



**Guaranty Trust Bank Kenya Limited v NW Realite Limited (Commercial Case 378 of 2020)  
[2025] KEHC 12495 (KLR) (Commercial and Tax) (1 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12495 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 378 OF 2020  
JWW MONG'ARE, J  
SEPTEMBER 1, 2025**

**BETWEEN**

**GUARANTY TRUST BANK KENYA LIMITED ..... PLAINTIFF**

**AND**

**NW REALITE LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff instructed the Defendant to value property described as Title No. Kwale/Kiwegu Jego/11("the Property") on 21<sup>st</sup> November 2014. The instruction letter specified the need of the Defendant to advise the Plaintiff on the property's current market value, forced sale value, and insurance values. The Defendant was to act as an agent of the Plaintiff and the valuation was not to be discussed with the customer or proprietor. The Defendant produced a valuation report on 26<sup>th</sup> November 2014, co-authored by Timothy P. Saruni and Grace Karen Wakaba. This report stated the Open Market Value of the Property at Kshs.190,000,000.00, Mortgage Value at Kshs 150,000,000.00/= and Forced Sale Value at Kshs. 142,500,000.00/=.
2. Through its Complaint dated 17<sup>th</sup> September 2020, the Plaintiff states that it relied on this report to extend overdraft facilities up to Kshs.80,000,000/= to its customer, Micro Mobile Limited. Upon default by the customer, the Plaintiff attempted to sell the property but it alleges that the Defendant had negligently misrepresented its value. A joint valuation ordered by the court in a separate case (Nairobi HCCC No. 34 of 2019) was conducted by Crystal Valuers Limited on 1<sup>st</sup> July 2019 and this subsequent valuation assessed the Market Value at Kshs.50,000,000/= and the Forced Sale Value at Kshs.37,500,000.00/=.
3. The Plaintiff asserts that the Defendant's valuation was negligent and misled the bank into extending financial accommodation far exceeding the Property's actual value, leading to losses. The Plaintiff



argues that the Defendant's negligence is evident from their report being co-signed by someone admitted to be a "stranger" to the company, casting doubt on its correctness. It contends that a correct report would have informed the appropriate loan amount, and due to the Defendant's exaggerated Open Market Value of Kshs.190,000,000/=, the Plaintiff extended Kshs.80,000,000.00/= in overdraft facilities, which the Defendant should now be liable for, plus interest. The Plaintiff concludes that the Defendant's patent negligence, including relying on an official search before receiving instructions, not having an inspection date or sketch plan, and misrepresenting the property as prime, caused the Plaintiff to suffer economic loss. Thus, the Plaintiff seeks damages equal to the outstanding loan amount of Kshs.106,667,295.21/= as of 16<sup>th</sup> February 2020, with interest, plus costs of the suit.

4. The Defendant responded to the suit by filing a statement of defence dated 27<sup>th</sup> November 2020. The Defendant states that, like all previous valuations performed for the Plaintiff, this valuation was carried out diligently and professionally, taking into consideration the assessment to determine the property's values. The Defendant maintains that a physical inspection of the property was conducted by their valuer and an official search for the property was conducted on 13<sup>th</sup> November 2014, before the instructions were received on 21<sup>st</sup> November 2014 and the Defendant asserts this is a standard practice before officially receiving instructions. That following the inspection and search, the Defendant submitted the valuation report to the Plaintiff.
5. The Defendant states that professional valuers are not insurers against loss and their duty is to exercise reasonable care and skill, not to guarantee accuracy. It disputes the Plaintiff's reliance on the Crystal Valuers report of 1<sup>st</sup> July 2019, as proof of their negligence. It argues that the two reports were prepared at different times (2014 vs. 2019) and therefore cannot be directly compared. It states that market values can change over time due to various factors like infrastructure development, economic conditions, and government policies. The Defendant maintains that it conducted a physical inspection of the property before preparing the report and it restates that its instructions was to provide an "open market valuation" and "forced sale value," which it did. It denies that the instructions required it to advise on the suitability of the property as security or the viability of the project.
6. The Defendant also addresses the claim that TIMOTHY SARUNI, a co-signatory, was a "stranger" to the company and clarifies that he was a registered valuer and a director of the company at the time the report was prepared. The Defendant asserts that the valuation report followed standard methodologies, including the comparative method and the income capitalization method, although this was not explicitly detailed in the report. The Defendant contends that the Plaintiff, as a professional financial institution, also owed a duty of care to itself and its customers and that the Plaintiff failed to conduct its own due diligence, such as obtaining an independent valuation or physical inspection, before extending credit based solely on the Defendant's report. It emphasizes that banks typically conduct multiple layers of risk assessment and argues that the Plaintiff has not definitively proven that the alleged loss was solely caused by the valuation report. It suggests that the borrower's default, other prevailing economic factors, or the Plaintiff's own credit assessment processes could have contributed to the loss.
7. The Defendant states that even if negligence were proven, the Plaintiff's claim for the full outstanding loan amount is excessive. It states that the proper measure of damages in valuation negligence cases is typically the difference between the actual value of the property at the time of valuation and the value stated in the negligent report and it also highlights that the Plaintiff still holds the property as security. In conclusion, the Defendant urges the Court to find that the Plaintiff has failed to prove negligence or that any loss suffered was directly caused by the Defendant's actions and it seeks the dismissal of the Plaintiff's suit with costs.



