



**Wendoh v SBM Bank Kenya Limited (Civil Suit 036 of 2022)  
[2026] KEHC 1399 (KLR) (Commercial & Admiralty) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1399 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
CIVIL SUIT 036 OF 2022  
H NAMISI, J  
FEBRUARY 13, 2026**

**BETWEEN**

**FLORENCE EDELQUONN WENDOH ..... PLAINTIFF**

**AND**

**SBM BANK KENYA LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff commenced these proceedings against the Defendant, seeking judgement against the Defendant as follows:
  - i. A permanent injunction to restrain the Defendant, whether by itself, or by its employees, servants, agents or any other person acting upon its instructions, from offering for sale, selling, advertising the sale of, exercising any powers whether granted by law or otherwise in relation to, or in any other manner whatsoever dealing with the property known as LR Number 2327/277 (original number 2327/68/6);
  - ii. A declaration that the charge dated 3 April 2012, purportedly executed in favor of the Defendant in relation to parcel known as LR Number 2327/277 (original number 2327/68/6) is invalid, void and unenforceable in law against the Plaintiff or the estate of the late Charles Khakali Maringo;
  - iii. A finding that the Defendant has used and tried to use illegal means to cajole and coerce the Plaintiff to assume alleged contractual liability of her deceased husband, Charles Maringo Khakali;
  - iv. Any other or further relief that this Court shall deem appropriate in circumstances
  - v. Costs of the suit.



2. The Plaintiff, a widow and the registered proprietor of the property known as Land Reference Number 2327/277 (Original Number 2327/68/6) situated in Karen, Nairobi (hereinafter referred to as "the suit property"), approached this Court seeking protective relief against the Defendant's threatened exercise of the statutory power of sale. The suit property, measuring approximately 0.404 hectares, served as the matrimonial home of the Plaintiff and her late husband, Charles Khakali Maringo (hereinafter "the Deceased"), until his demise on 7 April 2021.
3. The Defendant, a licensed financial institution which acquired certain assets and liabilities of Chase Bank (Kenya) Limited (In Receivership) pursuant to the provisions of the *Banking Act* and the *Kenya Deposit Insurance Act*, entered appearance and filed a Statement of Defence dated 5 August 2024. The Defendant vehemently denied the Plaintiff's claims, asserting that the Deceased was a customer who had lawfully borrowed funds secured by the Suit Property. The Defendant contended that the Plaintiff was fully aware of the facilities, had executed the relevant security documents including the Mortgage and Guarantees, and had subsequently ratified the debt through written correspondence. The Defendant maintained that it had strictly complied with the statutory requirements for exercising its power of sale following the default of the Borrower.
4. The matter proceeded to a full hearing where the Court received oral and documentary evidence. The Plaintiff testified on her own behalf as PW1. The Defendant called one witness, Ms. Pauline Gakere (DW1), a Debt Recovery Officer. Following the close of the evidentiary phase, learned Counsel for both parties filed comprehensive written submissions, which this Court has meticulously considered alongside the judicial authorities cited therein.

## Background

5. The factual background of this case, as distilled from the pleadings and the evidence adduced at trial, reveals a narrative of a disputed lending relationship complicated by the death of the principal borrower and allegations of procedural irregularity.
6. The Plaintiff and the Deceased purchased the suit property in the year 2002. The acquisition was completed in July 2003, and the property was registered in their joint names as joint tenants. They established their matrimonial home on the property in October 2010. The title deed produced in evidence confirms this joint proprietorship.
7. According to the Defendant's records, the Deceased, Charles Khakali Maringo, maintained an account (Account No. 0082016515001) with Chase Bank (Kenya) Limited. In 2010, the Bank purportedly advanced a facility of Kshs. 11,150,000/= to the Deceased, comprising an overdraft of Kshs. 9,150,000/= and a term loan of Kshs. 2,000,000/=. The Defendant alleges that this facility was secured by a Letter of Offer dated 26 May 2010, which the Plaintiff allegedly witnessed.
8. The Defendant further asserts that due to the non-performance of the 2010 facility, a restructuring was agreed upon in 2016. By a Letter of Offer dated 15 February 2016, the facility was restructured to Kshs. 14,600,000/=. To secure this restructured facility, the Defendant relies on several security instruments: (i) A Legal Mortgage dated 3 April 2012 over the suit property. (ii) A Letter of Guarantee and Indemnity dated 9 March 2016, allegedly signed by the Plaintiff. (iii) A Spousal Consent form dated 9 March 2016, allegedly signed by the Plaintiff. (iv) An Authority to Carry Out Valuation dated 9 March 2016.
9. The Plaintiff denies knowledge of these facilities. Her testimony is that she only became aware of a potential claim by the Bank in late 2018 or early 2019 when her husband fell critically ill. Upon his incapacitation, she took possession of his mobile phone and noted persistent calls and messages



