



Mwaura & another v Standard Chartered Bank Kenya Ltd (Civil Appeal E557 of 2023) [2025] KEHC 9372 (KLR) (Civ) (1 July 2025) (Judgment)

Neutral citation: [2025] KEHC 9372 (KLR)

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

CIVIL

CIVIL APPEAL E557 OF 2023

LP KASSAN, J

JULY 1, 2025

BETWEEN

STEPHEN NJUGUNA MWAURA 1ST APPELLANT

JEDIDAH WAKONYO NJUGUNA 2ND APPELLANT

AND

STANDARD CHARTERED BANK KENYA LTD RESPONDENT

(Being an appeal from the judgment of L.B. Koech (CM) delivered on 7th June, 2023 in Nairobi Milimani CMCC No. 10937 of 2018)

JUDGMENT

1. This appeal emanates from the judgment delivered on 07/06/2023 in Nairobi Milimani CMCC No. 10937 of 2018 (hereafter the lower court suit). By way of an amended plaint, Standard Chartered Bank Kenya Ltd, the plaintiff before the lower Court (hereafter the Respondent) filed suit as against Stephen Njuguna Mwaura and Jedidah Wakonyo Njuguna, (hereafter the 1st and 2nd Appellant) seeking among other orders -; that the sum of Kshs. 2,236,836.20/- together with accrued interest currently at the rate of 15.5% (variable) from 31/09/2009 until payment in full; in the alternative a declaration that the Appellants should not have received payment from the Government of Kenya before discharging the mortgage debt owing to the Respondent; an order directing the Appellants to pay the Respondent the sum of Kshs. 2,236,836.20/- together with accrued interest currently at the rate of 15.5% (variable) from 31/09/2009 until payment in full; and costs of the suit
2. It was averred that at all material times, the Appellants were the registered owners of LR No. Kikuyu/ Kikuyu Block 1/65 (hereafter the Property) and also directors of Capital Link Courier Ltd. That on or about November 2004 Capital Link Courier Ltd approached the Respondent for a term loan facility of Kshs. 2,400,000/- which was granted vide letter of offer dated 19/11/2004, to wit,



both Appellants stood as guarantors to the aforesaid company borrowing and offering the Property as security among others. It was further averred that despite having received the facility from the Respondent the said Capital Link Courier Ltd failed to repay the loan prompting the Respondent to issue a three (3) months statutory notice dated 13/03/2007, whereupon expiry of the same an auctioneer was instructed to sell the charged property through public auction.

3. It was further averred that the Appellants through their advocate wrote to the Respondent's advocate informing them that the charged property had been compulsorily acquired by the Government of Kenya (GOK) to make way for the construction of the Southern Bypass and that the amount paid as compensation would be utilized to clear the outstanding loan. That on or about September 2010, the Respondent discovered that the Appellants fraudulently received compensation payment from the GOK totaling Kshs. 6,318,380/- meanwhile utilized the monies for their own private use without consulting the Respondent as a chargee and or settling the loan account with the aforesaid company. It was averred that the Respondent's claim is Kshs. 2,236,836.20 together with accrued interest currently at 15.5% (variable) from 31/10/2009 until the date of payment or orders of declaration set out in the plaint.
4. The Appellants filed an amended statement of defence denying the key averments in the plaint meanwhile began by averring that the Respondent cannot in law maintain a claim as against the Appellants independently without enjoining the principle borrower therefore the suit is incompetent, misconceived, frivolous, vexatious, inept, an abuse of the Court process and ought to be struck out with costs. They went on to aver that the Respondent has no claim against the Appellants and any claim ought to be against the Commissioner of Lands. That the Respondent's claim being a contractual claim based on the Agreements of Guarantee and Charge over the Property, the same extinguished ninety (90) days after the Gazette Notice for Compulsory Acquisition of the Property, that is on 25/05/2006, and the statutory period of six (6) years for lodging any contractual claim expired on 24/08/2012 hence the suit is time barred.
5. The suit proceeded to full hearing during which both the Appellants and Respondent called evidence in support of the averments in their respective pleadings. In its judgment, the lower Court found that the Respondent had proved its case on balance of probabilities and proceeded to order the Appellants to pay the Respondent the sum of Kshs. 2,236,836.20/- with interest at Court rates from the day the payment fell due until payment in full, subject to in duplum rule and cost of the suit.
6. Aggrieved with the outcome, the Appellants preferred the instant appeal challenging the lower Court's decision on the following grounds: -
 - “ 1. The learned Magistrate erred in law and fact in entering judgment in favour of the Respondent against the Appellants contrary to the basic fundamental legal and statutory principles governing Compulsory Land Acquisition under the Land Acquisition Act (repealed) and provision of the Land Act and consequently arrived at a wrong decision and judgment.
 2. The learned Magistrate erred in law and fact in entering judgment in favour of the Respondent against the Appellant in total disregard to the weight of the evidence presented before the Court which clearly demonstrated that no liability could attach to the Appellants in the circumstance of the case having satisfied all the statutory requirements and procedures under the Land Acquisition Act.



