THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

HCCOMM CASE NO. 802 OF 2002

HON. JUSTICE ALEEM VISRAM

29TH JANUARY, 2026

BETWEEN

NILAM DOSHI.....PLAINTIFF

AND

BANK OF AFRICA KENYA LIMITED..... 1ST DEFENDANT

GANSHYAM CHHOTABHAI PATEL……...……2ND DEFENDANT

WILFRED J. KHASHOMI……..3RD DEFENDANT

PALLINDER HOLDINGS LIMITED……...…….4TH DEFENDANT

JUDGMENT

Introduction and Background

1. These proceedings arise from three related commercial suits filed in 2002, namely HCCC No. 802 of 2002, HCCC No. 803 of 2002, and HCCC No. 804 of 2002, all involving claims against the 1st Defendant arising from transactions undertaken in the mid-1990s. Although closely connected in subject matter, not

all the suits were consolidated. HCCC No. 803 and 804 of 2002, were formally consolidated.

2. HCCC No. 802 was heard separately. This Court had, at an early stage, suggested to the parties that all three matters be consolidated, and proceed as one, given that there was substantial overlap in terms of the issues, and the witnesses who intended to testify in all three matters. That proposal was opposed by the 1st Defendant, who was of the opinion that the matters involved different facts, and ought to be heard separately. As a consequence, the Court directed that the matters be heard one after another sequentially, and on each consecutive day. At the hearing of the matters, the Court found that the witnesses of both parties testified in relation to all three matters during the hearing of HCCC No. 802 of 2002. Moreover, their evidence revealed facts that are relevant and common to all the three suits, in addition to some facts that were unique to each case. Therefore, although HCCC No. 802 of 2002 was not formally consolidated with HCCOMM Nos. 803 and 804 of 2002, the matters were heard sequentially and back to back. With the knowledge of all parties, witnesses testified on overlapping factual and evidentiary issues during the hearing of HCCC No. 802 of 2002. That testimony was expressly adopted and relied upon in the

determination of the consolidated suits, namely HCCC Nos. 803 and 804 of 2002, to avoid unnecessary repetition.

3. A further procedural feature common to the three cases concerns the participation of the Defendants. Only the 1st Defendant actively participated in the proceedings. The 2nd and 3rd Defendants did not attend or participate in the proceedings and were not present at the hearing. The record shows that they had not attended any mentions, or participated in any applications for several years prior to the hearing of the suit, and had not filed or produced any documentation. It is also important to note that they were joined to the suits at the instance of the 1st Defendant, and not the Plaintiff, whose claim, was against the 1st Defendant alone. It was therefore evident to this Court that the 2nd and 3rd Defendants had lost interest in the matter and had no intention to take part in the proceedings. A ruling was issued to this effect.

4. The factual background to this matter arises from a financial transaction said to have occurred in the year 1996 involving the Plaintiff, Nilam Doshi, and Credit Agricole Indosuez Limited, formerly trading as (Banque Indosuez) ("Agricole" or "the Bank"), whose assets and liabilities were later taken over by the 1st Defendant. The Plaintiff's case, as pleaded and as outlined in her submissions, is that she liquidated bearer certificates held at Kenya Commercial Bank,

following which, a banker's cheque in the sum of Kshs. 20,350,000/- was issued in favour of Credit Agricole Indosuez Limited. Of this amount, Kshs. 1,575,000/- was applied towards the purchase of Kenya Airways shares, while the balance of Kshs. 19,000,000/- was, at her instructions, placed on fixed deposit with Banque Indosuez.

5. The Plaintiff's case is, in summary, that the Bank issued written acknowledgements confirming the placement of the funds on fixed deposit, the applicable interest rate, and the maturity dates. She pleaded that upon the first maturity in June, 1996, interest was paid out and the principal sum was retained and rolled over on fixed deposit to a later maturity date paid out in September, 1996. The Plaintiff pleaded that the sums due upon maturity were never paid to her, giving rise to the present claim, and for which the Bank remains liable together with the interest accrued.

