



**Bank of Africa Limited v Ndambuki (Commercial Suit E072 of 2024)
[2025] KEHC 12119 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 12119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
COMMERCIAL SUIT E072 OF 2024**

F WANGARI, J

MAY 15, 2025

BETWEEN

BANK OF AFRICA LIMITED PLAINTIFF

AND

MUTISO NDAMBUKI DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit through an Originating Summons dated 22/11/2024 brought under sections 1A, 1B and 3A of the Civil Procedure Act, Order 37 Rules 4 and 8 of the Civil Procedure Rules, section 88 (1) (c) and 97 (2) of the Land Act 2012. The Plaintiff sought for judgement against the Defendant for the following reliefs: -
 - a. An order granting the Plaintiff's authorized valuer to access and conduct valuation of property registered as Subdivision Number 13681 (original Number 4732/18) Section 1 Mainland North C.R. 39350 (herein after referred to as the 'security').
 - b. Costs of the suit
2. Accompanying the Originating Summons was the Supporting Affidavit sworn by Victor Keitany, the Senior Recoveries Officer of the Plaintiff. It was deponed that the Defendant took a loan facility with the Plaintiff for Kshs. 10,000,000/= and legal charge registered over the property mentioned herein above as security.
3. The Defendant breached the facility terms by failing to pay the instalments as required. Despite several demands to pay, the Defendant failed to regularise the account. The Plaintiff commenced the process of realisation of the security by instructing an auctioneer. The Plaintiff engaged an Valuer to undertake valuation of the security to ascertain the Market and Forced Sale values thereof.



4. The Plaintiff as the chargee could not exercise its rights of access to the property as the Defendant failed to allow and/ or facilitate access to the property, despite several attempts to do so by the Plaintiff. Without the valuation report, the Plaintiff cannot secure the best possible price for the security.
5. Subsequently, the Plaintiff filed this application. It pays to have the application allowed to enable it undertake the legal requirement and exercise its statutory right to recover the sums due and owing.
6. The Originating Summons and Summons to Enter Appearance were served upon the Defendant. No appearance was entered by the Defendant. The Plaintiff made a request for Interlocutory Judgment under Order 10 Rule 4 of the Civil Procedure Rules. Interlocutory Judgment was entered on 04/02/2025. The matter proceeded by way of affidavit. The Plaintiff further filed the List of Authorities dated 12/03/2025 in support of its case.

Analysis and Determination

7. I have carefully considered the Plaintiff's pleadings, and the authorities relied upon. The issues for determination: -
 - a. Whether the court should grant access to property orders as prayed.
 - b. What is the order as to costs and interests?
8. It is not in dispute that the Defendant took a loan facility with the Plaintiff and the suit property charged as the security. It is also not disputed that the Defendant defaulted in the repayment. The Plaintiff has the statutory right to realize the security so as to recover the sums due and owing.
9. In order to exercise the statutory right of sale of charged property in case of default under section 96 of the Land Act, the chargee is required to ensure that forced sale valuation is undertaken as provided for under section 97 (2) of the Land Act. The Plaintiff has proved its case and I find the application merited.
10. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
 - a. That the Plaintiff's authorized valuer is hereby granted access to the suit property for purposes of valuation to ascertain the market and forced sale value.
 - b. That if need be, the Plaintiff is at liberty to get assistance from the local police station where the land is situated for purposes of maintaining peace.
 - c. Costs awarded to the Plaintiff.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 15TH DAY OF MAY, 2025.

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F. WANGARI

JUDGE

In the presence of;

N/A by the Plaintiff

N/A by the Defendant

M/S Norah, Court Assistant

NB: File released to the registry. Parties be notified.

