



Kimani v Gulf African Bank Ltd & another; Gulf African Bank Limited (Plaintiff to the Counterclaim); Kimani & another (Defendant to the Counterclaim) (Civil Suit 177 of 2019) [2025] KEHC 15498 (KLR) (Commercial and Tax) (27 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 177 OF 2019
FG MUGAMBI, J
OCTOBER 27, 2025**

BETWEEN

SIMON NGIGI KIMANI PLAINTIFF

AND

GULF AFRICAN BANK LTD 1ST DEFENDANT

GARAM INVESTMENTS AUCTIONEERS 2ND DEFENDANT

AND

GULF AFRICAN BANK LIMITED PLAINTIFF TO THE COUNTERCLAIM

AND

SIMON NGIGI KIMANI DEFENDANT TO THE COUNTERCLAIM

RUDUFU LIMITED DEFENDANT TO THE COUNTERCLAIM

JUDGMENT

Introduction and Background

1. The plaintiff (hereinafter referred to as SNK), filed this suit by way of a plaint dated 26th July 2019 seeking, among other reliefs, a permanent injunction to restrain the 1st defendant Bank and the 2nd defendant Auctioneer from selling the suit properties, namely LR No. 10210/13, Karen, Nairobi and Land Title No. Kajiado/Kitengela/14990, by public auction. He also seeks declaratory orders against the Bank and costs of the suit. In response, the defendants filed a joint statement of defence and counterclaim dated 14th March 2022, to which SNK filed a reply dated 1st April 2022.



2. From the pleadings on record, it is common ground that the dispute stems from various banking facilities extended by the Bank to SNK. The Bank avers that it advanced a cumulative principal sum of KES 98,000,000/= to him for multiple purposes, including the purchase of aircraft parts, acquisition of two properties, development of LR No. 12778/47, and the takeover of an existing facility previously held with Spire Bank.
3. The said facilities were secured by, among other instruments, charges registered over the suit properties, a corporate guarantee dated 1st December 2017 issued by Rudufu Limited (the 2nd defendant in the counterclaim), as well as security over motor vehicles registration numbers KCG 505B and KCG 728U.
4. SNK contends that the Bank mismanaged the loan facilities and effectively extinguished his equity of redemption in the suit properties. He alleges that the Bank unilaterally departed from a mutually agreed payment plan and, without justification, instructed the Auctioneer to proceed with the sale of the suit properties by public auction.
5. The Bank denies these allegations and maintains that SNK failed and/or neglected to comply with the terms and conditions of the charge instruments, resulting in the loan account falling into arrears. It is the Bank's case that, following the default, all requisite statutory notices were duly issued, and the Auctioneer was lawfully instructed to proceed with the auction of the charged properties.
6. At SNK's request, the Bank conditionally postponed a scheduled auction that was set to take place on 9th April 2019. However, upon his failure to comply with the conditions attached to the postponement, the Bank instructed the Auctioneer to reschedule the sale. A subsequent auction was slated for 30th July 2019, but the same was aborted following the filing of this suit and the grant of an interlocutory injunction on 29th July 2019. That injunction was later dismissed by the Court on 18th December 2019.
7. Following the dismissal of the injunction, the Bank proceeded to realize part of the securities. The charged motor vehicles were sold for a cumulative amount of KES 2,750,000/=:, while L.R. No. 10210/13 was sold for KES 42,800,000/=:. The proceeds from these sales were applied towards the reduction of the outstanding loan arrears.
8. By way of counterclaim, the Bank seeks judgment against SNK and Rudufu Limited in the sum of KES 100,806,020.21 as at 8th February 2022, together with profit at the rate of 13% per annum, and default damages at the rate of 20% per annum, from the date of entry of judgment until payment in full. The Bank also prays for the costs of the suit.

Analysis and Determination

9. The hearing of the suit proceeded on 18th June 2025. SNK was absent despite having been duly served with the Hearing Notice. Consequently, his suit as set out in the plaint dated 26th July 2019 was dismissed. I deem it fair to grant costs to the defendant considering that the suit was defended. The matter then proceeded ex parte on the Bank's counterclaim, during which the Bank called a single witness, Mr. Lawi Sato, its Legal Officer, who testified in support of its case.
10. As reflected in the record, SNK's reply to the counterclaim consisted largely of bare denials, unsupported by any documentary evidence or sworn testimony. In the absence of such evidence, the Bank's counterclaim remains, for all practical purposes, unopposed. I note that judgment has already been entered against the 2nd defendant, Rudufu Ltd.
11. Nonetheless, it is incumbent upon this Court to assess the veracity of the claims made in the counterclaim and to determine whether they meet the requisite legal threshold. This evaluation is undertaken with the recognition that the averments in the counterclaim remain uncontroverted.