6. On the other hand, the 1st Defendant's version of events is that no valid fixed deposit was ever created in favour of the Plaintiff. The 1st Defendant denies that the Plaintiff was a customer of the 1st Defendant in the manner alleged, disputes the existence of any contractual relationship giving rise to liability, and challenges authority of the officers that issued the documents to the Plaintiff.

The 1st Defendant pleaded that the funds in question were diverted through unauthorised acts of former employees acting outside the scope of their employment, and contended that it is not liable for those acts. The Defence also raised issues relating to limitation of actions and the timing of the claim.

7. I have considered the pleadings, the oral testimony of the witnesses, the documentary exhibits produced, and the rival submissions and authorities filed by the parties.

Issues for Determination

8. The issues that arise for determination are:

i. Whether the Plaintiff proved that Credit Agricole Indosuez received and acknowledged the deposit claimed?
ii. Whether the acknowledgment constituted an enforceable obligation?
iii. Whether liability, if any, was assumed by the 1st Defendant under Section 9(3) of the Banking Act?
iv. Whether the claim is defeated by limitation, fraud or illegality; and
v. The appropriate reliefs.

Analysis and Determination

9. In arriving at its determination, this Court is guided by the fact that the standard of proof in civil cases is on a balance of probabilities, and that the burden of

proof is on the party alleging the existence of a fact which they want the Court to believe. This is anchored in Section 107 (1) and (2) of the Evidence Act (Chapter 80 of the Laws of Kenya) which provides that:- **whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist** and further that:- **when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.** In ***Miller v Minister of Pensions [1947] All ER 372,*** Lord Denning aptly summarized the application of the standard in the following terms:-

> ***"That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in criminal cases. If the evidence is such that the tribunal can say: We think it more probable than not; the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case is which the tribunal cannot decide one way or the other which evidence to accept, where both parties' explanations are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained."***

10. The Court of Appeal in ***James Muniu Mucheru v National Bank of Kenya Limited [2019] KECA 1058 (KLR)*** simply put it that:- ***"Courts will make a finding based on which party's version of the story is more believable."*** Guided by the above, I move to the issues in dispute, sequentially.

<u>Proof of Deposit and Acknowledgment</u>

11. The Plaintiff's case was advanced through PW1, her son, who was duly authorized by way of power of attorney to testify on her behalf. He explained that the reason he was testifying on his mother's behalf was because she was an elderly woman, presently 86 years of age, and of ill health. He clarified that although he is not the Plaintiff, he is the individual that carried out the subject banking transactions on behalf of his mother. He pointed out that in any event, his mother was presently recovering from heart surgery and was not in a position to testify. He explained that he was generally in charge of financial matters for his family, and that he handled transactions for the family. He stated that he was the best person to give evidence for this reason. This testimony was not rebutted by way of any evidence on the part of the 1st Defendant.

12. It was PW1's evidence that he liquidated the Plaintiff's bearer Certificates from KCB and a banker's cheque for Kshs. 20,350,000/- was drawn in favour of Bank Indosuez, the purpose of which, was for part to be applied for a share purchase, and the balance of Kshs. 19,000,000/- placed on fixed deposit.

13. His testimony was corroborated and consistent with the documentary evidence on record. He produced a copy of the said cheque dated 12th April, 1996, which is drawn in favour of the Bank and for the said amount. The said testimony is also buttressed by a contemporaneous acknowledgment from the Bank. The Plaintiff produced a letter dated 16th May, 1996, written on Indosuez official letterhead and signed by its officers, expressly acknowledging receipt of Kshs. 19,000,000/- . The letter states in material part:-

> ***"We confirm having received from you the sum of Kshs. 19,000,000.00/- …and on maturity ..15th June 1996…we will pay you Kshs.19, 827,671.25/-."***

