



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Stanbic Bank Kenya Limited v Kipsigis Stores Limited & 2 others (Civil Suit 3B of 2017) [2025] KEHC 14192 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14192 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL SUIT 3B OF 2017
JK NG'ARNG'AR, J
OCTOBER 9, 2025**

BETWEEN

STANBIC BANK KENYA LIMITED PLAINTIFF

AND

KIPSIGIS STORES LIMITED 1ST DEFENDANT

ALFRED KIPKORIR MUTAI 2ND DEFENDANT

SAMWEL CHERUIYOT MUTAI 3RD DEFENDANT

JUDGMENT

1. vide Plaintiff dated 19th July 2017, the Plaintiff filed this suit seeking the following orders and remedies: -
 - I. The outstanding sum of Kshs 69,444,104.56/= being the loan amount due and outstanding as at 14th July 2017 together with interest accruals thereof until the date of payment in full.
 - II. A declaration to the effect that pursuant to the provisions of the thereof, the Plaintiff is entitled to repossession of the various assets being Trailers ZE 6541, ZE 6542, ZE 6543 ZE 6544 AND ZE 6545, Prime Movers Registration No. KBY 900Y, KBY 400Z, KBY 500Z, KBZ 900B and KBZ 600B and Nissan Navara Pick Up Reg. No. KBY 800J to be sold and the proceeds applied towards liquidation of the outstanding amounts and or part thereof as the case may be.
 - III. An order compelling the Defendants jointly and severally to deliver to the Plaintiff within such period as may be directed by court the various assets being Trailers ZE 6541, ZE 6542, ZE 6543 ZE 6544 AND ZE 6545, Prime Movers Registration No. KBY 900Y, KBY 400Z, KBY 500Z, KBZ 900B and KBZ 600B and Nissan Navara Pick Up Reg. No. KBY 800T.
 - Iv. Costs of this suit.
 - v. Interest on [a] above at contractual rates.



2. It is claimed that the 1st Defendant applied for and was by various Hire Purchase Agreements advanced various Hire Purchase facilities as follows: -
 - a. By way of Hire Purchase Agreement dated 12th June 2014, the sum of Kshs. 15,750,000/= to facilitate the purchase of a total of five [5] Trailers Reg. No ZE 6541, ZE 6542, ZE 6543 ZE 6544 and ZE 6545.
 - b. By way of Hire Purchase Agreement dated 11th June 2014 for the sum of Kshs. 67,800,000/= to facilitate the purchase of five [5] Mercedes Benz Prime Movers Reg. No's. KBY 900Y, KBY 400Z, KBY 500Z, KBZ 900B and KBZ 600B.
 - c. By way of Hire Purchase Agreement dated 22nd February 2014 for the sum of Kshs. 4,600,000/= to facilitate the purchase of a Nissan Navara Pick Up Reg. No. KBY 800J .
3. It is averred that some of the terms of the Agreements of the parties were as follows: -
 - a. That the Agreements from the onset designated the Plaintiff, being financier thereof, for all intents and purposes as the "Owner" of the assets whilst the 1st Defendant was designated the "Hirer" until such time when the amounts advanced shall have been settled in full, at which point the rights of ownership would be transferred to the 1st Respondent.
 - b. The Agreements placed upon the 1st Defendant the obligation to make payments punctually, on agreed dates, in the agreed amounts and at the agreed rates until such time as the facilities shall have been redeemed in full.
4. The Agreements at Clause 2 thereof further placed upon the 1st Defendant the obligation to inter alia keep and maintain the vehicles in good order, to permit the owners to inspect the said assets at any time and otherwise make the said assets available on demand. The Agreement at Clause 5 thereof gave the owner the right to repossess the assets in case of breach of any terms of the Agreements.
5. The said assets were jointly registered to the Plaintiff and the 1st Defendant until such date as the amounts due shall have been paid, where after they would be transferred to the 1st Defendant. It is stated that in case of non-payment, the Plaintiff would be entitled to repossess the vehicles for sale to recover any monies as may be outstanding.
6. It is claimed by the Plaintiff that the 2nd and 3rd Defendants as directors of the 1st Defendant executed Deeds of Guarantee and Indemnity guaranteeing repayment of the amounts as may be due from the Bank on the said Hire Purchase Agreements. It is further claimed that the 1st Defendant having secured the Facilities and the Assets breached the terms of the Agreement by failing to repay the amounts due as a consequence of which the loan facilities accumulated to a sum of Kshs 69,444,104.56/= due and outstanding as at 14th July 2017.
7. That in view of the default, the Plaintiff issued a demand to the Defendants to remedy the default by settling the arrears failing which the Plaintiff would exercise its rights as set out in the Facility Agreements.
8. It is averred that the Defendants despite receiving the demand failed to comply with the terms thereof and the Plaintiffs then instructed M/S Westminster Commercial Traders [Auctioneers] to proceed and repossess the various assets in exercise of the Plaintiff's rights under the Hire Purchase Agreements. It is further claimed that the attempts by the said Auctioneers to locate the assets and repossess the same were unsuccessful as it transpired that the 1st Defendant and or its agents were hiding the assets to keep them away from the reach of the Plaintiff.