3. The learned Magistrate erred in law and fact in entering judgment against the Appellants in a suit where the principle borrower of the debt from the Respondent Bank was not enjoined as a party and the Commissioner of Lands or his Successor who were the primary parties involved in the process of compulsory land acquisition of the charged property Title No. Kikuyu/Kikuyu Block 1/65 were not made parties and consequently the learned Magistrate arrived at a wrong decision and judgment.
4. The learned Magistrate erred in law and fact in totally ignoring the submissions and binding legal authorities by the High Court and Court of Appeal cited by the Appellants together with the Statutory Provisions guiding the process of Compulsory Land Acquisition and the Interest of all parties who have rights over such property which included the Respondent who ignored the Gazette Notice and never participated in the process by registering its claim whereas the Commissioner of Lands who was the custodian of Land records was fully aware of the charge registered over the property by the Respondent bank.
5. The learned Magistrate erred in law and fact in failing to appreciate the process of assessment of compensation for compulsory land acquisition by the compulsory land acquisition committee under Section 107-122 of the [Land Act](#) and Section 107-133 of the Land Acquisition Act (repealed) and consequently arrived at a wrong decision and judgment.
6. The learned Magistrate erred in law and fact in attaching liability to the Appellants when the legal fault lay with the Respondent who ignored the Gazette Notice No. 3788 & 3789 dated 26.05.2006 for the compulsory acquisition of the charged property Title No. Kikuyu/Kikuyu Block 1/65 whereas the Respondent had a legal right as charge recognized under Section 107-133 of the Land Acquisition Act (repealed) and Section 107-122 of the [Land Act](#) and similarly the Commissioner of Lands was also aware of the legal charge over the property by the Respondent bank.
7. The entire judgment to the lower Court is lopsided contrary to the basic legal and statutory principles of pleadings, inept, fails to consider and analyse the applicable law relating to the pleadings and claims by the Respondent and ignores well laid down legal principles of law by the High Court and Court of Appeal and the same should be set aside as being a bad judgment.
8. The learned Magistrate erred in law and fact in failing to give the necessary weight to the unchallenged evidence of the Appellants and relied on the weak hearsay evidence of the Respondent's witness who confessed that he was not aware of the facts and circumstances relating to the subject debt and the process of compulsory land acquisition committee which took place between May 2006 and August 2006 before the compensation was made on 28.01.2008 more than one (1) year after the proceedings and decision of the compulsory land acquisition committee.
9. The learned Magistrate erred in law and fact in ignoring the authorities and submissions made by the Appellant hence arriving at a wrong decision and judgment.