14. The 1st Defendant, on the other hand, denied that the said letter was proof of a fixed deposit. It denied that the Plaintiff was a customer of the Bank and it disputes the existence of any contractual relationship between the Plaintiff and the Bank. The evidence does not, however, support the Defendant's version of events. I say so because DW 1 admitted from the outset that the banker's

cheque produced by the Plaintiff and drawn by KCB in favour of Agricole was both certified as a true copy of original, and was credited to Agricole. She stated unequivocally that ***" this could not have been paid to any other party other than that bank".***

15. DW 2 further admitted the following at paragraph 9 of her witness statement, which statement was duly adopted as her evidence in chief:-

> ***"I am aware that on or about 15 April 1996, a banker's cheque number 075550 dated 12 April 1996 was deposited by a customer into a transit account CD and thereafter immediately transmitted to the account of United Traders (Msa) Ltd at Prime Bank."***

16. Further, during cross examination, DW 2 once again admitted the following:-

> ***"Yes, the money was cleared to the Bank and landed in the account of the Bank…the account it landed in was operated by bank officials…the officials that authorized the transfer are authorized and must have been officials working in the Bank."***

17. Finally, the acknowledgment letter dated 6th May, 1996, from the Bank is critical for several reasons: It emanates from the Bank itself, not the Plaintiff; it is contemporaneous with the alleged deposit; it expressly acknowledges receipt of the precise sum in issue; and finally, its authenticity was not disproved by

the defence through any form of contemporaneous repudiation. The defence did not lead any evidence whatsoever to show that this letter was forged, fabricated, or repudiated by the Bank at the time. I am persuaded that the said funds were deposited in the Bank in the manner alleged by the Plaintiff.

18. The next, and related issue is whether or not a fixed deposit was created in favour of the Plaintiff? PW1 testified that he gave the Bank instructions to create the fixed deposit in question over a telephone conversation with Mr. Patel, the 2nd Defendant. His testimony, which has not been refuted by any evidence on record, was that following the said conversation, Mr. Patel placed the agreed amount in a fixed deposit as per his instructions for a period of three months and at an interest rate of 26.5%. He testified that this instruction was thereafter acknowledged by the Bank. He referred the Court to the letter dated 6 May, 1996, which is consistent with this testimony.

19. A reading of the letter dated 6th May, 1996, shows that the Bank confirmed as having received the principal sum, and that it specified the amount to be paid on the maturity date of 15th June, 1996, being the sum of Kshs. 19,827,671.25/- From a reading of the same, it is easily discernable that the interest rate to be applied over the period in question was the rate of 26.5% per annum.

20. Beyond pleading that this money was later transferred out by bank officials acting in concert with the Plaintiff, and allegedly in an effort to defraud the Bank, no credible evidence was provided in support of this. DW2, confirmed that she joined the Bank in 1999, after the 2nd and 3rd Defendant had already left the Bank, and explained that her knowledge of the events at the time was based solely on investigative records, rather than any first-hand experience of the events.

21. DW2's testimony in respect of the fixed deposit certificates was inconsistent. She focused on form and technicality, initially pointing out that the letter of acknowledgment dated 6th May, 1996, bears the subject reference "Sale and Purchase – Bills of Exchange" rather than fixed deposit. She further testified that this was not a system generated certificate. However, during cross examination she admitted that at that time, the Prudential Guidelines did not provide for a fixed format for the creation of a fixed deposit. She conceded that "each bank may have its own" format and explained that the criteria to create a fixed deposit is that that document must show: "the amount, date of maturity, and the amount payable on maturity date". All of which, she conceded, was present in various letters of acknowledgment issued by the Bank. Moreover,

she admitted that at that time, a person did not have to be a customer of the Bank in order to create a fixed deposit with the Bank.

22. The pleading that the Bank officials were acting in their own capacity, was not corroborated by any credible evidence or details. To the contrary, DW2 admitted that Mr. Patel was the Manager of the Bank at the time, and further admitted that Mr. Kashomi, was also an official of the Bank at the time. She could not explain or provide any details as to how the two were allegedly acting on their own, or in collusion with the Plaintiff. This is consistent with her admission that she joined the Bank after the 2nd and 3rd Defendants had left, and given that she only knew of them through reports that she had read. These reports were not produced in court. Neither was the maker of the report called to testify in relation to the same.

