



**Maingi v CFC Stanbic Bank (Civil Suit E409 of 2020)  
[2025] KEHC 7512 (KLR) (Commercial and Tax) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7512 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E409 OF 2020  
FG MUGAMBI, J  
MAY 30, 2025**

**BETWEEN**

**KIMANI JAMES MAINGI ..... PLAINTIFF**

**AND**

**CFC STANBIC BANK ..... DEFENDANT**

**JUDGMENT**

**Background and Introduction**

1. This suit was instituted vide an amended plaint dated 20<sup>th</sup> June 2022. The plaintiff prays for, among others, an order for a true and elaborate accounts of how the defendant Bank applied all payments made under Mortgage Loan Account No. xxxxxxxx, to be conducted by an analyst appointed by the Court or otherwise directed.
2. The plaintiff further seeks a declaration that the Bank is not entitled to charge or recover penalties, whether described as penalty interest, interest on arrears, default charges, credit or debit arrangement charges, or any other charges, on the ground that such charges are unlawful, unconscionable, null and void, and constitute a clog on the plaintiff's equity of redemption.
3. The plaintiff also prays for a declaration that the Bank acted in contravention of the *Banking Act* (Cap. 488, Laws of Kenya) and breached the express contractual terms by applying interest rates not agreed upon. Consequently, he seeks a refund and credit to the loan account of an overcharged sum of Kshs. 14,705,793/=, a reduction of the outstanding loan by the same amount, and refund of any excess payments made. The plaintiff also claims costs of the suit with interest.
4. The plaintiff avers that, on or about 20<sup>th</sup> December 2010, he applied for and was granted a mortgage loan facility by the Bank in the sum of Kshs. 28,700,000/=. The facility was secured by a charge registered on 7<sup>th</sup> June 2011 over the property known as LR No. 1xxx/x4, and was repayable over a



period of twenty (20) years at a variable interest rate pegged to the bank's base lending rate. The facility was governed by the terms set out in the loan agreement, the charge instrument, and subsequent communications between the parties. Disbursement of the loan was effected on or about 8<sup>th</sup> July 2011 into Mortgage Loan Account No. xxxxxx.

5. In accordance with the terms of the facility, the plaintiff confirms that, the interest rate was fixed at 18.5% per annum for a period of twenty-four (24) months, effective from 15<sup>th</sup> June 2012 and ending on 15<sup>th</sup> June 2014. Thereafter, the applicable rate was to revert to the prevailing interest rate. The plaintiff, however, contends that the defendant continued to apply the fixed rate beyond the agreed period, up to 20<sup>th</sup> July 2015, thereby occasioning him financial prejudice.
6. The plaintiff avers that, by a notice dated 13<sup>th</sup> July 2015, the defendant adjusted the interest rate to 19.83% per annum, calculated on the basis of the Kenya Bank Reference Rate (KBRR) plus a margin of 9.96%. A subsequent notice issued on 8<sup>th</sup> August 2016 revised the interest rate downwards by 0.97%, resulting in a new rate of 18.53% per annum. Despite the issuance of these notices, the plaintiff contends that the Bank failed to implement the revised rates as communicated, and instead continued to levy excessive and punitive interest charges in a manner contrary to both the law and the express terms of the agreement.
7. The plaintiff further maintains that interest ought to have been computed on a 365-day year basis, applied to cleared balances only. He contends that from 16<sup>th</sup> June 2014 onwards, the applicable interest rate should have reverted to the Bank's base rate, rather than the fixed rate of 18.5%, which had lapsed.
8. The plaintiff further states that in February 2020, he raised concerns regarding the outstanding loan balance and formally requested a breakdown and explanation from Bank, which was not forthcoming. A meeting held on 20<sup>th</sup> February 2020 between the plaintiff, his financial advisor, and representatives of the Bank did not provide clarity or justification for the allegedly inflated loan balance.
9. As a result, the plaintiff engaged Audit Focus Advisory to conduct an independent forensic audit. The audit report, upon completion, revealed purported overcharges amounting to Kshs. 14,705,793.11. The plaintiff avers that these charges were not supported by the loan agreement, the charge instrument, or any other contractual documentation, and were therefore unauthorized and unlawful.
10. According to the audit report, the Bank employed unfamiliar and unexplained terminologies in effecting debits to the plaintiff's loan account, thereby rendering the statements opaque and difficult to reconcile. As at 31<sup>st</sup> March 2022, the plaintiff had made cumulative repayments amounting to Kshs. 83,921,779.25, comprising both principal and interest.
11. The plaintiff accuses the Bank of breaching the loan agreement by unlawfully overcharging interest, failing to properly communicate interest rate adjustments, and debiting the account with irregular and unauthorized charges. He contends that these actions amounted to a clog on his equity of redemption and were contrary to both contractual and statutory obligations.
12. The suit is opposed by the defendant Bank through an amended statement of defence dated 11<sup>th</sup> August 2022. The Bank admits granting the mortgage facility to the plaintiff but denies that the plaintiff adhered to the agreed terms of the loan. It avers that the plaintiff defaulted on his repayment obligations and is, therefore, not entitled to the reliefs sought.
13. The Bank specifically denies that it continued to apply the fixed interest rate beyond the agreed 24-month period or that it levied interest charges contrary to the contractual provisions or the law. It disputes the plaintiff's reliance on interest rate variation notices, contending that any such notices



