

3. The Plaintiff contends that the Defendant prepared valuation reports dated 4th April 2014, 10th April 2014 and 22nd May 2014, which were used by the Plaintiff in conducting credit risk assessment and in approving credit facilities to KAAB Investments Limited. The borrower accepted the facilities, and legal charges were registered over the valued properties as security.
4. The Plaintiff averred that the borrower subsequently defaulted in repayment, prompting the Plaintiff to issue statutory notices and resolve to exercise its statutory power of sale. Upon obtaining fresh valuations in 2016 from Landmark Realtors Ltd, substantial discrepancies were noted between the Defendant's 2014 valuations and the later valuations
5. The Plaintiff sets out comparative tables demonstrating the differences between the Defendant's open market and forced sale values and those assessed in 2016. The Plaintiff contends that the variances were significant and outside acceptable professional margins, indicating that the Defendant's valuations were erroneous.
6. The Plaintiff pleaded that as a result of the substantially reduced values, it suffered loss since it had wholly relied on the Defendant's valuation reports in deciding to advance the credit facilities. It further pleaded particulars of professional negligence and/or breach of contract, including making false or negligent valuation reports, inducing the Plaintiff to believe the security was adequate, and failing to exercise reasonable care and skill in carrying out the valuations

7. It was further pleaded that the cumulative forced sale value of the three principal properties was significantly lower than the exposure, with the outstanding debt as at 5th November 2019 being Kshs. 2,396,260,026 and USD 576,228. The Plaintiff contended that due to the erroneous valuations, it is unable to recover the full outstanding sums.
8. The Plaintiff averred that despite demand and notice of intention to sue, the Defendant failed and/or neglected to compensate the Plaintiff. It asserted that the cause of action arose within the jurisdiction of this Court. Accordingly, the Plaintiff prayed for judgment against the Defendant for:
- a) A declaration that the Defendant was negligent and liable for losses arising from reliance on the impugned valuation reports;*
 - b) A declaration that the Defendant's valuations were outside permissible margins of error;*
 - c) General damages for negligence;*
 - d) Kshs. 3,543,800,000 being cumulative overstatement of forced sale value in 2014 over the properties identified;*
 - e) Interest at the bank's commercial rates;*
 - f) Costs of the suit and any other relief the Court may deem fit.*
9. The Defendant filed a Statement of Defence dated 6th February 2020 in which it denied liability, denied the existence of a contractual relationship with the Plaintiff, and contended that valuation is an opinion subject to market

dynamics. It further pleaded contributory negligence on the part of the Plaintiff.

10. The Defendant denied that the valuations were issued for purposes of conducting a credit risk assessment forming the basis for approval of credit facilities. It averred that loans are advanced by banks on the basis of a borrower's ability to repay and not solely on the security offered. It contended that the Plaintiff ought to produce the credit risk assessment reports and offer letters to demonstrate the basis upon which the facilities were advanced.
11. Further, the Defendant maintained that it had conducted numerous valuations for the Plaintiff over a long period diligently and professionally, and that no issue had previously been raised regarding the quality of its reports. It denied that there was any proper legal basis for alleging discrepancies in valuations based on subsequent reports prepared more than two years later, contending that market dynamics and the passage of time materially affect value.
12. The Defendant also pleaded that the charge documents were collateral to a debenture which constituted the main security, and that the Plaintiff had multiple avenues of recovery, including enforcement of the debenture and exercise of its statutory power of sale. It denied any default attributable to its actions and asserted that the Plaintiff had a duty to monitor its borrower and enforce its securities.
13. The Defendant denied breach of contract and denied the existence of any actionable contract between itself and the Plaintiff. It further pleaded that any loss suffered by the

Plaintiff, if at all, was occasioned by the Plaintiff's own negligence and incompetence. In that regard, the Defendant particularized negligence on the part of the Plaintiff, including failure to conduct proper credit risk assessment, failure to enforce debenture security, failure to auction the charged properties, failure to monitor loan performance, and failure to initiate recovery proceedings in good time.

