



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI, NAIROBI

ELCLOS NO E022 OF 2025

CITY ESTATE CORPORATION LIMITED.....

.....APPLICANT

-VERSUS-

STANDARD CHARTERED INVESTMENT SERVICES LIMITED.....1ST

RESPONDENT

STANDARD BANK NOMINEES (EAST AFRICA) LIMITED2ND

RESPONDENT

STANDARD CHARTERED BANK KENYA LIMITED3RD

RESPONDENT

RULING

Brief facts

1. Vide the originating summons application dated 3rd April 2025, the

Applicant seeks the following orders:

- a. A declaration that the loan secured by the charge registered against LR NO 1870/V/118 IR.NO 35334 has been fully settled and there is no outstanding obligations arising therefrom
- b. An order compelling the respondents to execute and deliver to the applicant a discharge of charge in respect of the property known as LR NO 1870/V/118 IR.NO 35334 within 7 days from the date of the order

- c. An order that in the event the respondent fails or refuses to execute the discharge of charge the deputy registrar of the court be authorized to execute the same
 - d. Costs of the application
 - e. Any other relief the court deems just
2. The application was premised on grounds as in the supporting affidavit sworn by the Abdul Hameed Sheikh that the applicant had been a borrower under a charge dated 25/3/1981 in favour of the respondents but had cleared the said loan secured by the charge hence the need to have it discharged. That the respondents have failed to discharge the same despite demand citing lack of record on their end which reason is not lawful to maintain the charge hence the application

Respondent's case

3. The respondents in response filed a replying affidavit sworn by Evelyn Wanjiru Gachanja. She deponed that the respondents did not hold any title to the suit property and that they had no records pointing to the alleged borrowing by the applicant. That the discharge of the charge could only be effected upon orders of the court as the 3rd respondent was not convinced with the ownership of the title attributed to the applicant. She further deponed that the 3rd respondent did not keep records of transactions beyond 7 years from the date of the said transaction

4. The application was canvassed by way of written submissions applicant filed submissions dated 24th October 2025 whereas the respondents filed their submissions dated 26th January 2026

Applicant's submissions

The applicant submitted that the respondents did not deny the repaying of the loan secured by the charge and furthermore the averments in the replying affidavit that the 3rd respondent did not keep any record of the transaction implied an admission that the respondents had no claim as against the applicant and if there was any claim, it was time barred. Counsel relied in the case of

Choitram 7 Another Vs Nazari (19840 KECA 47(KLR))

Respondent's submissions

The respondent submitted that it will be prejudicial for the court to order the respondents to discharge a charge that they have no records of. That the inordinate delay in the applicant seeking for the discharge has prejudiced them as they do not have any record that should aid in the said transaction if they are to discharge the charge.

Analysis and determination

5. Having looked at the application, the responses and submissions by all parties, the substantial issue for determination is

Whether the Application is merited

The contention stems from the fact that the applicant indicates there was a charge registered on the suit property to secure a

loan. The applicant indicates that the loan was paid in full and hence the need to compel the respondents to discharge the same. The respondent indicates that due to the time that has lapsed there have no records pointing out to the alleged borrowing and charge if any and therefore cannot discharge that which they cannot substantiate from their record. The applicant in support of the application has attached a charge instrument dated the 25th March 1981 with the 1st respondent currently trading as the 3rd respondent. The document has not been controverted by the respondents and the court will take it into evidence that indeed a charge was secured.

The next question is whether the loan amounts were repaid that should warrant the discharge of the said charge. The applicant has produced a letter dated 24th April 1992 that apparently listed the amount still owed by the applicant to the respondent and a forwarding letter apparently with the cheque clearing the outstanding amounts. A perusal at the forwarding letter does not in any way indicate that the applicant cleared the outstanding amounts. There is no evidence from the lender being the 3rd respondent that the loan was cleared.

It is trite law that he who alleges must prove. Section 107 (1) of the Evidence Act, Cap 80 Laws of Kenya, 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.

This degree of proof is well enunciated in the case of Miller vs Minister of pensions [1947] cited with approval in **D.T. Dobie Company (K) Limited vs Wanyonyi Wafula Chabukati [2014] eKLR** where the court stated:- *That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not', thus proof on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties' explanations are equally unconvincing the party bearing the burden of proof will lose, because the requisite standard will not have been attained.*

The applicant has not produced any bank account statements to corroborate the fact that the loan was paid in full in the respondent's account.

Further I would like to agree with the respondent that the statute of limitation bars the applicant from bringing up such a claim since the year 1992 hence disadvantaging the respondent who cannot put up its defence in order due to lack of sufficient evidence.

The purpose of the Law of Limitation was stated in the case of **Mehta vs Shah [1965] E.A 321**, as follows; "The object of any

limitation enactment is to prevent a Plaintiff from prosecuting stale claims on the one hand, and on the other hand protect a Defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.” Similarly, in **Gathoni -vs- Kenya Co-operative Creameries Ltd [1982] KLR 104**, the Court of Appeal held as follows; “ ...The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest

Final disposition

In view of the foregoing,

- a) I find that the applicant failed to satisfy the court below on the balance of probabilities that it deserves the orders sought. The application dated 3rd April 2025 is hereby dismissed
- b) Costs to be borne by the Respondents.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **13th** of **April, 2026.**

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

No appearance for the Applicant

Mr. Mureithi..... for the Respondents

Philomena W..... Court Assistant

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