from the Bank. This led to a meeting in April 2019 at her home with a bank official identified as Ms. Egidia Mecha, who initially presented herself as a friend of the Deceased before disclosing the banking relationship.

10. The Deceased's health deteriorated, and he was admitted to the hospital in early 2021. The critical juncture in this dispute occurred on 16 March 2021. The Plaintiff testified that while her husband was being prepared for surgery and admitted to the ICU, Ms. Egidia Mecha visited her at the hospital. Under threat of immediate auction of the matrimonial home, the Plaintiff wrote and signed a letter admitting liability and requesting time to settle the debt. The Deceased passed away shortly thereafter on 7 April 2021.
11. Following the Deceased's death, the Defendant issued statutory notices to the Plaintiff, culminating in a notification of sale by public auction. The Plaintiff, upon conducting due diligence, claimed to have discovered that the security documents held by the Bank were forgeries, prompting this litigation.

### **The Plaintiff's Case**

12. The Plaintiff, Edel Florence Wendoh, testified as PW1. She adopted her witness statement dated 30 September 2022 as her evidence-in-chief. She came across as a witness of truth, recounting the events with consistency and emotional clarity, particularly regarding the events at the hospital.
13. PW1 was shown the Mortgage dated 3 April 2012, the Letter of Guarantee, and the Spousal Consent. She categorically denied signing any of them. Regarding the Mortgage, she stated, "I have never seen the letter dated 26 May 2010... The signature looks like mine but I have never seen this document... I did not sign this letter". She asserted that the suit property was her family home and she would never have jeopardized it by using it as security for a loan she knew nothing about.
14. PW1 was cross-examined regarding the Advocates who purportedly witnessed her signature—Mr. Patrick Lubanga Mutuli (witness to the 2012 Mortgage) and Mr. Gregory Mutai (witness to the 2016 documents). She testified that she had never appeared before Mr. Lubanga Mutuli. Regarding Mr. Gregory Mutai, she stated that she only met him in 2022, a year after her husband's death, in relation to a separate employment case he was handling for the Deceased. She was emphatic: "I have never signed anything before Mr. Mutai".
15. PW1 described the events of 16 March 2021 in vivid detail. She testified that Ms. Egidia Mecha called her and then came to the hospital where the Deceased was undergoing radiotherapy and surgery. Ms. Mecha allegedly pulled out a statutory notice, claimed it was about to lapse, and stated the bank could auction the house immediately. PW1 stated: "She said she wanted to help me. She pulled out a pad and told me that I need to commit myself to ensure that the Bank doesn't auction the property. She dictated a letter to me. I signed the document. She said now you are safe". PW1 contended that this letter was obtained through coercion and undue influence while she was in a state of extreme vulnerability.

### **The Defendant's Case**

16. The Defendant called Ms. Pauline Gakere as DW1. She is a Debt Recovery Officer at SBM Bank. It is notable that DW1 joined the bank in 2022, well after the transactions in question (2010-2016) and the hospital incident (2021) occurred.
17. DW1 relied entirely on the records held by the Bank. She produced the Defendant's Bundle of Documents containing the Letters of Offer, the Mortgage, the Guarantees, and the Statements of Account. Her testimony was largely essentially that the documents appeared regular on their face and that the Bank had advanced monies which remained unpaid.



18. Under cross-examination, DW1 admitted she was not present when the documents were allegedly signed. She could not personally vouch for the authenticity of the signatures or the circumstances of the attestation. The Defendant did not call the relationship manager (Ms. Egidia Mecha) or the attesting Advocates to testify.

