



REPUBLIC OF KENYA



Equity Bank (Kenya) Limited v Metrocosmo Limited (Civil Appeal E392 of 2024) [2025] KEHC 9183 (KLR) (Civ) (27 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E392 OF 2024

AN ONGERI, J

JUNE 27, 2025

BETWEEN

EQUITY BANK (KENYA) LIMITED APPELLANT

AND

METROCOSMO LIMITED RESPONDENT

(Being an appeal from Judgment of Hon. Bernard Kasavuli (SPM) in Milimani CMCC No. E11363 of 2021 delivered on 20th February 2024)

JUDGMENT

1. The appellant Equity Bank Limited filed Milimani CMCC No. E11363 of 2021 via amended plaint dated 10th February 2023 against the respondent, Metrocosmo Ltd.
2. The appellant was seeking ksh.2,325,203.33 plus interest and auctioneers costs of kssh.167,204.
3. The amount was in respect of loss the appellant incurred when the respondent, a registered valuer, allegedly wrongly valued a property known as Kathwani 158, kathwara area in Tharaka Nithi county (hereafter referred to as the suit property).
4. Upon reliance on the said valuation report, the appellant advanced a loan of kshs.2,800,000 to one Earnest Muthengi T/a Tharaka Farms Enterprises.
5. The suit property was valued at kshs.7,500,000 with a forced value of ksh.5,626,000.
6. When Earnest Muthengi defaulted in repayment of the loan, the appellant conducted two fresh valuations which showed that the suit property had a market value of ksh.1,500,000 with a forced sale value of 1,125,000/=.
7. The appellant sold the property at ksh.1,200,000 on 23rd July 2019.



8. At the time of sale, the loan was in areas of kshs.3,525,203.33 and the appellant incurred a loss of ksh.2,325,203 which they were claiming from the valuer – the respondent herein together with auctioneers charges of ksh.167,204/=.
9. The respondent denied the appellant’s claim and outlined the steps taken in procuring documents such as the title deed, survey maps for purposes of the valuation.
10. The respondent further stated eligibility for a loan to any customer is a decision to be made by the financier depending on many valuables and not just the valuation.
11. That a lender is duty bound to take into consideration the viability of the prospective borrower’s proposed project, his income services, the credit worthiness of the borrower, risks associated with the proposed project/venture among other considerations.
12. The trial court found that there was no professional negligence and dismissed the appellant’s case.
13. The court further said the maker of the two subsequent reports were not called as witnesses to justify the said reports.
14. The appellant has appealed against the said judgment on the following grounds;
 - i. The learned trial magistrate erred in fact and law by failing to consider the plaintiff’s pleadings and submissions in whole.
 - ii. The learned trial magistrate erred in misapprehending the plaintiff’s evidence presented in court.
 - iii. The learned trial magistrate erred in fact by finding that the defendant’s witness (DW 1) visited the site and inquired from some on the value of the land at site yet there was no such proof advanced.
 - iv. The Learned Trial Magistrate erred in fact by finding that the Defendant's allegation of having visited the site and inquiring from some people on the ground on the value, was sufficient to prove that the Defendant had discharged its professional obligations.
 - v. The Learned Trial Magistrate erred in law in failing to hold that where special skill is required for a task then it is not sufficient for the person with special skill not to exercise such skill when attending to the task.
 - vi. The Learned Trial Magistrate erred in fact by falling to consider the fact that the Defendant's witness was a valuer of over 34 years of experience therefore expected to exercise the special skill, degree of diligence, foresight and competence reasonably expected of a professional of his caliber.
 - vii. The Learned Trial Magistrate erred in fact by finding that visiting the property and inquiring from some people on the ground about the value of the land at the site, was sufficient discharge of the Defendant's professional duty as a valuer.
 - viii. The Learned Trial Magistrate erred in fact by falling to acknowledge and hold that the Defendant, by its own, had admitted that the values in the impugned valuation report, were speculative.
 - ix. The Learned Trial Magistrate erred in holding that the fact that the area where the site was had been earmarked as the Headquarter for Tharaka Nithi County Government was sufficient to justify the Defendant's conclusion on the value of the site.



