



Chase Bank Limited (In Receivership) & another v Nanda Properties Limited (Civil Appeal E429 of 2023) [2025] KEHC 8008 (KLR) (Civ) (9 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E429 OF 2023
WM MUSYOKA, J
JUNE 9, 2025**

BETWEEN

CHASE BANK LIMITED (IN RECEIVERSHIP) 1ST APPELLANT

KENYA DEPOSIT INSURANCE CORPORATION 2ND APPELLANT

AND

NANDA PROPERTIES LIMITED RESPONDENT

(Appeal from judgement and decree of Hon. Wendy K. Micheni, Chief Magistrate, CM, in Milimani CMCCC No. 4648 of 2017, of 28th April 2023)

JUDGMENT

1. The suit, at the primary court, was by the respondent, against the appellants, with respect to erroneous excess interest charges, refund of the monies paid on basis of the said excess interest rates; refund of monies debited as valuation charges, and the recall of the names of the directors of the respondent from the credit reference bureaux. The appellants filed a defence denying the claim.
2. A trial was conducted, where both sides presented witnesses. In the end, in a judgement delivered on 28th April 2023, the trial court allowed the claim by the respondent against the appellants. The decretal amount awarded to the respondent was Kshs. 4,851,623.42, as per the decree issued on 28th July 2023.
3. The appellants were aggrieved, hence the appeal. The grounds, in their memorandum of appeal, dated 26th May 2023, revolve around the trial court failing to appreciate the evidence, disregard of the case presented by them, relying solely on the calculations by the respondent, making wrong findings on the moneys due for the valuation, erring in directing the recall of the names of the directors of the respondent from credit reference bureaux, and the judgement being punitive.



4. Directions were never taken on written submissions, but I note that the appellants did file their written submissions.
5. The appellants identify five issues for determination: on whether the 2nd appellant could be liable for the liabilities as ordered by the trial court, whether excess interest was rightfully charged, whether a valuation was rightfully carried out on the assets; whether the listing of the directors of the respondent was lawful; and costs. They have cited a variety of judicial decisions to support their case.
6. In my view, the issues for determination are: whether the excess interest charged, of USD 40,194.00 was excessive; whether the sum of USD 6,909.11 was wrongly deducted from the respondent's amounts; whether the 2nd appellant is liable for the liabilities of the 1st appellant; and whether the names of the directors of the respondent should be delisted from the credit reference bureaux.
7. The first issue is on the excess interests charged. The letter of offer, of 23rd May 2012, provided for charging of excess interest where the borrowing exceeded the maximum principal amount, in this case, USD 2,000,000.00. The 1st appellant conceded that the borrowing did not exceed the maximum amount of the facility, USD 2,000,000.00, but it exceeded the time limit placed by the 1st appellant. It is trite, that courts do not re-write contracts for the parties, according to *National Bank of Kenya Ltd vs. Pipeplastic Sankolit (K) Ltd* [2001] eKLR (Tunoi, Shah & Keiwua, JJA). The excess interest was to be charged upon the maximum amount of the facility being exceeded, and not the time limit placed by the 1st appellant. Those were the terms that had been signed to by the parties. Consequently, the increase, in the interest rate, was in breach of the letter of offer, and the trial court was right in its finding.
8. On the amount deducted, of USD 6,909.11, with respect to the valuation, the applicable law, section 97 of the *Land Act*, Cap 280, Laws of Kenya, allows it, to be paid by the borrower. The trial court found that that was so, but even then, there would still be need to prove that a valuation was in fact done, to justify the making of a deduction. No such proof was provided. Being entitled, in law, to charge a valuation fee, is one thing, the valuation being done is another. The appellants were obliged, to provide proof that such a valuation had been undertaken, to justify the deduction. They did not provide proof, and the deduction was unjustified.
9. On the 2nd appellant being liable for the liabilities of the 1st appellant, the legal position is stated in section 45(b) of the *Kenya Deposit Insurance Act*, Cap 487C, Laws of Kenya, which shields the 2nd appellant from liability, for the liabilities of the institutions placed under its receivership.
10. That position has been restated and reiterated in a number of decisions, including *Andrew Muma and Charles Kanjama Trading as Muma & Kanjama Advocate & others vs. Deloitte & Touche East Africa & 5 others* [2020] eKLR [2020] KEHC 10059 (KLR) (Nzioka, J), *Atul R Shah & Another vs. Imperial Bank Limited & Another* [2021] eKLR [2021] KEHC 7923 (KLR) (Mabeya, J) and *Metto vs. Chase Bank (Kenya) Limited* [2023] KEELC 1988 (KLR)(Obaga, J), that the 2nd appellant only acts as a receiver of the entity placed under its receivership, as its agent. The liability of the 2nd appellant is limited or restricted to damages suffered by any party, because of the actions of the 2nd appellant. The 2nd appellant acts as a receiver, but it cannot be held liable for carrying out that mandate as such.
11. On whether the names of the directors should be delisted from credit reference bureaux, the law on listing in credit reference bureaux is the Credit Reference Bureau Regulations, 2013. Regulation 18(4) (a)(ii) is of relevance. It provides that where a customer is not a natural person, the information, to be shared with the credit reference bureaux, would be: the name of the entity; its registration number; its personal identification number; the names of its directors; the names of its shareholders, holding more than 10% of its shares; the names of its partners, trustees or officials; and its past and current addresses and other contacts. Regulation 50(1) requires that the institution or entity notifies the customer,



within thirty days, before the loan becomes non-performing, that it shall submit to the bureaux, information on the loan immediately it becomes non-performing.

12. Material was placed on record, as I can see from the record of appeal, that a notice, dated 20th May 2016, was issued to the respondent, in compliance with Regulation 50(1). When default on non-performance happened, Regulation 18(4)(a)(ii) kicked in, and the information set out in there, including the names of the directors, was shared with the bureau. The doctrine, that a limited liability company is separate from its shareholders and directors, cannot be a shield in the circumstances. See *Mwatech Enterprises Ltd vs. Equatorial Commercial Bank Ltd* [2021] KEHC 2338 (KLR)(C. Kariuki, J).
13. In view of everything said above, the appeal partly succeeds. The final orders are:
 - a. That the decision and order of the trial court, on the refund of the excess interest charged, to the tune of USD 40,194.03, is upheld;
 - b. That the decision and order of the trial court, on the refund of USD 6,909.11, with respect to valuation, is upheld;
 - c. That the decision of the trial court, with respect to the recall of the names of the directors of the respondent from the credit reference bureaux, is set aside;
 - d. That it is declared that the 2nd appellant cannot be held liable for the liabilities of the 1st appellant; and
 - e. That each party bear their own costs of the appeal, while the 1st appellant shall bear the costs at the court below.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 9TH DAY OF JUNE 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Caroline Oyusu, Court Assistant, Milimani, Nairobi.

Ms. Azenga Alenga, Legal Researcher.

Advocates

Mr. Ochieng, instructed by Robson Harris Advocates LLP, Advocates for the appellants.

Mr. Kipkoech, instructed by Mulanya & Maondo, Advocates for the respondent.