### **Plaintiff's Submissions**

19. The Plaintiff submitted that the Defendant had failed to prove the validity of the charge. He argued that the burden of proving due execution lies on the Chargee (Bank), especially when the Chargor denies execution. He cited *Njoki Kanja v Co-operative Bank of Kenya Limited* eKLR to support the proposition that failure to call the attesting advocate is fatal to the bank's case.
20. The Plaintiff further submitted that the Mortgage dated 3 April 2012 contained a chronological impossibility as it referenced the *Land Act* 2012 and *Land Registration Act* 2012—statutes that had not yet commenced on that date. This, he argued, was proof of forgery and backdating.
21. Regarding the handwritten letter, the Plaintiff invoked the doctrine of non est factum, citing *Saunders v Anglia Building Society* and *Pao On v Lau Yiu*. He argued the letter was voidable due to duress and undue influence exerted by the bank official at the hospital.

### **Defendant's Submissions**

22. The Defendant submitted that the Plaintiff had failed to prove fraud. Relying on *R.G. Patel v Lalji Makanji*, she argued that allegations of fraud must be strictly proved and that the Plaintiff should have produced a handwriting expert's report.
23. The Defendant argued that the handwritten letter of 16 March 2021 acted as an unequivocal admission of debt and estoppel. They contended that even if the formal charge was defective, the deposit of the title deed created a valid Informal Charge under Section 79 of the *Land Act*, entitling the Bank to sell the property.

### **Analysis & Determination**

24. Upon carefully review of the pleadings, the evidence on record, and the rival submissions, this Court frames the following issues for determination:
- i. Whether the Defendant has discharged the burden of proof regarding the due execution and attestation of the security instruments;
  - ii. Whether the Mortgage dated 3 April 2012 is valid in law;
  - iii. Whether the handwritten letter dated 16th March 2021 constitutes a valid admission of debt or whether it is vitiated by duress, undue influence, or the doctrine of non est factum;
  - iv. Whether the deposit of the title deed created a valid Informal Charge capable of enforcement by statutory power of sale without a court order;
  - v. Whether the Defendant's notices of sale were valid and lawful;
  - vi. What reliefs, if any, the parties are entitled to.

### **The Burden and Standard of Proof**

25. The primary contest in this suit is the validity of the signatures on the security documents. The Plaintiff alleges forgery; the Defendant alleges valid execution. The starting point is the *Evidence Act*. Section



- 107 provides that whoever desires any court to give judgment as to any legal right dependent on the existence of facts which he asserts must prove that those facts exist. Section 109 further states that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence.
26. The Defendant has submitted that since the Plaintiff alleged fraud/forgery, the burden lay upon her to prove it to the standard required in civil fraud cases—that is, a standard higher than a mere balance of probabilities, though not beyond reasonable doubt. This principle is well established in *R.G. Patel v Lalji Makanji* [1957] EA 314, where the Court of Appeal for Eastern Africa held that allegations of fraud must be strictly proved.
  27. However, this submission overlooks a crucial nuance in the law of conveyancing and banking securities. When a party (the Bank) seeks to enforce a security instrument, and the purported signatory (the Chargor/Guarantor) denies signing it, the evidentiary burden shifts to the party relying on the document to prove its due execution. The Plaintiff cannot be expected to prove a negative (that she did not sign) beyond her sworn testimony. The affirmative burden—to prove that she did sign—rests with the Bank.
  28. As held in *Uba Kenya Bank Limited v Farm Transport and Technical Services Ltd* [2024] KEHC 2805, while the initial burden may be on the person alleging forgery, once they have tendered sworn testimony denying the signature, the burden shifts to the Bank to produce evidence of execution.
  29. The Mortgage dated 3 April 2012 was purportedly witnessed by Advocate Patrick Lubanga Mutuli. The Guarantee and Spousal Consent dated 9 March 2016 were purportedly witnessed by Gregory Mutai, Advocate. The attestation of a signature on a charge document is not a mere administrative formality. It is a statutory safeguard mandated by Section 45 of the *Land Registration Act* 2012. The witnessing Advocate certifies that the Chargor appeared before them, was identified, and understood the nature and effect of the instrument.
  30. In this case, the Plaintiff emphatically denied ever appearing before these Advocates. She testified that she only met Gregory Mutai in 2022, long after the alleged 2016 execution. This testimony directly impeached the certificates of attestation on the face of the documents.
  31. Faced with this denial, it was incumbent upon the Defendant to call the Advocates to testify. They are officers of the Court and the only persons capable of verifying that the Plaintiff indeed appeared before them. The Defendant failed to do so. No explanation was offered for their absence.
  32. I am guided by the persuasive authority of *Njoki Kanja v Co-operative Bank of Kenya Limited & Michael Douglas Kanja* [2015] eKLR, where the Court held: "Where the execution of a document is denied, the party relying on it must prove its execution... The failure to call the advocate who witnessed the charge was fatal to the bank's case."
  33. Furthermore, section 72 of the *Evidence Act* provides for the proof of documents where no attesting witness is found. It implies that the first step must be to seek the attesting witness. Only if they cannot be found can other evidence be relied upon. The Defendant made no attempt to show the advocates were unavailable.
  34. By failing to call the attesting witnesses, the Defendant denied the Court the opportunity to test the veracity of the attestation. Pursuant to the principle in *Jacinta Wanjala Mwatela v IEBC* [2013] eKLR, this Court is entitled to draw an adverse inference that had these witnesses been called, their evidence would have been unfavourable to the Defendant.