12. This approach aligns with the holding in a decision cited by the Bank: North End Trading Company Limited (carrying on business under the registered name of Kenya Refuse Handlers Limited) V City Council of Nairobi, Nairobi HC Comm 731 of 2008, [2019] eKLR where the Court observed as follows:

“It is my view, that a party to a case having filed his pleadings should call evidence where the matter is considered to proceed by way of evidence. It is trite law that where a party fails to call evidence in support of its case, the party’s pleading are not to be taken as evidence, but the same remain mere statements of fact which are of no probative value since the same remain unsubstantiated pleading which have not been subjected to the required test of cross-examination.

A defence in which no evidence is adduced to support it cannot be used to challenge the plaintiff’s case. The failure to call evidence means that the evidence adduced by the plaintiff remain uncontroverted and therefore unchallenged. In such a situation the plaintiff is taken to have proved its case on balance of probability in absence of the defendant’s evidence. In the instant case the plaintiff gave evidence which was not challenged, proved documents in support of her claim. I find the plaintiff’s evidence to be credible and I am satisfied the plaintiff pleaded and proved her claim for special damages.”

13. I have carefully considered the evidence adduced by the Bank. In the absence of any rebuttal or defence by Simon, it is evident that the financial facilities were duly extended and secured in the manner pleaded by the Bank.
14. The letter of offer dated 24th November 2016 granted SNK a Murabaha facility of KES 5,000,000/=, repayable over 60 months. A second letter of offer dated 5th May 2017 provided a Murabaha personal facility of KES 25,000,000/=, repayable over 120 months, followed by a third letter of offer dated 14th July 2017 for an additional Murabaha facility of KES 25,000,000/=, also repayable over 120 months.
15. These facilities were later consolidated under a letter of offer dated 7th December 2017, which incorporated them together with a further facility of KES 68,000,000/=. Each of the offer letters was duly executed in acceptance by SNK, with Rudufu Ltd. as guarantor, and the Bank. All the facilities were extended on Murabaha terms, with monthly repayments comprising both principal and profit.
16. Clause 5.1 of each Letter of Offer provided that the principal sums advanced would attract profit at the rate of 14% per annum. Further, Clause 6.5 of each Letter of Offer expressly stipulated that, in the event of default in repayment of any amount when due, default damages would accrue at the contractual rate of 20% per annum on the outstanding balance until payment in full. These terms, which are clear and unequivocal, have not been challenged or controverted by SNK.
17. While I accept the Bank’s submission that the outstanding amount has not been controverted, the law nonetheless places upon the Bank the burden of proving, on a balance of probabilities, the precise sum it claims, in this case, KES 100,806,020.21 as at 8th February 2022. A claim for a liquidated sum, even where unchallenged, must be supported by credible, cogent, and internally consistent evidence that enables the Court to verify its accuracy.
18. Upon a meticulous review of the documentary evidence produced, I note that the summary of amounts due and outstanding on the three loan accounts, as presented at page 155 of the Bank’s bundle, itemizes the components of the debt. These comprise the outstanding principal sums, profit accrued at the agreed contractual rate, and default charges levied in accordance with the facility terms.



19. The loan statements for the three accounts; 6575, 7246, and 7254 reflecting their status as at 4th March 2022 have been produced. A careful review of these statements reveals a detailed computation of the outstanding balances, which already factor in the principal sums advanced, profit accrued at the agreed contractual rate of 14% per annum, and default damages at the contractual rate of 20% per annum.
20. The statements demonstrate that these charges were applied periodically over the life of the facilities and aggregated into the final figure.
21. On that account, the claim for additional profit at 13% per annum cannot therefore be allowed, as it would result in impermissible compounding. However, clause 6.5 of each Letter of Offer expressly stipulates that default damages at 20% per annum would accrue on any outstanding amount from the date of default until payment in full. I am satisfied that this obligation is a continuing contractual term that survives judgment and applies to the outstanding balance until full satisfaction of the debt.

Final Orders

22. Accordingly, judgment is entered in favour of the Bank, the plaintiff in the counterclaim, against SNK, the 1st defendant therein, for:
 - a. The sum of KES 100,806,020.21 as at 8th February 2022.
 - b. Default damages at the contractual rate of 20% per annum on the said sum from the date of entry of judgment until payment in full.
 - c. Costs of the counterclaim, to be borne by the defendant.
 - d. The prayer for profit at 13% per annum from the date of judgment is declined.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER 2025.

F. MUGAMBI

JUDGE

