

Digital Lenders Standing at the Small Claims Court in Kenya

11th April 2025



Introduction

On 10 February, 2025, the Small Claims Court (SCC) in Nairobi dismissed a suit filed by M-Collect Limited against Mbwana Kalua for recovery of an unpaid loan amount. The suit was dismissed for amongst other reasons; the failure by M-Collect to comply with the requirements of section 33 S of the Central Bank of Kenya Act (CBK Act), and the finding by the court that M-Collect was a vexatious litigant, having filed multiple suits at the SCC which it failed to prosecute.

These twin issues above that underlie debt collection by digital lenders at the SCC are important to, not only the investors (money lenders) but also to the consumers, on the parties' respective rights and duties.

Requirement for licensing by CBK

Section 33S of the CBK Act precludes any person not licensed by the CBK from engaging in non-deposit-taking credit business. The business of non-deposit credit includes "granting of loans or credit facilities, whether or

not digitally, to members of the public or a section of it, with or without interest ..." Therefore, digital money lenders are required to be licensed before they engage in the business of lending. In the absence of a license from CBK, their right to recover debts from their customers through the court process would be impaired as they would be operating against the law. The SCC, doubted whether M-collect had the requisite license, a finding that was extended to claims filed by Aventus Technology Limited. The court decreed that entertaining such claims would be dignifying an illegality, and consequently, "[a]ll matters filed by Aventus Technology Limited appearing in today's cause list are hereby dismissed for the Claimant is operating contrary to law."

Vexatious proceedings

As regards this aspect, the court observed that there is a disturbing trend where companies filed claims in large numbers but abandoned them after obtaining case numbers and summons. In this specific case, M-Collect filed a claim against Mbwana Kalua but failed to attend court or pursue the matter to its logical

conclusion. The court held that the claimant's conduct amounted to an abuse of court process, ultimately declaring the claimant a vexatious litigant under Section 2(1) of the Vexatious Proceedings Act. It appears that the primary objective of filing the suit was to obtain summons and case numbers for ulterior purposes, possibly to intimidate debtors without pursuing the matter substantively.

Therefore, by dismissing the claims, the SCC in a way protected debtors from harassment by unlicensed debt collectors' hell bent on using the court process for such ulterior motives.

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Way forward

As a way forward, it is suggested that lenders engaged in the business of non-deposit credit should make a point of obtaining license from the CBK, in accordance with the provisions of the CBK Act, in order to comply with the law. Otherwise, their right to recover debts would be impaired should they opt to pursue such recovery through the court system.

Beyond this, the ruling discourages debt collection agencies from abuse of court process, so that lenders/debt collectors need to pursue only the claims that they consider legitimate.