23. PW1 testimony on this issue appears to be more reliable and credible. He testified that upon maturity, only a small amount of the original sum was paid out, leaving a balance of Kshs. 19,800,000/-, which the Bank again acknowledged by letter dated 26th June, 1996, fixing maturity of the deposit to 13th September, 1996 and a payable sum upon maturity of Kshs. 21,093,780.80/-. A copy of the said acknowledgment was produced on the Bank's letterhead and duly signed by its officials.

24. PW1's testimony is consistent with the documentary record. His version of events appear more probable on a balance of probability, bearing in mind the various admissions set out above on the part of the defence witnesses, and given the internal bank confirmation of receipt. It is also not lost on me that the defence did not adduce evidence to show that the cheque was dishonoured or returned. To the contrary, the Bank issued a contemporaneous written acknowledgment of receipt; the Bank's own internal email confirms receipt; and that no evidence of non-receipt or refund was produced by the Bank.

25. Finally, DW1 and DW2 both conceded that the banker's cheque was cleared through the Central Bank clearing system into an account controlled by Credit Agricole Indosuez. And DW2 admitted that the personal records of the Plaintiff existed at the Bank. She testified explicitly that ***"I have never met Sanjita and Nilam. I know of them only from Bank records"***. And further admitted that "***the Bank had records of both of them***".

26. Having weighed the evidence above, I am persuaded that the letter of acknowledgment satisfied the criteria for creation of a fixed deposit, and that a fixed deposit, was in fact, created by the Bank in favour of the Plaintiff.

27. The evidence before me does not support the view that only a system generated certificate of deposit was valid at that time. There is a clear admission that there was no fixed form of deposit, a further admission that the letter in question met the applicable criteria for a deposit, and the testimony of DW1 and DW2 did not corroborate the narrative set out in the pleading that the Bank officials were either unauthorized, or that they acted outside of their capacity.

28. Having found the above, the logical conclusion is that the further letters of acknowledgment issued in the same manner and consistent with the Plaintiff's version of events are equally valid for the same reasons.

29. I therefore find and hold that the subsequent roll over vide the further fixed deposit created on 26th June, 1996, for the principal sum of Kshs. 19, 800, 000/- which stipulated a maturity date of 13th September, 1996 and the amount to be paid on such date, being the sum of Kshs. 21, 093,780/- constituted evidence of receipt of the funds and is a valid fixed deposit in favour of the Plaintiff. There is no evidence to show that the same was paid to the Plaintiff, and the same remains due from the said date of maturity.

Enforceability of the Instrument

30. As stated, the letters issued by Credit Agricole Indosuez were in writing, signed by authorised officers, stated a sum certain, a maturity date and an ascertainable interest component. DW1 and DW2 both accepted that such instruments fall within the definition of promissory notes under the Bills of Exchange Act (Cap 27). Based on the reasons set out above, I find that the acknowledgments constituted enforceable obligations on the part of Agricole.

Successor Liability

31. It is common ground that by Gazette Notice No. 4697 of 2004, Bank of Africa Kenya Limited acquired the assets and assumed the liabilities of Credit Agricole Indosuez with effect from 30th June, 2004. The Gazette Notice states: -

> ***"The Minister of Finance has approved the acquisition of the assets and the transfer and assumption of Calyon (formerly known as Credit Agricole Indosuez) by the Bank of Africa Kenya Limited where such acquisition of the assets and assumption of liabilities are effected on the 30th June, 2004 at 24 hours (midnight)."***

32. A plain reading of the said Gazette Notice would suggest that the 1st Defendant assumed all the liabilities of Agricole, and not just "some" or "certain" liabilities. DW 1 clarified that the said Gazette Notice does not list all specific

assets and liabilities transferred to the 1st Defendant. She pointed out that the notice ought to be read together with the applicable Acquisition Agreement which contains full particulars of the specific assets and liabilities that were assumed by the 1st Defendant after acquisition. She admitted that the 1st Defendant is a party to that agreement and confirmed that it has possession of the same. She further confirmed that the said agreement would show, as a matter of fact, whether or not the 1st Defendant had assumed this particular liability.