10. The learned Magistrate erred in law and fact in entering judgment in favour of the Respondent who had not met the legal threshold of proof in civil proceedings to justify the entry of judgment in its favour.” (sic)
7. The appeal was subsequently canvassed by way of written submissions of which this Court has duly considered alongside the authorities cited in support of the submissions and the record of appeal.
8. This is a first appeal. The Court of Appeal for East Africa set out the duty of the first appellate Court in *Selle v Associated Motor Boat Co.* [1968] EA 123. Further, it is trite that an appellate Court will not ordinarily interfere with a finding of fact made by a trial Court unless such finding was based on no evidence, or it is demonstrated that the Court below acted on wrong principles in arriving at the finding it did. See *Ephantus Mwangi & Another v Duncan Mwangi Wambugu* [1982 – 1988] 1 KAR 278. Thus, a revisit of the memorandum of appeal it is apparent that the appeal turns on whether the trial Court appropriately applied it’s to fact and law in entering judgment in favour of the Respondent as against the Appellants.
9. Pertinent to the determination of issues presented before this Court, are the pleadings, which formed the basis of the parties’ respective cases before the trial Court. See; - Court of Appeal decision in *Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank* [2004] 2 KLR 91. This Court having earlier in its judgment outlined the gist of the respective parties’ pleadings, it serves no purpose restating the same at this juncture. Further, having equally identified what the dispute before the trial Court gyrated on, the key query for consideration is whether the trial Court’s findings on the issues falling for determination before it was well founded.
10. In order to contextualize the appeal and the issue for determination, it would be apposite to quote in extenso the relevant facets of the impugned judgment. The trial Court after restating the evidence tendered before it addressed itself as follows-;
- “21. I have considered the evidence tendered by the parties. I have read the submission filed.....
- 22
23. From the pleadings and the submission filed. I find the following issues presenting itself from determination before this Court
- a) Whether the plaintiff’s suit against the defendants as guarantors and without the principle borrower (capital links courier limited) and the commission of lands can be sustained?
 - b) What was the assessed value of the suit property at the time of compulsory acquisition by the commission of lands?
 - c) How much was paid by the commissioner of lands to the defendants and was this the approved value or was it less?
 - d) Was the plaintiff under statutory obligation to submit its claim and interest as a charge over the suit property following the Gazette Notice No. 3788 and 3789 of May 2006?
 - e) Did the defendant conduct of offering their property as security and taking proceeds of compulsory acquisition from government amount to fraud?



- f) Whether the plaintiff is entitled to the claim of Kshs. 2,236,836/-?
- g) Who then should bear the costs of this suit?
24. The defendants claim against the plaintiff on the 1st issue is that the plaintiff cannot in law maintain a claim against the defendants independently without the principal borrowers i.e. Capital Links Courier Limited and the Commissioner of Lands who compulsorily acquired the charged property.
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29.
30. It is therefore clear from the above citation that a guarantor is a contract between the guarantor and the creditor therefore when the principal borrower defaults as in this case, the creditor can sue the guarantor to perform the obligations under the contract of guarantee in light of this, the action is properly before Court and if the defendants were of the view that the commissioner of lands ought to have made payments to them, nothing would have prevented the defendants to issues a third party notice as provided under Order 1 Rule 16 of the Civil Procedure Rules. The action in my view is properly before Court.
31.
32.
33.
34.
35. Was the defendant conduct fraudulent.....
36. It is clear from the evidence given that the defendants made a representation to the Plaintiff, the representation being that they were going to pay the loan though the proceeds for compulsory acquisition, the Plaintiff relied on this to their detriment.
37.
38. I have noted the particular of fraud as pleaded by the Plaintiff in the amended plaint and I am satisfied that the defendant conduct amounted to fraud.
39. is the plaintiff then entitled to Kshs. 2,236,836/-. The defendant evidence is that at 30th August, 2006, the loan balance was Kshs. 1,199,994/-. The plaintiff claim however was Kshs, 2,236,836/-. As it were, then the defendants failed to pay the amount accrued interest which remains unpaid and as at the time the cause of action arose, the loan amount plus interest stood at Kshs. 2,236,836/-



