



REPUBLIC OF KENYA



**KENYA LAW**  
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**Faulu Microfinance Bank Limited v Paul Wambua Valuers Ltd (Civil Appeal E130 of 2024) [2024] KEHC 16341 (KLR) (Civ) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16341 (KLR)

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

**CIVIL**

**CIVIL APPEAL E130 OF 2024**

**JM NANG'EA, J**

**DECEMBER 18, 2024**

**BETWEEN**

**FAULU MICROFINANCE BANK LIMITED ..... APPELLANT**

**AND**

**PAUL WAMBUA VALUERS LTD ..... RESPONDENT**

*(Being an appeal from the decision of the Valuers Registration Board dated 2/1/2024 on the complaint against the respondent regarding properties known as Kekonyokie/Ilkusumet/399 Oltepesi area & Ngong/Ngong/58742 Kerarapon)*

**RULING**

**The basis and Grounds of Appeal**

1. This appeal follows the above decision of the Valuers Registration Board (“the Board”) communicated to the appellant’s advocates vide a letter dated 2/1/2024 following the appellant’s complaint about the respondent’s valuation report in respect of the above described parcels of land . The gist of the complaint dated 17/2/2022 was alleged professional misconduct by Mr Nicodemus M. Mwaru and Paul Wambua of the respondent in their valuation of the said properties known as Kekonyokie/Ilkusumet/399 Oltepesi area and Ngong/Ngong/58742 Kerarapon (“the charged property”) for the purpose of provision of banking facilities to one Mr Robert Nyamweya Onchanga. The respondent’s valuation report dated 20/2/2017 opined that the Current Market Value, Mortgage Value and Forced Sale Value of Kekonyokie/Ilkusumet/399 Oltepesi area was Kshs. 23,000,000, Kshs.20,000,00 and Kshs. 17,000,000 respectively. Regarding Ngong/Ngong/58742 Kerarapon, its Current Market Value, Mortgage Value and Forced Sale Value was assessed at Kshs. 32,000,000, Kshs. 27,000,000 and Kshs. 24,000,000 respectively as per valuation report dated 8/5/2017.



2. Based on the professional opinion the appellant extended a banking facility of Ksh. 5,000,000 followed by a top-up of Ksh. 22,000,000 to the borrower who, however, failed to honour agreed monthly repayments resulting in the appellant's exercise of its statutory power of sale of the charged property. S. Karani Githiaka of Accurate Valuers Limited was hired to determine the Forced Sale Value of the charged property for the purpose of possible sale to recover the loan. The second valuation reports indicated a huge variation in the value of the charged property in comparison with the respondent's initial valuation. The Current Open Market Value, and Forced Sale Value of Kekonyokie/ Ilkusumet/399 was stated as Kshs. 3,000,000 and Kshs. 2,250,000 respectively as per valuation report dated 16/1/2019 while the same value categories in respect of Ngong/Ngong/58742 were found to be Kshs. 8,500,000 and Kshs. 6,375,000 respectively in terms of the valuer's report dated 11/1/2019. On account of these reports, the appellant was convinced that the respondent's valuation, "constituted a fraudulent misrepresentation of the facility", hence the complaint to the Board.
3. When the appellant lodged the complaint and appeared before the Board on 8/9/2023 through its advocates, the Board is said to have expressed concern regarding the timing of the valuation reports in question noting that they were commissioned on 8/11/2017 after the charges over the subject properties had already been registered. The appellant's advocates then discovered that the valuation reports availed to the Board were prepared prior to the top-up facility of Kshs. 22,000,000 requested by the borrower and urged adjournment and obtained leave to present the initial reports that informed the disbursement of Kshs. 5,000,000 within seven days. According to the appellant it complied and presented the earlier valuation reports to the Board on 22/9/2024 together with all requisite documents including records evidencing disbursements made in favour of the borrower. The appellant then expected the Board to fix another hearing date for the parties to address it on the contentious valuation reports. This was not to be as the Board instead rendered the contested decision, lamented the appellant.
4. The Board's decision as per the letter dated 2/1/2024 alluded to hereinabove was "that the complaint was not admissible since Faulu Bank (read the appellant) advanced the loan in May 2017 before the valuation report was submitted by the valuer in question (read the respondent) in November 2017 hence the valuation report was not the basis for the bank facility."
5. By Memorandum of Appeal dated 30/1/ 2024, the appellant craves an order setting aside the impugned decision of the Board; that the respondent be found guilty of professional misconduct or in the alternative the complaint be resubmitted to the Board for determination within 30 days of determination of this appeal. The grounds of appeal as contained in the Memorandum of Appeal may be condensed into two as hereunder:
  - a. That the Board erred in finding that the complaint was inadmissible.and
  - b. That the Board erred by failing to consider new evidence the appellant supplied in a bid to resolve the discrepancy in the two valuation reports in issue.

### **Analysis and determination**

6. I have read through the record together with written submissions of learned Counsel, the respondent having failed to file submissions. Learned Counsel for the appellant acknowledge what they call an "oversight" on the part of the appellant in its commissioning of the valuation reports in issue but assert that their client was entitled to the right of hearing before the Board made its decision. The Board is faulted for failing to take into account the additional valuation reports presented to it on 22/9/2024. Counsel brought to the court's attention that the Board did, nevertheless, find the respondent guilty



of professional negligence and fined him and the appellant wonders why its complaint was found inadmissible despite that verdict. Reference was made to two superior courts' decisions to wit; County Assembly of Kisumu & 2 Others V. Kisumu County Assembly Service Board & 6 Others ( 2015) eKLR and Republic V. National Police Service Commission Exparte Daniel Chacha (2016) eKLR. These decisions underscore the right to fair hearing that must be accorded to disputants by judicial and quasi-judicial bodies as guaranteed in Articles 47 & 50 of *the Constitution*.

7. The main issue for determination is whether the respondent denied the appellant the constitutional right of hearing before making its decision. To further emphasize the centrality of this right, Article 25 (c) of *the Constitution* of Kenya 2010 includes the right of fair hearing among only three others that cannot be derogated from under any circumstances.

#### **Determination**

8. The respondent has not disputed the appellant's contention that it was not heard after presenting new evidence as permitted. It is also unclear whether the respondent considered the evidence in reaching the decision to find the respondent and its said officers guilty of the misconduct complained of. The grounds of appeal accordingly succeed. No further orders will issue in light of the admitted fact that the respondent and its errant officers were found guilty of the charges levelled against them and punished.
9. Ruling accordingly.

**J. M. NANG'EA, JUDGE**

**RULING DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF DECEMBER 2024 IN THE PRESENCE OF:**

The appellant's advocate, Ms Onsare

The respondent and/or its advocate, Absent

**J. M. NANG'EA, JUDGE**

