



**National Bank of Kenya Limited v Ashioya (Civil Appeal E051 of 2025)
[2026] KEHC 1659 (KLR) (9 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E051 OF 2025
WM MUSYOKA, J
FEBRUARY 9, 2026**

BETWEEN

NATIONAL BANK OF KENYA LIMITED APPELLANT

AND

OYE ASHIOYA RESPONDENT

(Appeal from the judgment and decree, of Hon. PA Olengo, Senior Principal Magistrate, SPM, delivered on 22nd February 2024, in Busia CMC ELC No. E119 of 2022)

JUDGMENT

1. The suit, at the primary court, was by the respondent, against the appellant. The respondent, principally, sought to protect his property, which he had offered as security, for a loan, with the appellant, from foreclosure by the appellant. He argued that he had been servicing the loan, and was willing to settle it, but was hindered by the failure by the appellant to give to him updated statements on the standing of the loan account. The principal prayers were for a permanent injunction to restrain the intended foreclosure, and for the taking of accounts.
2. Simultaneous with the suit, the respondent filed a Motion, dated 26th August 2021, for temporary injunction, and for taking of accounts. It was asserted that the total loan amount had been paid up, and what was in dispute was the amount, above the loan amount, that the appellant was raising, which, the respondent argued, the appellant had failed to explain or provide statements of accounts to support of that figure.
3. It would appear that the appellant did not file a defence, to the allegations made in the plaint, but it did file a replying affidavit, sworn on 6th September 2021, to the Motion, pointing out that the respondent was in default, hence the steps taken to foreclose. It was asserted that the indebtedness was not denied by the respondent.



4. The Motion was canvassed by way of written submissions, and a ruling was delivered, on 22nd February 2024, allowing the same.
5. The appeal herein arises from the said ruling, for the appellant was aggrieved. Its memorandum of appeal is dated 12th March 2024. The principal arguments are that the principles for grant of injunctions were not met; no basis was laid for the taking of accounts; and the evidence tendered by the appellant was not considered.
6. Directions were taken, on 2nd October 2025, in the presence of both sides, for canvassing of the appeal, by way of written submissions. I have seen and read the written submissions by the appellant, and I have noted the arguments made.
7. The dispute was over re-payment of loan monies. The loan itself was not disputed. The respondent prevaricated on whether he paid the primary loan amount in question in full, and was only disputing the excess demanded, but he did assert that he had paid some money towards repaying the loan, and had provided some evidence, which appeared to amount to a payment of Kshs. 1,000,000.00, far below the loan amount of Kshs. 3,400,000.00, which he appeared to say he had paid in full. I understand him to have been saying that he paid off the full amount, but the appellant had overloaded other figures which were not explained, and in respect of which he would have liked to be given a statement, so that he could negotiate and repay the total amount agreed to be owing.
8. The appellant had not committed to how much was owing, and was more certain on what it claimed. The affidavit, in response, did not disclose how much had been paid by the respondent, and how it was coming to the figure it was demanding. Its response was more on there being a default, hence justification for foreclosure.
9. In cases of this nature, where a dispute is framed as being on accounts, the preferable thing should be for both sides to focus on the accounts, where the borrower should file accounts on what it alleges it has repaid, with the lender filing accounts on what it has received from the other side, and on the balance outstanding, demonstrating how that outstanding amount has been availed at. That is what would resolve the matter.
10. In this case, both sides did not do that. The respondent claimed to have had settled the loaned money in full, and was only raising issue with the amount over and above that amount, Kshs. 3,400,000.00. His complaint was that no statement of accounts had been given to support the figures in excess of Kshs. 3,400,000.00, that the appellant was claiming. Yet, the material placed on record only demonstrated a payment of not more than Kshs. 1,000,000.00, by the respondent. That would mean that he did not pay the full loaned amount of Kshs. 3,400,000.00, as alleged in his filings.
11. The appellant, on its part, did not address that issue. It did not seek to provide evidence on how much the appellant had paid towards the loan. It merely asserted that there was an amount still outstanding, without explaining, or providing material to explain, how it arrived at that figure, yet that was the issue the appellant was raising. I understand that the appellant was not denying the loan, that there was an amount outstanding, but to be challenging what was claimed to be outstanding. The appellant should have focused to providing a statement of accounts, on what it was claiming, as there was what was at the core. That was the evidence that was required. The evidence it provided, that there was a loan, and that it had taken all the relevant steps towards foreclosure, did not address the critical issue, the status of the outstanding account, and how it was arrived at.
12. As the core as not addressed by the appellant, in its response to the Motion, I would not conclude that trial court was in error, for ordering the taking of accounts, and the grant of the restraining orders. There ought to be a clear case of the actual indebtedness, before a foreclosure can proceed. The



respondent had made a case, though marginal, for grant of the orders sought, which the appellant did not adequately counter, in its response.

13. I am not persuaded that the appeal herein is merited and, I hereby dismiss it. The respondent, apparently, still owes the appellant, so I shall not grant costs. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 9TH DAY OF FEBRUARY 2026.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Oye Ashioya, the respondent, in person.

Advocates

Mr. Oduor, instructed by Otieno Yogo Ojuro & Company, Advocates for the appellant.