40. From the foregoing, I am satisfied that the Plaintiff has proven the case against the defendants on a balance of probability and enter judgment for the Plaintiff as against the defendant.....” (sic)
11. Having set out the aforecaptioned, the applicable law as to the burden of proof is found in Section 107, 108 and 109 of the *Evidence Act*. Further, it is well trodden that the same is on a balance of probabilities meaning that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. See Court of Appeal decision in *Mumbi M’Nabea v David M. Wachira* [2016] eKLR. Hence, the duty of proving the averments contained in the plaintiff squarely on the Respondent vice versa with respect to the averments contained in the Appellants statement of defence. See Court of Appeal decision in *Karugi & Another v Kabiya & 3 Others* [1987] KLR 347. Meanwhile, it is trite that issues for determination before a Court generally flow from the pleadings and a Court ordinarily pronounces judgment on the issues arising from the said pleadings. See the Court of Appeal decision in *North Kisii Central Farmers Limited v Jeremiah Mayaka Ombui & 4 others* [2014] eKLR. This is because “the system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which the parties can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them” - Bullen and Leake (12th edition) Pg. 3 under the rubric Nature of Pleadings.
12. At the core of the disputation, concerns enforcement of a guarantee obligation by the Appellants in favor of Capital Links Courier Limited and purported fraud by the said guarantors, with particulars being specifically pleaded. This Court concurs with Makau. J’s rendition in *Ecobank Kenya Limited v Francis Tole Mwakidedi* [2018] eKLR, wherein he pithily observed that -” creditor is free to choose from which debtor and what method to use to recover the debt. The debtor has no luxury nor right of choosing for the creditor who amongst the debtors, to pursue and failure to pursue all debtors at once is not fatal to the creditor’s petition.” Further, Order 1 Rule 10 of the Civil Procedure Rules, provides for joinder of parties, to wit, a party is a liberty to enjoin a necessary party in order to have the real matters in controversy effectually and completely adjudicated upon in a suit. Consequently, in limine this Court agrees with the trial Court’s determination that the Capital Links Courier Limited was not a necessary party to the Respondent suit meanwhile the Appellants were always at liberty to enjoin the said Capital Links Courier Limited and Commissioner for Lands if they so deemed them necessary to the suit.
13. Moving on to the substratum of the appeal, as to a cause of action founded on fraud in civil proceedings, the standard of proof is since settled. Nevertheless, Tunoi JA (as he then was), in *Vijay Morjaria v Nan Singh Madhu Singh Darbar & Another* [2000] eKLR stated that -;
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”
14. The standard of proof in respect of the second issue is higher. The Court of Appeal in *Kinyanjui Kamau v George Kamau* [2015] eKLR expressed itself as follows-;
- “...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo* [2008] 1 KLR (G & F) 742 wherein the Court stated that:



“...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

15. In *Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Company Ltd* [2004] eKLR, the same court held that-;

“Fraud is a serious quasi-criminal imputation, and it requires more than proof on a balance of probability though not beyond reasonable doubt”.