14. The Defendant further contended that the Plaintiff selectively relied on certain valuations while ignoring others, and that the use of one valuer's opinion against another without regard to time and market dynamics was unsound. It denied any demand as alleged and asserted that the suit was frivolous and an attempt by the Plaintiff to shift responsibility for its own failures to the Defendant.
15. At trial the Plaintiff called 3 witnesses while the defendant called one witness. Pw1 - Ibrahim Ngata Mbogo a legal officer with the Plaintiff, adopted his witness statement dated 22nd September 2021 as his evidence in chief and produced the Plaintiff's main bundle dated 8th November 2019 as P.Exhibit 1 and the supplementary bundle dated 27th July 2021 as P.Exhibit 2.
16. In cross-examination, Pw1 testified that instructions to valuers are ordinarily issued in writing, though the specific letter of instructions was not included in the bundle. He stated that the valuer in this case was to be paid by the customer (borrower), and that a legal charge was created over the suit property to secure lending. He maintained that the Defendant, being a professional valuer, was aware the

valuation was for lending purposes and had previously undertaken multiple valuations for the Plaintiff.

17. It was his evidence that the Defendant's valuation was negligent as it exceeded the acceptable margin of error. He compared the Defendant's report with that prepared by Landmark Realtors Limited and pointed out material discrepancies in the values assigned. He acknowledged that an unsigned report had initially been filed, but stated that a signed valuation report was later produced in the supplementary bundle.
18. He testified that statutory notices were issued in the course of realization of the security. He referred to valuation reports for other parcels and confirmed that securities were created based on the valuations. He maintained that the discrepancies in the values demonstrated overvaluation by the Defendant
19. He further stated that securities were created based on the valuations and that discrepancies in value affected realization. The Plaintiff's claim, he emphasized, was founded on overvaluation beyond the true market value of the properties.
20. In re-examination, Pw1 referred to the Defendant's report which acknowledged receipt of instructions from the Plaintiff. He also testified that a demand for joint valuation dated 7th May 2019 was issued but not responded to by the Defendant.
21. Pw2 - Chege Waiganjo, testified that he is a property valuer working with Landmark Realtors Ltd and has practiced

as a valuer since 1999. He stated that he prepared valuation reports contained in the supplementary bundle dated 27th July 2021. He confirmed that the reports related to LR Nos. 29152 and 29153, and LR 24207, and that these reports were prepared for mortgage purposes.

22. He testified that upon comparing his valuations with those prepared by the Defendant, there were substantial variances. In respect of LR Nos. 29152 and 29153, he indicated a variance of approximately 58%, while for LR 24207 the variance was about 87.9%. In his professional view, acceptable valuation variance should not exceed 15%.

23. Pw2 further testified that the Defendant's reports lacked sufficient detail and description of the properties, including neighbourhood characteristics and methodology applied. He stated that valuation for mortgage purposes requires clear disclosure of the basis and method used to arrive at the assigned values.

24. With regard to LR 24207, he described it as a rural property measuring approximately 466 acres in Kilifi County, Malindi. He noted that the property was partially submerged by the ocean and covered by mangrove trees, which limited its use to salt manufacturing and negatively affected its marketability. He stated that these factors materially affected value and reduced the pool of potential buyers. He testified that in his report prepared for NIC Bank, he assessed the market value at Kshs. 70,000,000/= and the forced sale value at Kshs. 52,500,000/= as at 10th January 2016. He contrasted this with the Defendant's valuation

which placed significantly higher figures on the same property.