9. The Plaintiff states that the assets had been fitted with tracking devices to enable the Plaintiff through its tracking agents to monitor and verify their locations at any given time, and efforts to trace the assets through the tracking devices have been tempered with the tracking Company indicating that the devices on the said vehicles have all been interfered with and or removed hence the vehicles could no longer be traced.
10. It is the Plaintiff's contention that as owner of the assets, he has a right to repossess the same for valid reasons, and it is not in dispute that there is a substantial amount due and outstanding on account giving the Plaintiff the right to repossess the assets. Further, it is claimed that the 2nd and 3rd Defendants as directors of the 1st Defendant unfortunately used all means possible to frustrate the recovery despite not ensuring that the 1st Defendant paid the facility amount.
11. Following this turn of events, the Plaintiff at the time of filing the suit also filed an Application seeking to have the Defendant's compelled to surrender the vehicles or pay the amount due, and the court having been satisfied with the evidence available, by ruling delivered on 13th July 2017 directed the Defendants to show cause why they should not deliver the listed Motor vehicles to court, or pay the amounts due to court pending the hearing and determination of the suit. That the plaintiff claims that vide the said Ruling, the court found that the 1st Defendant's premises had been closed, and that the Auctioneers had been unable to trace the assets because they were hidden.
12. The Plaintiff further claims that court record will demonstrate that following the Show Cause, the court was not satisfied with the explanation given by the 2nd and 3rd Defendants and it ordered the surrender of the vehicles or deposit of the amounts sought in court, and when the 2nd and 3rd Defendants failed to comply with the said directions, the court proceeded to issue warrants for their arrest following contempt of court proceedings. It was pointed out that unknown to the Plaintiff, the 1st Defendant had in fact been undergoing insolvency proceedings filed in the year 2016, but the Defendants failed to disclose the existence of these proceedings to court during the hearing of this case but instead attempted to paint a picture of the 1st Defendant doing robust business.
13. It is contended by the Plaintiff that it is only after the order for insolvency was made that the 2nd and 3rd Defendants purported to bring it up before court in an effort to hide behind the same and defeat the claim by the Plaintiff. It was further stated that the Official Receiver attended court on several occasions and told the court that the 2nd and 3rd Defendants had not filed the statement of affairs and had refused to present themselves to the Official Receiver, who was not in possession of any assets of the Company/1st Defendant.
14. The Plaintiff claimed that there was a deliberate ploy to keep the said assets away from the reach of the Plaintiff and the Official Receiver, by non-other than the 2nd and 3rd Defendants as the principal officers/directors of the 1st Defendant.
15. The 2nd and 3rd Defendants filed defence dated 29th May 2023 and witness statement dated 10th February, 2025 by Samwel Cheruiyot Mutai the 3rd Defendant. They stated that they entered into various Hire Purchase Agreements on 22nd February, 2014, 11th June, 2014 and 12th June, 2014. That as a result of the Hire Purchase Agreements the Plaintiff financed the purchase of the of motor vehicles ZE 6541, ZE 6542, ZE 6543 ZE 6544 AND ZE 6545, Prime Movers Registration No. KBY 900Y, KBY 400Z, KBY 500Z, KBZ 900B and KBZ 600B and Nissan Navara Pick Up Reg. No. KBY 800J on the terms and conditions set out in the hire purchase agreement.
16. It is claimed by the Defendants that the Hire Purchase Agreements were only executed on the basis that the terms agreed upon in them would remain stagnant and unchanged. The 2nd Defendant in his



statement claims that he did not execute the Hire Purchase Agreement and that he has no knowledge of the existence of any deeds.