served merely to communicate changes in the base rate and did not constitute binding agreements on the lending rate itself.

14. The Bank further asserts that it fully complied with the applicable legal framework on interest rate capping and that the loan documentation expressly provided for applicable interest rates and margins, which did not include a zero margin. It denies applying punitive or excessive interest rates and maintains that all charges levied were lawfully and contractually imposed.
15. While acknowledging that discussions on restructuring took place, the Bank denies failing to provide explanations regarding the loan account. It also challenges the validity of the forensic audit commissioned by the plaintiff, noting that it was neither involved in the process nor consulted on the findings. The Bank contends that the audit is fundamentally flawed for failing to account for the plaintiff's admitted default.
16. The Bank also denies applying any unauthorized or unfamiliar charges and disputes the accuracy of the alleged overcharge amounting to Kshs. 14,705,793.11. It maintains that the plaintiff has failed to substantiate claims of contractual breach and asserts that, on the contrary, it is the plaintiff who is in breach by failing to honour his repayment obligations under the facility.
17. In response to the defendant's amended statement of defence, the plaintiff maintains that the mortgage loan was repayable over 20 years, not 20 months, and denies defaulting on repayment. He maintains his compliance with all contractual terms and variations. To address irregularities in interest charges, he reiterates having commissioned a forensic audit which revealed overcharges amounting to Kshs. 12,153,731.23.
18. The plaintiff claims that the Bank continued to apply a fixed interest rate beyond the agreed period and failed to implement lawful rate adjustments based on the KBRR and Central Bank Rate. He further alleges that the Bank imposed punitive and unjustified charges, failed to provide transparent explanations, and dismissed the audit without cause. The plaintiff contends he only withheld payment after failed attempts to resolve the dispute.

### **The Hearing:**

19. The plaintiff called two witnesses. PW1, James Maingi Kimani, testified in accordance with his witness statement dated 13<sup>th</sup> October 2020. PW2, James M. Mwangi, a consultant with Audit Focus Advisory, adopted his witness statement dated 23<sup>rd</sup> October 2020 as his evidence-in-chief. The defendant called one witness, DW1, Amos Mugambi, whose testimony was based on his witness statement dated 3<sup>rd</sup> March 2022.
20. Each of the witnesses produced and relied upon their respective documentary evidence. The Court will not reproduce the full details of their testimonies, which substantially align with the facts already summarized, but will refer to relevant portions thereof in the analysis where necessary. The parties also filed their respective written submissions, all of which the Court has duly considered.

### **Analysis and Determination**

21. From the pleadings filed by the parties, the following issues arise for determination:
  - i. Whether the defendant was in breach of the contract by unlawfully applying interest rates beyond the agreed terms.
  - ii. Whether the plaintiff is entitled to the reliefs sought, including a refund of overcharged amounts, declarations against the bank, and costs.