35. The Defendant relied solely on DW1, who had no personal knowledge of the execution. Her evidence is hearsay on this point. Consequently, I find that the Defendant has failed to prove the due execution of the Mortgage, the Guarantee, and the Spousal Consent. The Plaintiff's testimony that she did not sign these documents stands un rebutted by any direct evidence.

### **The Validity of the Mortgage**

36. Even if the execution had been proved, the Mortgage document itself suffers from a fatal defect identified by the Plaintiff's Counsel as a chronological impossibility. The Mortgage is dated 3 April 2012. Upon examination of the document, the Memorandum section explicitly lists the governing laws as:

- i. The Land Act No. 6 of 2012
- ii. The Land Registration Act 2012

37. Furthermore, the Notice section of the Mortgage refers to section 96 of the Land Act 2012 and section 108 of the Land Registration Act 2012.

38. This Court takes judicial notice of the following legislative facts. The Land Act, 2012 was assented to on 27 April 2012 and commenced on 2 May 2012. The Land Registration Act, 2012 also commenced on 2 May 2012.

39. It is a jurisprudential impossibility for a legal instrument executed on 3 April 2012 to cite, rely upon, and purport to be governed by statutes that did not exist as law on that date. On 3 April 2012, the substantive laws governing charges were the Registered Land Act (Cap 300), the Government Lands Act (Cap 280), and the Indian Transfer of Property Act (ITPA).

40. This anomaly admits of only two possibilities: either the document was executed on 3 April 2012 and the references to future laws were a prophetic nullity, or, more likely, the document was created after May 2012 and backdated to April. The latter constitutes a fraudulent misrepresentation of the date of execution.

41. As noted in legal scholarship regarding retroactive legislation and document validity, a document cannot derive validity from a law that is not yet in force unless the statute explicitly allows for such retrospectivity regarding instruments (not just rights) created prior to commencement. While section 78(1) of the Land Act allows for the Act to apply to charges created before its commencement, it does not validate a document that falsely claims to be created under the Act before the Act existed.

42. I, therefore, find that the Mortgage dated 3 April 2012 is legally defective and void ab initio due to this chronological impossibility, which points irresistibly to the conclusion that the document is not authentic.

### **The Admission Letter and the Doctrine of Non Est Factum**

43. The Defendant argued that even if the primary documents were contested, the Plaintiff admitted liability via the handwritten letter dated 16 March 2021. In this letter, the Plaintiff wrote, "I confirm I am the guarantor..."

44. The Plaintiff pleaded non est factum ("it is not my deed") and duress. The requirements for this plea, as set out in *Saunders v Anglia Building Society* [1971] AC 1004, are strict. It is generally available to those who are unable to read or understand a document due to blindness, illiteracy, or innate incapacity.