33. Nothing would have been easier than to produce this document. It is not lost on me that the 1st Defendant opted to litigate this matter in full rather than simply produce the agreement in question, which would have put the matter to rest. DW1, in her own words expressly testified that ***"this liability could have been proved by showing the agreement".*** The 1st Defendant's failure to produce the same leads me to the inescapable inference that had the agreement in question been produced it would have shown that the liability in question had been assumed by the 1st Defendant as part of the acquisition.

34. Finally, because that document is admittedly within the 1st Defendant's possession, and its contents are within its knowledge only, once the Plaintiff alleged, and DW 2 admitted that the same would prove the liability of the 1st

Defendant, the evidentiary burden of proof shifted to the 1st Defendant to displace, or rebut those facts. This is consistent with Section 112 of the Evidence Act which provides :- **In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.** This was not done. The 1st Defendant failed to discharge its burden, and accordingly, I find that the 1st Defendant assumed the Plaintiff's liability in accordance with Gazette Notice No. 4697 of 2004 and from the effective date of 30th June, 2004.

35. The legal effect of the above finding is statutorily underpinned under the provisions of Section 9 (3) of the Banking Act Cap. 488 Laws of Kenya, which stipulates that a Bank to whom the liabilities of another Banking institution are transferred to effectively 'stands in the shoes' of the institution whose liabilities it has acquired, and is liable for the transferring institutions liabilities.

36. In ***Signature Tours and Travel Limited v National Bank of Kenya Limited [2019] KEHC 6531 (KLR)***, the court stated the following in respect of the above:-

> "***There is no possibility that the intended takeover of the Defendant by another financial institution will jeopardize the interests of the Plaintiff since the process is properly anchored in law and regulated by sound***

institutions namely Capital Markets Authority, Competition Authority of Kenya and the Central Bank of Kenya. Under section 9(3) of the Banking Act there are systems to protect parties and claims as assets and liabilities are carried over by the new entity following the takeover or merger and become binding. The relevant law provides as follows . . .

Guided by the above provision of the law, I am satisfied that the Plaintiff's concerns are well taken care of since the new outfit will definitely be a going concern and liable to meet any obligations prior to the change and subsequent structure. The new outfit will definitely address any claims by the Plaintiff should it succeed in the end."

37. This principle was affirmed in the decision of ***Giro Commercial Bank Limited v Macho Credit Limited [2018] KEHC 10218 (KLR),*** where the Court stated thus:-

"3. The Defendant opposed the application on the grounds that the Defendant entered into contractual relationship with Giro Commercial Bank Limited and not I & M Bank Limited; . . .

. .5. The Defendant erred to argue that I & M Bank Limited cannot take over this suit because the Defendant had no contractual relationship with the bank. What entitles I &M Bank Limited to seek to take over this suit is the agreement with Giro Commercial Bank Limited for I & M Bank Limited to take over all assets and liabilities of Giro Commercial Bank Limited.

6. That agreement was gazetted in the Kenya Gazette as stated above. Section 9 (3) of the Banking Act Cap 488 provides in part as follows: . . .

. .7. It is clear from the above that I & M Bank Limited by virtue of Section 9 (3) (b) obtained the same rights on the assets and liabilities of Giro Commercial Bank Limited from the moment the transfer transaction came into effect."