- x. The Learned Trial Magistrate erred in accepting the Defendant's explanation on the earmark of the area as a County Government Headquarters was a basis of giving a futuristic value to the site, rather than an actual current value thereof.
- xi. The Learned Trial Magistrate erred in law in misapplying the decision in Caparo Industries PLC vs Dickman [1971] AC 793 on liability for financial loss arising from negligent advice.
- xii. The Learned Trial Magistrate erred in law and fact by failing to consider that the Defendant, in its evidence, acknowledged the authenticity of the valuation reports 21 February 2018 and 13 April 2018 and that their authors were well known to the Defendant.
- xiii. The Learned Trial Magistrate erred in law by placing reliance on valuation reports dated 21 February 2018 and 13 April 2018 yet finding fault in the need to present its authors, yet the Defendant cross examined the Plaintiff on the said reports.
- xiv. The Learned Trial Magistrate erred in law, by misinterpreting the decision in Trans-national Bank Of Kenya Ltd V Charles Kimita Willy another [2006] eKLR and its relevance in professional duty of care and failure thereof.
- xv. The Learned Trial Magistrate erred in law, by misinterpreting the decision in Kenya Commercial Bank v Philip Odongo Kabita T/A Odongo Kabi Valuers [2002] eKLR and thus distinguishing it from the instant case.
- xvi. The Learned Magistrate erred in law by misinterpreting the decision in National Bank Of Kenya Limited V E. Muriu Kamau & another [2009] eKLR and its relevance to professional negligence generally.
- xvii. The Learned Trial Magistrate erred in law and fact in holding that the Plaintiff had failed to demonstrate that the Defendant had breached professional duty of care.
- xviii. The Learned Trial Magistrate erred in law, by considering and deciding on, matters and issues which were neither in dispute nor pleaded by the parties.
- xix. The Learned Trial Magistrate erred in fact by holding that the Plaintiff should have filed a detailed bank statement relating to the borrower's loan account, yet this was not an issue pleaded, or in dispute.
- xx. The Learned Trial Magistrate erred in fact by holding that the Plaintiff failed to prove that the borrower was in default at the time of the auction, yet this was not in dispute, but was proven by the Plaintiff nonetheless.
- xxi. The Learned Trial Magistrate erred in fact by failing to consider the Securities Withdrawal Request Form adduced by the Plaintiff, as proof of the shortfall from the public auction.
- xxii. The Learned Trial Magistrate erred in fact and law by failing to hold that the defendant as a registered valuer owed the plaintiff a duty of care as client to use diligence, care, knowledge, skill and competence in attending to the task allocated to it.
- xxiii. The Learned Trial Magistrate erred in fact by failing to appreciate that the plaintiff lead and roved to the standard required that the defendant failed to exercise reasonable care and skill expected of a professional valuer in issuing the impugned valuation report.
- xxiv. The Learned Trial Magistrate erred in law by awarding costs to the defendant.

