April 2024, the appellant filed a statement of claim dated 5 th April 2024 against the respondent before the small claims court seeking for: i. Judgment in the sum of USD 2000 at 159.50 per dollar shilling exchange rate as at the time the parties executed the addendum (17.1.24) and/or the dollar shilling exchange rate at the time of execution of the decree in case in favour of the claimant but not less than Kshs. 140.00 per dollar. ii. A judgment in the sum of five hundred thousand shillings (500,000) and iii. Compound interest at 140 per annum on the above amounts till payment in full, interest at the court rates on the above terms 2. Upon being served with the statement of claim, the respondent entered appearance through their advocate but did not file a defence to the claim. 3. The appellant thereafter lodged a request for judgment dated 13 th June 2024 seeking that the court enters judgment as sought in the statement of claim. The learned adjudicator upon considering the request and having satisfied himself that the respondent had failed to file a defence as is required, proceeded to enter judgment in favour of the appellant against the respondent in the following terms: “ In the absence of a response, the court hereby enters judgment in favour of the claimant (appellant) as against the respondent for a sum of US 2000 only and the additional Kshs. 500,000, both sums that shall earn interest in the respective currencies at the rate of 12% per annum from 29 th June 2023 until payment in full. Further, the

claimant is awarded an all-inclusive cost of Kshs. 15,000.” 4. Aggrieved by the impugned judgment, the appellant challenges the same on two principal grounds: a. That the adjudicator should have entered judgment exactly as prayed b. That compound interest at 14% should have been awarded 5. The appellant’s submissions are that the learned adjudicator ought to have entered judgment as prayed for in the statement of claim since the same was not challenged. That the adjudicator violated the provision of section 27(1) of the Small Claims Act, 2016. 6. The appellant further submitted that an Addendum dated 17 th January 2024 between the appellant and the respondent clearly provided that in case of default, the amounts shall attract a compound interest at 14% p.a. till payment in full. The appellant cited the case of Margaret Njeri Muiruri v Bank of Baroda (K) Ltd (2014) eKLR and the case of Abok James Odera T/A A.J. Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates (2013) eKLR. 7. The respondent submitted that section 27 (1) of the Small Claims Act, 2016, permits the court to enter judgment where the respondent fails to respond, but the said section does not displace the court’s duty to ensure that the award is supported by pleaded facts. That section 26(1) of the Civil Procedure Act confers upon the court a discretion to determine the rate of interest to be awarded. That the adjudicator acted within his remit in awarding interest at a rate he considered appropriate. Determination 8. This court should determine whether the adjudicator acted within the law when he entered judgment in favour of the appellant the way he did. Section 27(1) of the Small Claims Act 2016 provides: “ If the respondent fails to respond to the claim within the presented period, the court may, either on its own motion or on the claimant’s application enter judgment for the claimant and order the relief sought in the statement of claim.” 9. There is no dispute that the appellant’s claim before the small claims court was for a liquidated claim based on a contract between the appellant and the respondent. The respondent had no defence to the claim and unless there was any component of ambiguity in the statement of claim, the court should have entered judgment as claimed. 10. It is trite law that a court cannot rewrite a contract for parties. The intention is to protect party autonomy and the sanctity of contracts. The law presumes that competent adults freely negotiate and agree to their terms and a court will not rewrite a bad deal unless in exceptional circumstances where vitiating factors including fraud, coercion, duress or undue influence are proved or where there is an illegality or where there are unconscionable terms. In this case, no material was placed before the learned adjudicator to warrant interference with a contract whose terms were clear. 11. The claim being a liquidated one which was unchallenged, the trial court should have entered judgment for the full amount as no component of the claim was ambiguous. The respondent had an opportunity to challenge the claim including the rate of interest and rate of exchange as pleaded. He chose not to do so. It must therefore be taken that the appellant’s claim should have been allowed as pleaded. In any event the learned magistrate did not give reasons why he departed from what was pleaded by the appellant in his statement of claim. It is a cardinal principle of law that a court must exercise discretion judicially and judiciously, meaning that decisions should never be arbitrary, based on personal feelings or based on personal preferences. To ensure transparency and allow for proper judicial discretion standard, a court should clearly state the reasoning behind why it

chose to exercise their discretion one way or the other. 12. For the foregoing discourse, I hold that the learned magistrate erred in law in the manner he entered judgment against the respondent. The appeal herein succeeds and the judgment dated 23 rd July 2024 is varied to the extent that the sums awarded shall attract compound interest at 14% per annum from the date of filing suit till payment in full. The appellant shall have costs of the appeal.

DATED, SIGNED AND DELIVERED THIS 16 th July 2026 D.O. ONYANGO JUDGE 2

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