38. And in ***George Maina Kingori v The Co-operative Bank of Kenya Ltd. (2013) KLR***, the court reiterated that assets and liabilities of Co-operative Merchants Bank Limited had by dint of Section 9 of the Banking Act been assumed by Co-operative Bank Limited. The present matter is no different. I find and hold that the 1st Defendant has acquired the liability in respect of the Plaintiff and that it has a legal obligation to remedy the same. The argument that there is no contractual relationship between the Plaintiff and the 1st Defendant therefore fails.

<u>Limitation, Competence, Fraud, and other issues</u>

39. The 1st Defendant raised the issue of limitation by way of a Preliminary Objection at the outset. At the time, this Court ruled that the question of

limitation would be dealt with as part of the merits of the case and would form part of the final judgment.

40. Having found that the 1st Defendant assumed the liability of Agricole, the logical question is (prior to the substitution of the 1st Defendant in place of Agricole) was the suit against Agricole filed in time? The answer is affirmative. The cause of action arose on the maturity dates of the deposits in question. The operative dates are 10th September, 1996 and 20th August, 1996. The suit was filed on 26th June, 2002. This was within the six years period from the accrual of the cause of action. Accordingly, I find and hold that the suit is not time barred by virtue of the limitation period.

41. I move to the allegations of fraud, which I have addressed in part above. As stated, these allegations were not substantiated by the evidence adduced at the hearing for several reasons. The most important reason was because no primary evidence was adduced in support of the same. The 1st Defendant did not call any witness as to the fact of the alleged fraud. None of the witnesses present were employed by the Bank at the relevant time, and none had personal knowledge of the events surrounding the alleged fraud. The testimony of the said witnesses did not draw a credible or reliable nexus between the Plaintiff

and any of the allegations of fraud on the part of the 2nd and 3rd Defendants as alleged by the 1st Defendant in its pleadings.

42. Most unusually, a vast number of the documents relied upon by the 1st Defendant in support of its allegations of fraud, were produced by the Plaintiff rather than the 1st Defendant, and after the 1st Defendant opposed a notice to produce originals of the same.

43. Several challenges arise in determining the evidentiary weight of the said documents: first, none of the witness present were familiar or able to speak to the contents of the documentary evidence; second, the authenticity of the documents is questionable given the age, foreign nature in some cases, and the fact that the documents are copies and not originals. None were certified as true copies of originals. Additionally, one of the documents produced appears to have come into being for the purpose of litigation, namely, a letter between Agricole and its law firm, Counsel for the 1st Defendant. No contemporaneous documentary evidence was produced to assist the court to decipher the credibility, reliability or accuracy of the contents of the said documentary evidence produced. In short, I found that little weight may be attached to the said documentary evidence relating to the alleged fraud.

44. The 1st Defendant addressed the relevance of these documents in submissions only. It is trite that submissions are not evidence. I am unable to accept for example, that the allegation that the Plaintiff was not a party to the suit, and rather, that the subject dealings were made by the late Lalitchandra P. Doshi, based purely on the pleading and written submission that the 2nd and 3rd Defendants admitted this. Those parties were not present at the hearing and the 1st Defendant did not call any witness to explain or contextualize this assertion. Nor did the 1st Defendant substantiate this allegation during cross examination of the Plaintiff's witness during the hearing.

45. Mere production of documentary evidence and reference to the same by way of submission and pleading is insufficient to discharge the burden of proof in the absence of subjecting that document to oral examination. The pleaded allegation remains a mere assertion until it is supported by sufficient evidence. This is especially the case in circumstances such as the present, where the 1st Defendant has pleaded fraud. The evidential burden lies with the 1st Defendant to prove the fraud. This was not done.

46. By way of further example, the 1st Defendant produced a document ostensibly a 'statement under inquiry' of the 2nd Defendant without calling any witness to contextualize the contents and explain the relevance of that document, or

without testing that document to oral examination. The 1st Defendant did not call the maker, author, or any witness to speak to that statement. This document and many similar documents are of little or no probative value. Documents do not speak for themselves. They must as a general rule, be explained, contextualized, and connected to the facts in issue by a witness. This was not done in relation to numerous allegations which I have considered and found are not proved for the same reason.