25. In cross-examination, Pw2 maintained that valuation is a professional opinion based on written instructions, comparable sales, and prevailing market conditions. He confirmed that valuation reports must be signed and sealed to be valid. He denied any conflict of interest and stated that once a report is prepared, payment is made for the professional work done
26. He reiterated that the purpose of valuation was to determine market and forced sale value and that his report was independently prepared in 2016 without sight of the Defendant's report. He maintained that the margin of variance between the reports was too large to fall within acceptable professional tolerance
27. Pw3 - Felix Onyango, testified that he is a professional valuer and the Principal Valuer of Damiano Valuers Ltd. He adopted his statement and the supplementary bundle of documents as his evidence in chief. He stated that he prepared valuation reports dated 16th September 2019 in respect of LR Nos. 29152 and 29153 situated at Tego Area, and a further report for LR No. 24207 (Mongoni Area, Malindi) for NIC Bank.
28. He explained that the terms of reference required him to determine both the current market value and the forced sale value. He testified that the retrospective valuation (as at 2014) placed the value of the properties significantly lower than the figures contained in the Defendant's reports.

In particular, he indicated that for LR No. 29152, the Defendant's valuation was Kshs. 120 million, whereas in his professional opinion the property was valued at approximately Kshs. 70 million. He further stated that for LR No. 24207 measuring approximately 466.52 acres, the current market value was Kshs. 50 million and the forced sale value Kshs. 46,900,000/=.

29. Pw3 testified that valuation is not a precise science but there exists an acceptable margin of error, which in his view ranges between 10 - 15%. He stated that the variances between his valuations and those of the Defendant were far beyond this acceptable threshold. He emphasized that valuation must be based on comparable sales, location, acreage, user and prevailing market factors at the time.

30. In cross-examination, he confirmed that valuation reports are prepared on the basis of instructions from clients and that a valuer gives an independent professional opinion at a particular time. He acknowledged that the market at the time of retrospective valuation may differ from current market conditions. He maintained, however, that the margin of variance between the two reports was too large to be attributed merely to professional judgment

31. In re-examination, Pw3 reiterated that a valuer's duty is to provide an expert and independent assessment of market and forced sale value. He maintained that clients rely on the valuer's expertise and that the significant discrepancy between the two reports could not be justified within accepted professional tolerance.

32. Dw1 - Simon Mukura, testified as a registered and practicing valuer. He adopted his witness statement and the bundles of documents dated 9th August 2021 and 26th October 2021 as his evidence in chief. He stated that he carried out the impugned valuations on behalf of the Defendant for mortgage purposes.
33. He testified that the instructions were to value the subject properties to determine their market value and forced sale value. He confirmed that he inspected the properties physically and identified their location, acreage and characteristics before arriving at his opinion of value. In respect of the larger parcel measuring approximately 466 acres, he stated that the valuation considered comparable sales and subdivision potential. He explained that different valuers may legitimately arrive at different figures depending on the methodology adopted, the comparables relied upon and prevailing market conditions.
34. Dw1 maintained that valuation is not an exact science but a professional opinion based on training, experience and available data. He stated that disparities between reports may arise due to differences in timing, economic factors, and professional judgment. He rejected the assertion that variance alone demonstrates negligence, emphasizing that two valuers can properly apply different approaches and arrive at different results.
35. In cross-examination, he confirmed that his reports were prepared for lending institutions and were signed and issued in the ordinary course of professional practice. He

reiterated that he relied on comparable sales data and market analysis in arriving at his figures. He denied inflating the values and maintained that he exercised due professional care.

36. He further stated that where a valuation margin appears large, one must consider the date of valuation, market dynamics, and the specific methodology applied. He maintained that his reports complied with professional standards and that any differences with subsequent valuations do not, of themselves, establish negligence.

37. In re-examination, he emphasized that a valuer's duty is to provide an independent professional opinion and that disagreement between valuers does not automatically imply misconduct. He concluded that he stood by his reports and denied any breach of professional duty.

Plaintiff's submissions

38. The Plaintiff submits that the Defendant was duly instructed to carry out valuation of the suit properties for mortgage purposes and for use in credit risk assessment prior to advancing facilities to KAAB Investments Limited. It contends that the valuation reports expressly indicated that the instructions were received from the Plaintiff bank and that the reports were addressed to it. The Defendant's assertion that it had been instructed by the property owners is, according to the Plaintiff, unsupported by any evidence and was not substantiated in cross-examination.