### **Whether the Bank unlawfully applied interest rates beyond the agreed terms:**

22. It is not in dispute that the plaintiff and the Bank entered into a contractual relationship pursuant to a mortgage facility agreement dated 20<sup>th</sup> December 2010, under which the plaintiff was advanced a loan of Kshs. 28,700,000/=, repayable over a period of twenty (20) years. The facility was secured by a charge registered over LR No. 1xxx/x4 and was subject to a variable interest rate pegged to the defendant's base lending rate. The principal issue for determination in this case concerns the plaintiff's allegation that the Bank levied excessive and unlawful interest charges on the loan account.
23. The plaintiff contends that by a variation letter dated 15<sup>th</sup> June 2012, the parties agreed to fix the interest rate at 18.5% per annum for a period of twenty-four (24) months, after which the facility would revert to the prevailing home loan rate. The plaintiff faults the Bank for failing to revert to the applicable variable rate after the expiry of the fixed period on 15<sup>th</sup> June 2014 and for continuing to apply the fixed rate until July 2015, which he alleges was contrary to the agreement. PW2 stated in his audit report that this continued application of the fixed rate resulted in overcharges to the plaintiff's loan account.
24. Conversely, DW1, the Bank's witness, testified that the facility terms expressly permitted the Bank to vary interest rates at its discretion, subject to notice, and that such variation notices were duly issued and communicated to the plaintiff. DW1 further contended that the audit report relied upon by the plaintiff did not account for essential variables, including loan restructuring, accruals arising from default, and the effect of the notices served upon the plaintiff.
25. The Court has carefully considered the audit report dated 23<sup>rd</sup> June 2022 relied upon by the plaintiff. Although the report alleges overcharges, PW2 admitted under cross-examination that the audit did not consider the plaintiff's loan default. Notably, PW2 testified:
- “The report assumed repayments were made on time. I was not aware that the customer had defaulted. He didn't tell me he had defaulted. The default interest rate is not captured anywhere in my report.”
26. He further conceded:
- “If there was a default during the 24-month fixed interest period, the impact is that any amounts in arrears would attract a default interest rate.”
27. This admission significantly undermines the credibility of the audit report, particularly because the plaintiff's claim for Kshs. 14,705,793.11 is premised upon it. Moreover, PW1 admitted during cross-examination that the facility went into arrears on several occasions. When referred to Clause 4.3 of the Facility Letter regarding default interest, he testified:
- “I can see Clause 4.3. It talks of default interest. I don't know what that means. I see that the bank was supposed to charge a rate of 14.37% as interest on default. My facility went into default severally. I was served with notice by the bank. I have not disclosed in my plaint and in my witness statement about the default. I disclosed the default to the auditor.”
28. In addition, Clause 4.1.4 of the facility agreement expressly permitted the application of prevailing interest rates and allowed the bank to vary the rate upon issuance of notice. The Court notes from the



record that such notices were indeed issued and received as admitted by PW1. In *Givan Okallo Ingari & Another V Housing Finance Co (K) Ltd*, [2007] 2 KLR 232, Warsame J (as he then was) held:

“... When parties to an instrument of charge have a clear agreement on the interest and charges to be charged on the facility, parties must be guided by the terms and conditions as set out in the charge document. In my humble opinion, a party in breach of the contractual document cannot be allowed to benefit from his own transgression. ...”

29. Applying that reasoning, and having considered the admissions made by the plaintiff's witnesses as well as the express terms of the facility agreement, the Court finds that the Bank was contractually entitled to vary the applicable rate of interest and did so upon issuing the requisite notices. The Court is further satisfied that the application of default interest was expressly agreed upon under the facility and was justified in the event of default.
30. Accordingly, the Court finds that the Bank acted within the bounds of the facility agreement in varying interest rates and levying default interest where applicable.

**Whether the plaintiff is entitled to the reliefs sought, including a refund of overcharged amounts, declarations against the bank, and costs:**

31. The plaintiff's case is principally anchored on the findings contained in the audit reports prepared by PW2. However, the credibility and probative value of those reports were substantially weakened by their failure to consider critical elements, including additional loan facilities secured under the same charge and the plaintiff's own admission of default. These omissions materially affect the reliability of the conclusions drawn therein.
32. The alleged overcharge of Kshs. 14,705,793.11 has not been established to the required standard of proof. Moreover, the plaintiff has not demonstrated, with any clarity or specificity, how the defendant breached the terms of the facility agreement. In the absence of cogent evidence of contractual breach, illegality, or misapplication of interest rates by the defendant, the Court finds that the reliefs sought by the plaintiff are not merited.

**Disposition**

33. Accordingly, the plaintiff's suit is dismissed with costs to the defendant.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 30<sup>TH</sup> DAY OF MAY 2025.**

**F. MUGAMBI**

**JUDGE**