45. However, the concept of incapacity is not limited to permanent disability. It extends to situations where the mind of the signer does not accompany their signature due to extreme external pressure or temporary mental distress. The evidence of PW1 regarding the circumstances of this letter is harrowing and uncontradicted. The letter was extracted at a hospital, specifically while the Plaintiff's husband was being admitted to the Intensive Care Unit for surgery. The bank official, Ms. Egidia, threatened immediate auction of the matrimonial home if the letter was not signed then and there. The Plaintiff testified the words were dictated to her.
46. Applying the test for Duress and Undue Influence as elucidated in *Pao On v Lau Yiu* 3 All ER 65 : (i) Did the person protest? The Plaintiff was in a state of shock and fear, effectively paralysed from protesting. (ii) Was there an alternative course? The threat of immediate homelessness while dealing with a dying spouse left her with no reasonable alternative. (iii) Was there independent advice? No. The bank official cornered her alone at the hospital. (iv) Did she take steps to avoid it? Yes. She subsequently instructed advocates to disown the letter in August 2022.
47. This Court finds the conduct of the Defendant's officer, Ms. Egidia Mecha, to be unconscionable. Pursuing a debtor's spouse to a hospital ICU to extract a security admission is a gross violation of the duty of care and ethical banking standards. It constitutes actual undue influence.
48. Consequently, the letter of 16 March 2021 is voidable and is hereby set aside. It cannot serve as a ratification of the forged security documents. It is legally worthless as an admission of debt because the Plaintiff's consent was vitiated by duress.

### **Spousal Consent**

49. The suit property was the matrimonial home. Section 79(3) of the *Land Act* 2012 and Section 12 of the *Matrimonial Property Act* mandate that a charge over a matrimonial home is valid only if spousal consent is obtained.
50. The Defendant relied on a spousal Consent document dated 9 March 2016. However, I have already found that the Plaintiff did not sign this document and the attesting witness was not called.
51. Even if the Bank argues that the 2010/2012 facility predated the *Land Act* 2012 and thus spousal consent was not required retrospectively, a position held in *Rose Florence Wanjiru v Housing Finance eKLR*, this argument fails for two reasons. First, the 2012 Mortgage itself cites the *Land Act* 2012, thereby subjecting itself to the Act's regime, including section 79(3). Second, the 2016 restructuring was a new contract requiring fresh consent under the 2012 regime, which the Plaintiff denies giving. Without valid spousal consent, the charge over the matrimonial home is null and void by operation of statute.

### **The Informal Charge Argument**

52. The Defendant submitted that the deposit of the Title Deed created an informal Charge under Section 79(6) of the *Land Act*.
53. Section 79(6) requires: (a) A written and witnessed undertaking from the chargor; OR (b) The deposit of a certificate of title.
54. However, Section 79(9) of the *Land Act* contains a crucial limitation: "A chargee shall not possess or sell land whose title document have been deposited with the chargor under an informal charge without an order of the Court."



55. The Defendant in this case issued notices to sell by public auction without obtaining a court order. They attempted to exercise a statutory power of sale as if they held a formal, registered charge. Even if an informal charge existed, which is doubtful given the lack of Plaintiff's consent to the deposit, the Defendant's procedure for enforcement was unlawful. An informal charge does not confer an automatic power of sale; it confers a right to sue for a judicial sale.
56. In the premise, I hereby order as follows:
- i. Judgement is hereby entered for the Plaintiff against the Defendant.
  - ii. A permanent injunction is hereby issued restraining the Defendant, its directors, officers, employees, agents, auctioneers, or any person acting on its behalf, from selling, advertising for sale, alienating, entering upon, or in any manner interfering with the Plaintiff's ownership, possession, and occupation of the property known as Land Reference Number 2327/277 (Original Number 2327/68/6) situated in Karen, Nairobi.
  - iii. A declaration is hereby issued that the Charge/Mortgage dated 3 April 2012 registered against Land Reference Number 2327/277 is invalid, null, and void *ab initio* for lack of due execution, lack of spousal consent, and fraudulent misrepresentation.
  - iv. Costs of this suit are awarded to the Plaintiff.

**DATED AND DELIVERED AT NAIROBI THIS 13 DAY OF FEBRUARY 2026**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Plaintiff: N/A

For the Defendant: Ms Maingi h/b Mr Kazungu

Court Assistant: Lucy Mwangi