15. The parties filed written submissions as follows;



16. The appellant submitted that the appeal arises from a judgment delivered on 20th February 2024 by the Senior Principal Magistrate in Milimani Chief Magistrate's Civil Case No. E11363 of 2021, where Equity Bank (Kenya) Limited sued Metrocosmo Limited, a registered valuer, for professional negligence.
17. The Bank alleged that it relied on the valuer's report, which grossly overvalued a property offered as security for a loan, leading to significant losses when the borrower defaulted and the property was auctioned at a much lower value.
18. The Bank's case was that Metrocosmo Limited, under a Service Level Agreement, was obligated to exercise due care, skill, and diligence in valuing the property.
19. However, the valuation report dated 20th September 2016, which estimated the property's market value at KES 7,500,000 and forced sale value at KES 5,626,000, was later contradicted by two independent valuations in 2018, which placed the market value at KES 1,500,000 and KES 1,250,000, respectively.
20. Further, that when the Bank attempted to recover the loan through an auction, the property sold for only KES 1,200,000, leaving a substantial shortfall.
21. At trial, the Bank argued that the valuer failed to conduct a proper inspection, relied on unverified speculative information, and did not adhere to professional standards.
22. The valuer, Dr. Humphrey Njuguna, defended his report, claiming he followed due process, including site visits and market comparisons, and attributed the discrepancy to market fluctuations and the property's potential appreciation due to municipal gazettement.
23. The trial court dismissed the suit, holding that the Bank failed to prove professional negligence, particularly since the authors of the subsequent valuation reports did not testify.
24. The court also found no evidence of payment of the auctioneer's fees claimed.
25. On appeal, the Bank contends that the trial court misapplied the law on professional negligence.
26. The appellant submitted that the valuer breached his duty of care by failing to verify data, relying on speculative future developments, and producing a misleading report.
27. The Bank cited precedents where valuers were held liable for negligent valuations that caused financial losses and asserted that the valuer's conduct fell below the standard expected of a professional, leading to the Bank's reliance on an inflated valuation and subsequent loss.
28. The Bank seeks to overturn the judgment, claiming the trial court erred in disregarding the evidence of negligence and misinterpreting the legal principles on liability.
29. It urged the High Court to find the valuer liable for the outstanding loan balance of KES 2,325,203.33 and auctioneer's costs of KES 167,204, plus interest and costs of the suit.
30. The appeal hinges on whether the valuer's actions constituted professional negligence and whether the Bank's losses were a direct result of that negligence.
31. In conclusion, the Bank maintains that the valuer's report was fundamentally flawed, leading to an unjustifiable loan advance and irrecoverable losses.
32. The appellant asked the Court to allow the appeal, set aside the trial court's judgment, and grant the reliefs sought.



33. The Respondent's written submissions opposed the Appellant's appeal, arguing that the trial court's judgment was sound in law and evidence.
34. The Respondent contended that the Appellant has failed to demonstrate any grounds warranting the High Court's interference with the lower court's decision.
35. On the alleged failure to consider pleadings and submissions (Ground 1), the Respondent asserted that the trial court meticulously reviewed the pleadings and submissions, as evidenced in the judgment.
36. Regarding Grounds 2–4, the Respondent maintained that the trial court correctly found the Respondent's witness visited the site, relying on testimony and documentary evidence, including prior instructions from Winfred Mukami Muthengi and the subsequent formalization of instructions from the Appellant.
37. The Respondent emphasized that an appellate court should defer to the trial court's factual findings, especially where witness credibility is involved.
38. Concerning the duty of care (Grounds 5–6 and 17), the Respondent argued that no breach was proved, as the valuation report was prepared with due diligence, accounting for market conditions, including speculative demand due to Kathwana's designation as Tharaka-Nithi County headquarters.
39. The Respondent highlighted that the Appellant failed to produce its own valuation reports or call expert witnesses, undermining its negligence claim (Grounds 8–11, 12–13). The Respondent cited case law (e.g., *Bernard Philip Mutiso v Tabitha Mutiso*) to argue that the Appellant's failure to adduce critical evidence is fatal to its case.
40. The Respondent distinguished the authorities relied on by the Appellant (e.g., *Trans-National Bank v Charles Kimita Willy and KCB v Philip Odongo Kabita*), noting those cases involved valuers inspecting wrong properties, whereas here, the Respondent correctly identified and valued Kathwana/158.
41. The Respondent stressed that valuation is time-specific and contextual, reflecting market conditions at the time (e.g., speculative demand in Kathwana in 2016).
42. On alleged losses (Grounds 18–19), the Respondent argued the Appellant provided no proof of outstanding loan amounts or efforts to recover from the borrower, rendering the claim speculative.
43. The Respondent reiterated that a valuer's role is advisory, and lenders must independently assess loan viability.
44. In conclusion, the Respondent urged the court to dismiss the appeal, affirming the trial court's finding that the Appellant failed to prove negligence or breach of duty.
45. The Respondent asserted that the valuation was professional, evidence-based, and compliant with industry standards, and that the Appellant's claims are unsupported by evidence or law.
46. Finally, the Respondent submitted that the costs are sought in their favour.
47. The first appellate court, while hearing a first appeal, bears a crucial duty to conduct a thorough and independent reappraisal of the entire evidence on record, both oral and documentary, rather than merely endorsing the findings of the trial court.
48. It must examine not only questions of law but also questions of fact, unless restricted by statute, and arrive at its own conclusions based on a proper assessment of the evidence.



