



**SBM Bank Kenya Limited v Omaha Venture Limited & 5 others (Civil Case E499 of 2020)
[2026] KEHC 2857 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2857 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E499 OF 2020
F GIKONYO, J
FEBRUARY 26, 2026**

BETWEEN

SBM BANK KENYA LIMITED PLAINTIFF

AND

OMAHA VENTURE LIMITED 1ST DEFENDANT

KENNETH WATHOME MWATU 2ND DEFENDANT

JANE NYAMBURA WATHOME 3RD DEFENDANT

**ARCHSTONE HEIGHTS LIMITED (FORMERLY SERENE HEIGHTS
LIMITED) 4TH DEFENDANT**

SERENE LIVING LIMITED 5TH DEFENDANT

REALTY MART MANAGEMENT 6TH DEFENDANT

RULING

1. The plaintiff filed the notice of motion dated 14.7.2025, under Section 30 of the [Civil Procedure Act](#) and Order 49 Rule (2) & (3) of the Civil Procedure Rules.
2. The plaintiff seeks the recognition and enforcement of the consent dated 8.12.2022 and adopted by the court on 23.1.2023. It also seeks entry of judgment in its favour for Kshs. 375,487,605.34/-, the amount owing as of 1.7.2025.
3. The application is supported by the affidavit sworn by Stephen Ngigi.
4. The defendants opposed the application through a replying affidavit sworn on 17.9.2025 by Kenneth Wathome Mwatu, a director of the 1st, 4th and 5th defendants and the proprietor of the 6th defendant.



5. The plaintiff's gravamen is that the defendants have failed to honour the terms of consent by only settling Kshs. 222,000,000/- out of the agreed Kshs. 400,000,000/-.
6. The plaintiff pointed out that the full amount ought to have been paid in three instalments between January 2022 and 31 December 2023. It argued that there is no justification for the defendants' non-compliance. It stated that it continues to suffer loss due to the defendants' failure to honour their undertaking to fully settle the loan balance.
7. The plaintiff submitted that the court has jurisdiction to issue a decree and enforce the consent. It also submitted that it is in the interests of justice and fairness that the court allows its application.

Response

8. The defendants' case is that they have demonstrated good faith by paying Kshs. 220,000,000/-. They proffered that the outstanding balance is Kshs. 178,000,000/-.
9. The defendants highlighted several challenges faced in repaying the balance. They indicated that at the time of recording the consent, they placed several properties on the market to raise funds, but the sales did not realize the anticipated proceeds due to unforeseen economic shifts and significant decline in market prices.
10. The defendants stated that they have continued to make payments whenever possible and are committed to discharging the outstanding balance in full.
11. The defendants intimated that they have a property known as L. R. No. 12648/107 situate at Mavoko, Machakos registered in the name of Serene Heights Investments LLP actively on the market and that they undertake to apply its sale proceeds to offset the outstanding balance.
12. The defendants urged that the application is unnecessary, premature, and will only escalate a matter where good will exists and where they have always demonstrated willingness to comply. The grant of the application would lead to a punitive decree against a parties that have shown good faith and negate the equitable maxim that equity looks at the intent rather than form.
13. The defendants also urged that they stand to be prejudiced by the intended enforcement. They prayed that the court exercises its inherent jurisdiction under section 3A of the Civil Procedure Rules to preserve the integrity of the consent while allowing a practical and equitable path for its full performance.

Analysis and Determination

14. The issue is whether the application is merited.
15. The consent dated 8.12.2022 provides in part that the defendants would pay the plaintiff a total of Kshs. 400,000,000/- in three instalments of Kshs. 100,000,000/- upon signing of the offer dated 31.1.2022, Kshs. 100,000,000/- on or before 31.12.2022 and Kshs. 200,000,000/- on or before 31.12.2023.
16. The payments were in respect of various outstanding loan balances totalling Kshs. 494,773,040.06/- from various accounts. The consent further provided that the final settlement of Kshs. 400,000,000/- would not attract interest for the specified period of repayment.
17. Under para. 10 of the consent, if any of the term or conditions was breached, the consent would be considered null and void and the full amount owing of Kshs. 494,573,040.06/- as of 28.1.2022



- including interest not previously charged would become due and payable. It also provided that the plaintiff could resort to execution of the consent order without any further reference to the defendants.
18. The consent was adopted as an order of the court on 20.1.2023.
 19. The defendants have opposed the application on grounds that they have shown good faith by partly complying with it and stated that the reason that they have not fully complied is due to prevailing economic realities.
 20. The defendants argued that the application would result in a punitive decree and urged the court to preserve the integrity of the consent by allowing a practical and equitable path for its performance.
 21. On the other hand, the plaintiff urged the court to allow the application because the defendants have not paid the full outstanding amount agreed within the agreed timelines. It complained about the losses that it continues to incur due to the defendants' noncompliance.
 22. In *Flora M. Wasike v Destimo Wamboko* [1988] eKLR the Court of Appeal observed that

“a consent judgement or order has contractual effect and can only be set aside on grounds which would justify setting aside, or if certain conditions remain unfulfilled, which are not carried out. If a consent is to be set aside, it can only really be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of material matters by legally competent persons”
 23. The defendants have not disputed the validity and adoption of the consent. They have also not demonstrated grounds sufficient for the setting aside of the consent.
 24. Therefore, the court finds that the plaintiff's application is merited.

Disposal

25. In the upshot, the plaintiff's application dated 14.7.2025 is allowed as prayed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 26TH DAY OF FEBRUARY, 2026.

F. GIKONYO M

JUDGE

In the presence of: -

Ms. Odongo for Applicant

Ms. Lungami for Ms. Shitecha for 1st defendant

CA- Ivan/Aggrey