39. The Plaintiff further submits that it relied on the Defendant's valuation reports in approving and advancing

substantial credit facilities and in registering legal charges over the suit properties as security. It points out that the loan statements and charge documents were produced in evidence and were not rebutted.

40. On the issue of negligence, the Plaintiff argues that subsequent valuations conducted in 2016 and 2019 by Landmark Realtors Ltd and Dominion Valuers Ltd revealed gross discrepancies between the Defendant's 2014 valuations and the true market and forced sale values. It submits that the margin of error in valuation practice is between 10 - 15%, a position acknowledged by all valuers who testified. The variances in this case - particularly in respect of LR No. 24207 - were far in excess of the permissible margin and thus indicative of professional negligence.

41. The Plaintiff emphasizes that the Defendant failed to adduce any expert rebuttal evidence and instead relied on a newspaper advertisement, which it submits has no probative value in law. It relies on authorities to the effect that where expert evidence is uncontroverted, and no countervailing expert opinion is presented, the Court has no basis to reject such evidence.

42. With regard to breach of duty of care, the Plaintiff submits that the Defendant owed a professional duty to exercise reasonable skill and care as a registered valuer. It relies on authorities including **Kenya Commercial Bank v Philip Odongo Kabita** and **Trans-National Bank of Kenya Ltd v Charles Kimita Willy & Another**, which

underscore that a valuer is liable where a negligent valuation induces a lender to advance funds and causes loss. It also cites **Halsbury's Laws of England** and English authorities such as **Singer & Friedland Ltd v John D Wood and K/S Lincoln v CB Richard Ellis Hotels Ltd** on the permissible margin of error and the standard expected of professional valuers.

43. On quantum, the Plaintiff invokes the principle of *restitutio in integrum* and submits that it is entitled to be restored to the position it would have been in had the negligent valuation not occurred. It argues that the appropriate measure of damages is the cumulative overstatement of the forced sale values as reflected in the Defendant's reports, being Kshs. 534,500,000. It further relies on House of Lords decisions, including **South Australia Asset Management Corp v York Montague Ltd** and **Nykredit Mortgage Bank Plc v Edward Erdman Group Ltd**, to submit that a negligent valuer is liable for the foreseeable consequences of the inaccurate information supplied, namely the shortfall attributable to the overvaluation.

44. In conclusion, the Plaintiff submits that it has proved on a balance of probabilities that it relied on the Defendant's negligent valuation reports, suffered loss as a result, and is entitled to the declaratory reliefs, special damages representing the cumulative overstatement of forced sale values, interest at commercial rates, and costs of the suit on a full indemnity basis.

Defence submissions

45. The Defendant submits that the Plaintiff has failed to discharge the burden of proof placed upon it under Sections 107, 108 and 109 of the Evidence Act. It contends that no sufficient evidence was tendered to establish a contractual or client-valuer relationship between the Plaintiff and the Defendant, as the instructions were allegedly issued by the borrower and not by the Plaintiff. In the absence of a formal instruction letter or engagement agreement between the Plaintiff and the Defendant, it is argued that no duty of care arose as between them.
46. The Defendant further submits that valuation is, by its very nature, an opinion and not an exact science. It relies on authorities including **Sidhu Sagar Ahmed Al-Hedi & 5 others v HCCC** and **Gulf African Bank Limited & 2 others v Commercial Case E173 of 2021** to assert that differences in professional opinion do not *per se* establish negligence. It argues that the Plaintiff's reliance on subsequent valuations conducted years later ignores market dynamics, economic conditions and the temporal context in which the original valuations were undertaken.
47. It is submitted that the Plaintiff's own expert witnesses conceded that valuation is not precise and that acceptable margins of variance exist, typically between 10 - 15%, though not codified in statute. The Defendant contends that no universally accepted benchmark for margin of error exists and that market volatility, demand fluctuations and external economic forces may account for changes in value over

time. In particular, it submits that property values in 2014 were influenced by specific market conditions and that subsequent depreciation cannot automatically be attributed to professional negligence.