16. With the above in reserve, before the trial Court, Boniface Machuki, testified as PW1, on behalf of the Respondent. Adopting his witness statement as his evidence in chief he proceeded to adduce into evidence the documents appearing in the Respondent’s list of documents as PExh.1 - 6, he went on to state that the Respondent and Appellants are borrowers and guarantors. That the latter approached the bank requesting for a facility which was disbursed and later learnt that the Property as charged was compulsory acquired and the Appellants duly compensated by the Government of Kenya. On cross-examination, it was his evidence that the principal borrower was Capital Links Courier Ltd meanwhile the Appellants were guarantors. He stated that he was not aware if the bank had a representative in the acquisition inquiry and that the Appellants had represented to the bank that they would settle the facility through the monies they were to receive on accord of acquisition of the Property. It was his evidence that if the principal borrower defaults you go after the guarantors.
17. In re-examination, he stated that the bank was unaware that the Appellants had been paid and neither did the Appellant inform the bank of the payment, with the bank later discovering payment in 2010. That the Commissioner of Land demanded Kshs. 2,400,000/- from the Appellants as a refund for erroneous overpayment, to wit, the banks advocates responded with the matter being referred to the Attorney General whereas the Respondent knew their obligation to settle the charge was upon the Commissioner for Lands. He iterated that the Appellants were the directors of the principal borrower meanwhile failed to settle the facility. That as at 31/10/2009, the outstanding loan balance was 2,236,636.20/- therefore the said amount ought to be awarded inclusive of interest as the Appellants were aware of the default having each received Kshs. 3,159,190/- as compensation for acquisition of the property.
18. On behalf the Appellants, the 1st Appellant testified as DW1. Stating that the 2nd Appellant is his wife, he too began by adopting his witness statement as his evidence in chief and adduced into evidence the documents appearing in the Appellants list of documents as DExh.1 - 8. He confirmed that the principal borrower was Capital Links Courier Ltd whereas they jointly provided their property to secure the debt which property was later compulsory acquired by the Government of Kenya. That at the time, the bank was in possession of the title meanwhile the Commissioner of Lands knew of the charge. He went on to state that they lodge a claim for compensation which they assessed at Kshs. 8,885,750/- and approved, however they were paid a total of Kshs. 6,318,386/-. It was their understanding that the balance on their assessment was paid to the Respondent. On cross-examination, he confirmed that the Property was tendered as security for the facility and that the compensation in the sum of Kshs. 6,318,386/- was made erroneously without factoring in the amount due to the Respondent. In re-examination, he stated that the letter from the Attorney General captures that the Commissioner of Lands was to pay the Appellants and it’s a debt due to the commission. He maintained that the facility was in favour of Capital Links Courier Ltd and did not know why the



Respondent failed to realize the facility from the company or Commissioner of Lands. In conclusion he stated that the Respondent cannot feign ignorance as they knew about the compensation being a Chargee.

19. Patently, by the aforecaptioned, it is not in dispute that the Respondent had advanced a facility in favour of Capital Links Courier Ltd to the tune of Kshs. 2,400,000/- wherein both Appellants as directors of the latter issued the Property as security for the facility as guarantors. By its amended plaint, the kernel of the Respondent's contestation was that the Appellants fraudulently received compensation from the Commissioner of Lands for acquisition of the Property tendered as security knowing to well the existence on a balance on the facility to the tune of Kshs. 2,236,836.20/- that remained unsettled by both Capital Links Courier Ltd and the Appellants, as guarantors towards the said facility.
20. While the Appellants appeal and grounds in support thereof appear to attempt to obscure the cause of action before the trial Court, it is manifest that the Respondent's suit was predicated on fraud and not propriety as to application of the Land Acquisition Act (repealed) as may have concerned the acquisition of the Property. Consequently, what the trial Court was called to determine was whether Respondent proved that the Appellants fraudulently received compensation for the Property that was tendered as security for the facility advanced in favour of Capital Links Courier Ltd?
21. At the risk of repetition, it is not in dispute, that the charged Property was compulsorily acquired by the Government of Kenya in 2006 to make way for construction of the Southern By-Pass Road. As at then, the law relating to compulsory acquisition was set out in Land Acquisition Act which has since been repealed by the Land Act. Earlier, in this judgment, the Court had captured the standard of proof in civil proceedings in respect of a cause of action founded on fraud, to wit, the same requires no restatement. By its amended plaint, the Respondent at Paragraph 12 pleaded fraud and itemized the particular therefore as against the Appellants. I find it useful to capture verbatim the Respondent's pleadings in order to contextualize appeal. it was averred at Paragraph 12 that -;

“ 12. On or about September 2010 the Plaintiff discovered that the Defendant had fraudulently received compensation payment from the Government as follows; -

1st Defendant – Kshs. 3,159,190.00

2nd Defendant – Kshs. 3,159,190.00

And utilized the monies for their own private use without consulting the Plaintiff as a chargee and or settling the loan account with the aforesaid company.