17. The Defendants through the statement of the 3rd Respondent claim not to owe the Plaintiff the alleged outstanding sum of Kshs. 69,444,104.56/=. They further claim that they have fully repaid the debts owed to the Plaintiff as per the terms of the loan agreement.
18. The 2nd and 3rd Defendants disputed the assertion that the 1st Defendant has not repaid the loan amount and maintain that it has made consistent payments in meeting its obligation. That they had paid a total of Kshs. 60,270,600.19/=. The Defendants aver that the Plaintiff has overcharged the interest payable on their accounts by Kshs. 4,588,772.51/=. They further claim that the Plaintiff has unlawfully varied the interest rate chargeable from 8.86% to 15% and that the Plaintiff has varied the penalty interest chargeable from 15% to 33%.
19. It was the Defendants' case that the Plaintiff in the subsequent Agreement did not provide for a penalty on interest. They claim that the Plaintiff unilaterally proceeded to impose interest of 33% per annum on the 1st Defendant without consent, knowledge or acquiescence.
20. The Plaintiff called one witness, Mr. Amos Mugambi who adopted his witness statement and reiterated the contents thereon. The summary of his evidence is that the 1st Defendant obtained a Facility from the Plaintiff, which Facility was in the nature of Hire Purchase to facilitate the acquisition of various vehicles by the 1st Defendant for its use. That a key component of the Hire Purchase Agreements was that the vehicles remained the property of the Bank [Plaintiff] until such time as they had been fully paid for and the option to transfer exercised.
21. The facility was secured by joint registration of the Plaintiff and 1st Defendant, as well as by Deeds of Guarantee and Indemnity by the 2nd and 3rd Defendants. The 1st Defendant defaulted, prompting the Plaintiff to issue instructions to various auctioneers to repossess the vehicles but all were unable to do so. It was then established that Defendants had taken action to ensure that the vehicles could not be traced, with the tracking devices having been tampered with and the vehicles defaced.
22. It was the witness evidence that this was established when one motor vehicle registration number KBY 400Z was repossessed whilst bearing registration number KCK 252N and through investigations were done, it was established that the chassis number had also been interfered with That this prompted the Plaintiff to also lodge a complaint in respect of the said vehicle and several other vehicles as exhibited by the letter dated 25th March 2019.
23. The Plaintiff claims that it is on record that the said parties have on oath admitted to being in possession and use of the assets, and the only logical conclusion is that they deliberately interfered with the said vehicles to keep them away from the reach of the Plaintiff. The Plaintiff concludes that it is equally discernible that that the Defendants deliberately refused to surrender the vehicles either to the Bank [Plaintiff] or even Official Receiver despite claiming that the 1st Defendant was under liquidation. The Plaintiff therefore seeks to have the Defendants be held liable, jointly and severally.
24. The Defendants called one witness, the 3rd Defendant who testified as DW-1. The 3rd Defendant filed a witness statement dated 10th January 2025 and adopted the same as his testimony. However, during cross examination he disowned the contents set out therein. The 3rd Defendant stated that he had no knowledge of the 1st Defendant's operations and was not involved in the matter of finances as this was only being done by the 2nd Defendant. That being the case, the witness could not therefore be in a position to corroborate any of the averments set out in the Defence, and this included the allegation that the loan facility had been repaid.



25. The salient issues for determination are as follows: -
- i. Whether the Defendants are indebted to the Plaintiff.
 - ii. Whether the Defendants are liable for acts of fraud.
 - iii. Whether the Plaintiff is entitled to possession of the vehicles.
 - iv. Whether the Plaintiff is entitled to the prayers as sought.

SUBPARA i. Whether the Defendants are indebted to the Plaintiff.