49. The first appellate court is obligated to apply its mind independently, scrutinizing the trial court’s reasoning and correcting any errors—whether factual, legal, or procedural—that may have crept into the lower court’s judgment.
50. The issues for determination in this appeal are as follows;
 - i. Whether the appellant proved the allegation of professional negligence against the respondent.
 - ii. Whether the trial court was right in dismissing the appellant’s case.
51. On the issue as to whether the appellant proved the allegation of professional negligence, I find that there is evidence that the appellant relied on the valuation report by the respondent in advancing the loan of kshs.2,800,000 to the 3rd party. The report gave the value of 7,500,000 and forced value of ksh.5,000,000/.
52. I have considered the detailed appeal before this Court, the key issue revolves around whether Equity Bank proved professional negligence against Metrocosmo Ltd, the valuer, for allegedly overvaluing the property used as loan security.
53. The trial court dismissed the Bank’s claim, finding no negligence, but the Bank now appeals, arguing the magistrate misapplied the law and ignored critical evidence.
54. Under Kenyan law, professional negligence requires proving a duty of care, breach of that duty, and resultant loss.
55. The Bank’s case hinges on the disparity between Metrocosmo’s 2016 valuation (KES 7.5 million) and two subsequent valuations (KES 1.5 million) after the borrower defaulted, leading to a forced sale at KES 1.2 million.
56. The Bank contended that the valuer failed to exercise due diligence by relying on speculative future developments (e.g., Kathwana’s designation as county headquarters) rather than current market value, breaching the standard of care expected under the Service Level Agreement.
57. Kenyan precedents, such as Kenya Commercial Bank v Philip Odongo Kabita [2002] eKLR, hold valuers liable for negligent overvaluations that cause financial harm, emphasizing that professionals must apply specialized skills with reasonable competence.
58. In the current case, Metrocosmo’s report allegedly lacked verifiable data, and the Bank argues the valuer’s 34 years of experience should have precluded such errors.
59. However, the trial court found the Bank failed to prove negligence, noting the authors of the subsequent reports were not called to testify, leaving their findings unchallenged.
60. This aligns with Bernard Philip Mutiso v Tabitha Mutiso, where failure to adduce key evidence weakened the claimant’s case.
61. The respondent submitted that valuation is time-sensitive and contextual, and that the 2016 report reflected market conditions, including speculative demand.
62. The trial court accepted the valuer’s testimony that he visited the site and consulted locals, which the Bank disputes.
63. I agree with the appellant that lenders bear responsibility for independent loan assessments, as held in Trans-National Bank v Charles Kimita Willy [2006] eKLR, where the bank’s failure to verify collateral independently contributed to its loss.



- 64. The Bank’s claim also falters on proving causation—it did not demonstrate that the alleged overvaluation directly caused the loss, especially since loan approval involves multiple factors including the viability of the prospective borrower’s proposed project, his income services, the credit worthiness of the borrower, risks associated with the proposed project/venture among other considerations.
- 65. In conclusion, while the Bank raises valid concerns about the valuation’s accuracy, it did not conclusively prove that Metrocosmo’s actions fell below professional standards or directly caused the loss.
- 66. The makers of subsequent reports were not called to justify their reports and further, the appellants were to consider other factors such as the viability of the prospective borrower’s proposed project, his income services, the credit worthiness of the borrower, risks associated with the proposed project/venture among other considerations before granting the loan.
- 67. The trial court’s dismissal was justified, since there was no clear evidence of negligence and causation.
- 68. The appeal is therefore dismissed.
- 69. Each party to bear its own costs of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT VOI THIS 27TH DAY OF JUNE, 2025.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

.....for the Appellant

.....for the Respondent