47. Such allegations collapse for want of proof. The Court may not fill that evidentiary void through submissions or conjecture. The 1st Defendant's allegation for instance, that the Plaintiff fraudulently procured photocopies of cheques was never even raised at the trial. As a further example, the production by the 1st Defendant of only a portion of a table, which again, was not subjected to oral examination, and to which no witness explained the importance of, or meaning of to the Court, may not be argued in written submissions in support of a particular proposition. Again, the maker of the statement, or author of the table was not presented to the Court and the material was not subjected to oral examination. To my mind, while this table forms part of the evidentiary record, the same is of little or no probative value. I further note that this position was even held by the 1st Defendant's Counsel. The letter dated 9th August, 2002,

between Counsel for the 1st Defendant and Agricole, relates to fraudulent activities on the part of Agricole's internal staff only.

48. As I conclude on this point, I reiterate that the simple production of documentation in court does not automatically discharge the duty of a litigant to discharge the burden of proof to the applicable standard. This was not done. To the contrary, DW2 expressly admitted that she could not speak to the events relating to fraud, she stated in her own words that ***"we did not whistle blow to say that the money had not been provided".*** The testimony is consistent with the Plaintiff's version of events that any fraud that may or may not have occurred was an internal issue between the Bank and its own staff, namely, the 2nd and 3rd Defendants and unrelated to the Plaintiff.

49. Finally, DW 2 evidence further shows that she was aware that Agricole and the 2nd and 3rd Defendants settled the internal matters relating to fraud, which settlement resulted in a consent order between the Bank and the 2nd and 3rd Defendants. She testified that she had no personal knowledge of the terms of the consent but conceded that the parties to the same does not include the Plaintiff.

50. Based on the evidence as stated above, I find and hold that the allegations raised in the pleadings and not contextualized or explained by the witness,

including fraud, were not substantiated. The 1st Defendant failed to draw a demonstrable nexus between the Plaintiff and such unlawful actions and allegations.

Interest and remaining prayers

51. The starting point in this matter is that a contractual rate of interest existed between the parties. The rate at that time was 26.5% per annum. However, it is also evident to me that the rate was for a fixed deposit, and applicable over a short period of time, three months. Moreover, it is not evident if the parties agreed or intended to extend the same rate after maturity of the deposit, or even to withdraw the funds. In the circumstances, the Court ought not speculate, and ought not write or rewrite a contract between the parties. I do not presume to do so. I find that awarding interest at the contractual rate at that time would also be unrealistic, noting that fixed deposit rates are prone to fluctuation and are based on market conditions.

52. Interest is awarded pursuant to Section 26 of the Civil Procedure Act, which give the Court power to exercise its discretion to award interest at court rates for any period, both before the institution of the suit, and from the date of filing suit until payment in full. Guided by the principle that an award of interest

ought to provide for restitution without imposing a disproportionate burden on the paying party, I find it appropriate to award interest at the court rate of 14% per annum. Interest shall run from the date of maturity of the fixed deposits until payment in full. That is from 13th September, 1996, until payment in full.

53. The claim for general damages is dismissed on the basis that the same was not demonstrated.

54. Having succeeded in her claim, the Plaintiff is entitled to costs based on the principle that costs ordinarily follow the event.

Conclusion and Disposition

55. Based on the reasons set out above, I find and hold that the Plaintiff's suit is meritorious. The same is allowed with costs and interest on the following terms:-

a. **Judgment is entered for the Plaintiff in the sum of Kshs. 21,093,780.80./-**

b. **Interest on the above amount is awarded to the Plaintiff at the court rate of 14 % from 13th September, 1996, until payment in full.**

c. **The Plaintiff is awarded the costs of the suit.**

Dated and delivered virtually via Microsoft Teams this 29th day of January, 2026

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lispa

……..…….....for Plaintiff
…….....for 1st Defendant
……..for 2nd Defendant
……..for 3rd Defendant
……..for 4th Defendant