26. The fact that the Defendants were granted a loan facility is not in dispute. This is confirmed by their Statement of Defence at paragraph 3. The only question is whether the said facilities were repaid as per the terms of the Agreement. The Plaintiff pleaded that the Defendants defaulted in their obligations by failing to settle the amounts due under the facility as required and as a consequence the same went into default and accumulated to the sum of Kshs. 69,444,104.56/=. The Plaintiff relied on bank statements to support the averment on default, with the last credit payment on the account having been done on 31st January 2017.

27. Section 176 of the *Evidence Act* provides as follows: -

Subject to the provisions of this Chapter of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transaction and accounts therein recorded."

28. The Defendants having not disputed receipt of the facilities pleaded that they had repaid the same. It was therefore necessary for the Defendants to establish the existence of the said fact in line with section 109 of the *Evidence Act* which states thus: -

"The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

29. The 3rd Defendant [DW1] testified that he had no knowledge of the financial operations of the 1st Defendant and could not therefore render any evidence on the question of payment of the facility.

30. The upshot is that the Defendants are indebted to the Plaintiff.

SUBPARA ii. Whether the 2nd and 3rd Defendants are liable for the acts of fraud.

31. The Black's Law Dictionary, 10th Edition defines fraud as follows: -

Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.

32. The Plaintiff pleaded expressly the following particulars: -



- i. The Plaintiff avers that attempts by the said Auctioneers to locate the assets and repossess the same were unsuccessful as it transpired that the 1st Defendant and or its agents were hiding the assets to keep them away from the reach of the Plaintiff.
 - ii. The Plaintiff avers that the Assets had been fitted with tracking devices to enable it through its tracking agents to be able to monitor and verify their locations at any given time, and states that efforts to trace the assets through the tracking devices have been hampered with the tracking Company indicating that that the devices on the said vehicles have all been interfered with and or removed hence the vehicles can no longer be traced.
 - iii. The Plaintiff avers that the 1st Defendant is for all intents and purposes determined to keep the said assets away from the reach of the Plaintiff and at the same time avoid settlement of the facility.....
 - iv.The Plaintiff additionally avers that the 2nd and 3rd Defendants as directors and guarantors of the 1st Defendant have not only been behind the attempts to frustrate the Plaintiff but have also failed to remedy the default by paying the amount due.
33. The Plaintiff expressly pleaded the above particulars of fraud as against the 2nd and 3rd Defendants. I note that there was no dispute that the 2nd and 3rd Defendants were the Directors/Principal Officers/agents of the 1st Defendants. The Plaintiff has pointed out to the court the contents of the averments made on oath by the 2nd Defendant in the affidavits filed on 21st September 2017 and 14th February 2018 to the effect that the 1st Defendant was in possession of the vehicles.
34. This court notes that the Plaintiff has equally presented evidence to demonstrate that one of the vehicles, KBY 400Z had been interfered with and affixed with different plates. From evidence this court notes that that the vehicles were not able to be traced.
35. I note that the Defendants who have deposed on oath that they had possession of the vehicles for their transport business equally deliberately disobeyed a court order directing that they surrender the said vehicles. None of the above positions was challenged by the Defendants. It is my finding that the 2nd and 3rd Defendants either directly, or through their authorized agents committed acts of fraud, the intention of which was to put the vehicles out of reach of the Plaintiff. The 2nd and 3rd Defendants cannot therefore escape liability arising from their actions.

iii. Whether the Plaintiff is entitled to possession of the vehicles.

36. This Court will refer to the provisions of the Hire Purchase Agreements thus: -
- a. The Agreements placed upon the 1st Defendant the obligation to make payments punctually, on agreed dates, in the agreed amounts and at the agreed rates until such time as the facilities shall have been redeemed in full.
 - b. The Agreement at Clause 5 [iv] thereof gave the owner the right to repossesses the assets in case of breach of any terms of the Agreements.
37. I note that the Defendants having claimed to have settled the loan facilities failed to render any evidence to contradict the position of the Plaintiff on non-payment.