Particulars of fraud

- a) The defendants misled the Plaintiff to believe that upon receipt of compensation from the Government they would clear the outstanding loan owed by Capital Link Courier Limited.
- b) Receiving compensation secretly to defeat the interest of the Plaintiff as a chargee.
- c) Failing to pay the debt owed by the said company despite quietly receiving compensation of an amount in excess of the outstanding sum at the time.” (sic)



22. By the Respondent's oral testimony and documentary evidence being PExh.1 - (Letter of Offer dated 19/11/2004), PExh.2 - (Charge dated 07/01/2005), PExh.3 - (Statutory Notice of Sale dated 13/03/2007 and certificate of posting), PExh.4 - (Auctioneer Notices) and PExh.6 - (Statement of Account), it was demonstrated that - ; the facility had been advanced in favour of Capital Links Courier Ltd; that the Appellants had advanced LR No. Kikuyu/Kikuyu Block 1/65 as security in respect of the said facility with a charge being registered on it; that the Appellants equally issued personal guarantees for the facility as directors of the Capital Links Courier Ltd; that there was default in servicing of the said facility by the principal borrower and monies was owing to the tune of Kshs. 2,236,836.20/- as at 31/10/2009; and that the Respondent made attempt to realize the security in respect of the facility. Upon receipt of PExh.3, the Appellants through counsel wrote a letter to the Respondent's advocate PExh.5 - (Letter dated 11/07/2007) in which the Appellant's intimated to the Respondent that the charged property was compulsorily acquired by the Government of Kenya vide Gazette Notices No. 3788 & 3789 of 26/05/2006. However, it would seem that the contents of the said letter articulated the Respondent's cause of action on fraud, given that therein was an intimation made by the Appellants acknowledging indebtedness and that the proceeds received from the compulsory acquisition would be utilized towards settlement of the balance on the facility. The same never happened leading to the instant suit.
23. In defence of the claim, aside from DW1's testimony, the Appellant's relied on a raft of correspondences. The Court gathers that the gist of the Appellants defence is that compulsory acquisition of the Property, offered as security, was then governed by the Land Acquisition Act (repealed) whereas upon publication of the Gazette Notices No. 3788 & 3789 of 26/05/2006, onus was the Respondent to tender its interest at the public inquiry of compulsory acquisition of the Property.
24. The question that begs therefore concerns, by the Appellants conduct, can fraud be imputed?
25. At the outset as at 26/05/2006 there was public notification by way of Gazette Notice of the Governments intent to acquire among others LR No. Kikuyu/Kikuyu Block 1/65, for purposes of construction of the Southern By-pass. The specific Gazette Notices were not adduced into evidence however having taken the liberty of perusing the same, Gazette Notice No. 3789 expressly captured the inclusion that "Every Person who is interested in the above land is required to deliver to the Commissioner not later than the day inquiry, a written claim to compensation".
26. Heeding the said call in the Gazette Notice No. 3789, the Appellant submitted a Memorandum of Compensation dated 25/07/2006 - DExh.3. A perusal of the said memorandum, ex facie reveals that the memorandum did not capture the charge registered in favour of the Respondent. Thus, as at issuance of PExh.3 and PExh.4, the Property had since been compulsorily acquired by the Government of Kenya with the Appellants merely awaiting compensation. Interestingly, by DExh.2, it would seem that the Commissioner for Lands attained a realization after acquisition was done, completed, letter of awards issued and final compensation done. In his letter addressed to the 04/09/2008 - DExh.2, the Commissioner of Lands stated as follows;
- "...it has come to our notice that your title was charged by Standard Chartered Bank for amount of Kshs.2,400,000/-. You attended the inquiries and disclosed all facts in your possession but conveniently/fraudulently to mention the mortgages status of your land. As a result, you were jointly overpaid by that amount which should have been first deducted and remitted to the chargee – the Standard Chartered Bank Ltd. Payment should have been reflected as follows...