48. The Defendant also challenges the evidentiary weight of the Plaintiff's comparative valuations. It points out that one of the Landmark reports relied upon by the Plaintiff was unsigned and therefore of questionable probative value. Further, it contends that the Plaintiff selectively relied on certain valuations while ignoring others and failed to demonstrate how the alleged discrepancies translate into actionable loss attributable to the Defendant.

49. On causation, the Defendant submits that the Plaintiff has not proved that any alleged overvaluation was the proximate cause of the loss. It argues that the primary cause of the Plaintiff's loss was the borrower's default and the Plaintiff's own failure to conduct proper credit risk assessment, monitor loan performance, enforce debenture security, exercise its statutory power of sale, or initiate timely recovery proceedings. It relies on authorities such as **Patel v Muthoga [1994] eKLR** and **Jennifer Nyambura Kamau v Humphrey Mbaka Nandi** to underscore that the burden of proof remains with the Plaintiff throughout.

50. The Defendant further submits that even if negligence were established (which it denies), the measure of damages must be strictly proved. It argues that special damages must be specifically pleaded and proved and that general damages are not ordinarily awardable for breach of contract,

relying on **Kenya Power & Lighting Co Ltd v Sheriff Molana Habib [2018] eKLR** and **Provincial Insurance Co Ltd v Nandwa [1995-1998] 2 EA 288**. It contends that the Plaintiff has not demonstrated actual quantifiable loss directly attributable to the Defendant's conduct.

Analysis and determination

51. Having considered the pleadings, evidence, submissions and authorities cited, the Court distils the following issues for determination:

- i. Whether there existed a client-valuer relationship giving rise to a duty of care.*
- ii. Whether the Defendant was negligent in preparing the 2014 valuation reports.*
- iii. Whether the Plaintiff proved causation and loss.*
- iv. Whether the Plaintiff is entitled to the reliefs sought.*

On the existence of a duty of care

52. The Defendant's primary defence was that no contractual nexus existed between itself and the Plaintiff. It was contended that the borrower issued the instructions and that no formal letter of engagement between the Plaintiff and the Defendant was produced in evidence.

53. The burden of proof rests upon the Plaintiff pursuant to Sections 107, 108 and 109 of the Evidence Act (Cap 80). However, in professional negligence claims, proof of duty is not confined to the production of a formal written contract. The Court must interrogate the entirety of the factual matrix to ascertain whether proximity, reliance and foreseeability are established.

54. The evidence on record demonstrates that the impugned valuation reports were expressly prepared for mortgage purposes. They were addressed to the lending institution and were subsequently utilized to facilitate the creation of legal charges over the subject properties.
55. Pw1 testified that the valuations formed the foundation of the credit approval process and the structuring of the security package. Dw1 candidly confirmed that the valuations were undertaken for lending purposes and that the lender would rely upon them in determining whether to advance funds.
56. The Defendant prepared the impugned reports with full knowledge that the Plaintiff would rely upon them in advancing substantial financial facilities. That knowledge suffices to ground a duty of care. The position is consistent with the holding in **Kenya Commercial Bank v Philip Odongo Kabita [2001] eKLR**, where the Court stated:

“A valuer who undertakes to value property for mortgage purposes owes a duty of care to the lender who relies on that valuation in advancing money.”

57. In the present case, reliance was not merely foreseeable; it was the very object of the exercise. The fact that the borrower may have facilitated payment does not displace the professional obligation owed to the lender.

58. I therefore find and hold that a professional relationship existed between the parties and that the Defendant owed the Plaintiff a duty to exercise reasonable skill and care in preparing the valuation reports.