38. In *Amicabre Travel Services Limited v Alios Kenya Finance Limited* [2014] KEHC 4671 [KLR], the court held: -

“The consequences of default of the payment of the instalments were set out in Clause [7] of the said Hire-Purchase Agreement. The said clause provided that termination the owner, in this case being the Defendant, could terminate the Agreement in the following circumstances: -

- a. The Owner may, on the happening of any of the events specified in clause 7 [b] below without notice to the Hirer immediately terminate the hiring of the Goods in consequence of which the Hirer shall no longer be in possession of the Goods without the consent of the Owner and the Owner shall have the right to immediately retake possession of the Goods.
- b. The following are the events referred to in clause 7[a] above: -
 - i. Any instalment or other sum payable hereunder by the Hirer remaining unpaid after the expiry of Fourteen [14] days of becoming due....”

It is abundantly clear from the provisions of Clause [7] hereinabove that the Defendant was entitled to repossess the said vehicles the moment any one [1] instalment or payment repaid unpaid fourteen [14] days after it became due.....”

39. Similarly, in *Leisure Car Hire Tours & Safaris Ltd vs Imperial Bank Ltd* [2002] KEHC 583 [KLR], the court held: -

“In this case one of the terms of the hire agreement was that the financier could without more set in motion the process of repossession if the hirer, the applicant here, defaulted in repayments. This is what the contract between them provided. There is evidence in the record before me that the Applicant received warnings of its default. There was even an attempt of repossession in 1999 which is the one that led to the earlier case being filed and injunction being obtained. The court and Respondent even gave a grace period of 30 days which the Applicant misused or failed to appreciate. This gave the Respondent a right to assert its rights as provided in the contracts which had been properly executed by the Applicant.....”

40. Flowing from the above, I find that the Plaintiff is indeed entitled to possession of the vehicles.

iv. Whether the Plaintiff is entitled to the prayers as sought

41. The Plaintiff seeks five [5] reliefs as set out in the Plaint. The Plaintiff seeks these reliefs as against the Defendants, jointly, and severally.

42. It is not in doubt that the 1st Defendant is a non-living entity which acts through its directors and principal officers. The Plaintiff demonstrated that the 2nd and 3rd Defendants being directors and principal officers of the 1st Defendant deliberately undertook acts whose effect was to keep the vehicles out of its reach. These acts not only included disobeying court orders for surrender, but also deliberately interfering with the vehicles to ensure that they could not be traced.



43. If the said vehicles had been availed by the 2nd and 3rd Defendants, then the Plaintiff would have had the chance to repossess the same and sell, and apply the funds towards repayment of the facilities. I note that the 2nd and 3rd Defendants continued to hold onto possession of the vehicles, and have failed to settle the debt due.
44. In *Josephat Muthui Mwangi v Chief Land Registrar & 2 Others* [2015] eKLR, the court held: -
“One cannot be allowed to benefit from a fraud, even if he is not a party to it....”
45. Further, in *Sosplashed Limited & Another vs Pwani Maoni Limited & 3 Others* [2021] eKLR, the court held: -
“In any event, a person cannot be allowed to benefit from his illegal acts. Allowing the project to continue will be allowing the 1st defendant to benefit from an illegality”
46. It is the same scenario herein. The 1st Defendant obtained a loan facility and the 2nd and 3rd Defendants failed to pay. The Plaintiff then pursued recovery of the securities which the said parties admitted to being in possession thereof, but was unable to secure the same because of the actions of the said parties. I am persuaded that allowing the 2nd and 3rd Defendants to continue retaining the vehicles is essentially allowing them to benefit from their illegalities. In equal measure, by allowing the 2nd and 3rd Defendants to hide behind the insolvency of the 1st Defendant and their failure to pay the debt or surrender the vehicles for sale amounts to allowing the said parties to benefit from fraud and illegalities.
47. In the end, it is my finding that the Plaintiff’s claim has merit and Judgment is entered as prayed as against the Defendants, jointly, and severally, with the consequence that upon failure to surrender the vehicles for sale, then the same can be executed against the individuals.
48. The Plaintiff is awarded costs of this suit.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 9TH DAY OF OCTOBER, 2025.

Hon. JULIUS K. NG’ARNG’AR

JUDGE

Judgement delivered in the presence of:

Siele/Susan [Court Assistants].

Maondo for the plaintiff

Kurgat for the 1st to 3rd defendants