As per the law therefore, I am demanding the refunds from each one of you the erroneous overpayment of Kshs.1,200,000/- with immediate effect” (sic)

27. Later vide a letter dated 03/06/2009 - DExh.7, addressed to the Appellants advocate, the Attorney General on instructions from the Commissioner of Lands, authoritatively addressed the Appellants in part as follows -;

“In compliance with Gazette Notices No. 3788 and 3789 of 26th May, 2006, your client Mr. Stephen Njuguna Mwaura attended the inquiry and upon being asked by the Commissioner of Lands offices to produce the title document represented that he was to produce it within a short while a fact which he knew was not true as the title documents was charged with Standard Chartered Bank (K) Ltd.

During the inquiry the Commissioner of Lands made a full inquiry into the value of your client’s land being compulsorily acquired. The commissioner of land in the valuation report for compulsory acquisition only noted the charge by your client dated 19th January, 2005 in favour of Standard Chartered Bank (K) Ltd to secure a loan of Kshs. 2,400,000 million.

Upon conclusion of the inquiry, the Commissioner of Lands made an award of Kshs. 6,318,380/- as the amount of compensation payable for the land and improvements to your client inclusive of 15% as per Rule 4 of the Schedule to Cap. 295.

.....

However, the Commissioner of Lands erroneously paid your client the whole award of Kshs. 6,318,380/- without taking into account and deducting the amount due to Standard Chartered Bank (K) Ltd in satisfaction of the loan secured by the charge dated 19th January, 2005...

Accordingly, the amount erroneously paid to your clients by the Commissioner of Lands in place of Standard Chartered Bank (K) Ltd is a debt due to the Commissioner of Lands under S.15 of the Land Acquisition Act Cap. 295 irrespective of the fact that the Commissioner of Lands is the custodian of all land records with knowledge of all registered charges/ mortgages” (sic)

28. The first item to be discussed here is that before the Compulsory acquisition of the land, who were the owners? - the Answer is both the bank and the Appellants. When the Appellants engaged the Commissioner of lands unilaterally, the bank's rights to ownership was significantly infringed. This was breach that may point at dishonesty for a better lack of a decent word.
29. Was the acquisition by the Commissioner lawful? - the answer is no because it did not engage all owners of the land. How is it possible to acquire land jointly owned by two parties after engaging only one party? Which kind of law allows this?
30. The Commissioner required public participation before acquisition and the matter was gazetted. Did the Commission fail to do due diligence when the matter was in a public domain and if it failed, should a third party suffer for this failure? The law must always be just and an omission to read the Kenya Gazette cannot be used as a reason of eschewing justice or trampling on people's/ institutions rights. Failure by one or two officials in the Commission cannot subject the entire commission to liability when especially in this case where the Appellants deliberately failed to disclose on time to the commission that the land was owned jointly.



3. Was the Respondent privy to the agreement between the Commission and the Appellants? - the answer is no. The assertion by the Appellants that the Commissioner was supposed to pay the Respondents is assailable- How can the commissioner deal with a party that never engaged with it in the first place?
31. Is the commission liable to pay the Respondents? This is not practical because the valuation of the land did not include the Loan charged to the property. In fact, if the Commission was to clear the loan then it would have been way and above the approved valuation amount which would have been a clear misuse of public funds that amounts to a criminal offence. In brief the land which jointly owned is acquired by the Commission and payment is only made to one owner, so what happens to the other owner?
32. Who should pay the Respondents? This question has a straight answer- the Appellants who admitted in their letter that they would compensate the Respondents.
33. The onset of the above is that the trial Court was right in its finding which I uphold. The Appellant will pay costs.

Orders Accordingly!

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1ST DAY OF JULY 2025.

L. P. KASSAN

JUDGE.

In the presence of;

Konare for Appellant

Chege for Respondent

Carol - Court Assistant

1st Day Of July 2025 Proceedings

Before Hon L. P. Kassan – Judge

Carol - Court Assistant

Konare for Appellant

Chege for Respondent

Court

Judgment delivered in the presence of parties.

Leave to appeal granted.

Typed proceedings to be availed

L. P. KASSAN

JUDGE