Whether the defendant was negligent

59. The ingredients of professional negligence are well settled: duty of care, breach of that duty, and resulting loss. The Plaintiff contends that the Defendant failed to exercise the requisite professional skill, care and diligence. In **Kenya Commercial Bank v Philip Odongo Kabita (*supra*)**, the Court found that:

“...he did not proceed to value the property in accordance with the ordinary standard of skill, care and diligence expected of a professional valuer...”

60. The principle was recently reiterated in **Gulf African Bank Ltd v Hanif Tours & Travel Agency Limited & 4 Others [2025] KEHC 486 (KLR)** where the Court held:

“...the Valuer breached his duty of care to the Plaintiff to give a professional opinion on the value of the charged property... [and] breached that duty of care by failing to independently verify the correct location of the charged property.”

61. Pw2 and Pw3, both experienced valuers, testified that acceptable professional variance ordinarily lies within a margin of 10 - 15%. They demonstrated that the discrepancies between the Defendant's 2014 valuations and subsequent independent valuations were far beyond that tolerance, particularly in respect of LR Nos. 29152, 29153 and LR 24207.
62. Dw1 acknowledged that a tolerance range exists, though he resisted the proposition that it is rigidly codified.
63. The comparative evidence disclosed variances exceeding 50% in certain instances. Of particular concern was LR No. 24207, where the magnitude of discrepancy could not reasonably be explained by normal market movement or cyclical fluctuation.
64. The Defendant did not call independent expert evidence to demonstrate that its valuations fell within acceptable professional parameters at the material time. Mere invocation of market volatility does not satisfactorily account for disparities of the magnitude demonstrated before this Court.
65. I therefore find, on a balance of probabilities, that the Defendant's valuations fell outside permissible professional margins and constituted negligent misstatements.

On causation

66. The Defendant submitted that any loss was attributable to borrower default and the Plaintiff's internal credit

decisions. However, the proper inquiry in negligent valuation claims is whether the lender was induced by the negligent valuation to enter into a transaction it would otherwise have declined or structured differently.

67. The Plaintiff led uncontroverted evidence that it relied on the valuations in approving the facilities and perfecting security. Subsequent valuations revealed that the forced sale values were materially overstated.
68. The Defendant's argument that the Plaintiff ought to have exercised alternative enforcement mechanisms does not negate inducement. A valuer's liability is confined to losses attributable to overvaluation, not to independent commercial risks.
69. I am satisfied that causation has been established to the extent of the proven overstatement in value.

On quantum

70. It is trite that special damages must be specifically pleaded and strictly proved. While the plaint referenced substantial aggregate figures, the Plaintiff's case as ultimately demonstrated in evidence and submissions crystallized around Kshs. 534,500,000/= being the cumulative overstatement of forced sale values on the principal properties.
71. Upon careful scrutiny of the evidentiary record, I am satisfied that the Plaintiff strictly proved recoverable loss

limited to Kshs. 534,500,000/=, being the quantified overstatement differential established at trial.

72. The award represents quantified special damage. An additional award of general damages on the same head would amount to double compensation and is therefore unwarranted.

73. Interest is discretionary pursuant to Section 26 of the Civil Procedure Act. In the circumstances of this commercial dispute, I award interest at court rates from the date of filing suit until payment in full.

74. Costs follow the event and shall be borne by the Defendant

75. In the result, I enter judgment for the Plaintiff against the Defendant as follows:

a) A declaration is hereby issued that the Defendant was negligent in preparing the impugned valuation reports.

b) A declaration that the valuations were outside permissible professional margins of error.

c) Judgment for the Plaintiff in the sum of Kshs. 534,500,000/=.

d) Interest on the said sum at court rates from the date of filing suit until payment.

e) Costs of the suit to the Plaintiff.

It is so ordered.

JUDGMENT delivered virtually, dated and signed at **NAIROBI**

This **26th** day of **February** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Otieno h/b for Mr. Allen Gichuhi, SC for Plaintiff

Ms. Lung'ania h/b for Ms. Chitechi for Defendant

Court Assistant: *Carlos*