8. At the hearing, the Plaintiff presented two witnesses: Beth Karanja(PW 1), the Plaintiff's Legal Manager and Blaise Musau(PW 2), a registered valuer with Crystal Valuers. PW 1 produced the Plaintiff's List of Documents dated (PEXhibit 1-28) whereas PW 2 produced Crystal Valuers' valuation report dated 1<sup>st</sup> July 2019(PEXhibit 29).
9. On its part, the Defendant presented one witness, Simon Oruka Orwa(DW1) who relied on his witness statement dated 1<sup>st</sup> November 2021 as his evidence. Once the hearing was concluded, the court directed that the parties file written submissions, which are on record and which together with the evidence I will be making relevant references to in my analysis and determination below.

### **Analysis and Determination**

10. From the pleadings, evidence and submissions of the parties, I find that the following issues fall for the court's determination:
  - a. Whether the Defendant was negligent in authoring the report dated 26<sup>th</sup> November 2014.
  - b. Whether the Plaintiff has suffered any loss as a result of the alleged negligence
  - c. Whether the Plaintiff is entitled to the reliefs sought in its Plaintiff

### **Whether the Defendant was negligent in authoring the report dated 26th November 2014.**

11. As stated, the Plaintiff argues that the Defendant's negligence is evident from the report being co-signed by someone admitted to be a "stranger" to the company, casting doubt on its correctness. It averred that a correct report would have informed the appropriate loan amount, and due to the Defendant's exaggerated Open Market Value of Kshs.190,000,000/=, the bank extended Kshs.80,000,000/= in overdraft facilities, which the Defendant should now be liable for, plus interest. The Plaintiff further argues that its evidence, particularly the Crystal Valuers report, shows the Defendant's report was "grossly exaggerated" and that the Defendant's patent negligence, including relying on an official search before receiving instructions, not having an inspection date or sketch plan, and misrepresenting the property as prime, made it suffer losses. It submits that the Defendant has not provided evidence to rebut the overwhelming evidence of negligence.
12. In response, the Defendant stated and submits that the Plaintiff bears the burden of proving negligence, which involves establishing a duty of care owed by the Defendant to the Plaintiff, a breach of that duty, resultant damage suffered by the Plaintiff and a causal link between the breach and the damage. The Defendant argues that professional valuers are not insurers against loss and their duty is to exercise reasonable care and skill, not to guarantee accuracy. It disputed the Plaintiff's reliance on the Crystal Valuers' report arguing that the two reports were prepared at different times (2014 vs. 2019) and therefore cannot be directly compared. It maintains that it conducted a physical inspection of the property before preparing the report and it asserts that the said Timothy Saruni was not a "stranger" but a registered valuer and a director of the company at the time the report was prepared. It accuses the Plaintiff's counsel of misleading the court on this point and failing to verify the facts from public records. It also submits that it is standard practice to conduct searches prior to receiving official instructions and accuses the Plaintiff of contributory negligence for failing to conduct its own due diligence, such as obtaining an independent valuation or physical inspection, before extending credit based solely on the Defendant's report. It averred that banks typically conduct multiple layers of risk assessment and that the Plaintiff has not definitively proven that the alleged loss was solely caused by the valuation report. That even if negligence were proven, the Plaintiff's claim for the full outstanding loan amount is excessive.



13. Negligence is defined as an omission to do something which a reasonable man, guided upon those considerations which regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. In strict legal analysis, negligence means more than needless or careless conduct, whether in omission or commission, it properly connotes the concept of duty, breach and damage thereby suffered by the person to whom the duty is owed (see *Blyth v Birmingham Waterworks Co.* [1856] 11 Exch 781). The Supreme Court, in *Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited* [2018] KESC 48 (KLR) restated the four key elements in establishing a negligence claim: a duty of care, a breach of that duty, causation, and damage.
14. I do not think it is in dispute that the Defendant, as a valuer, owed a duty of care to the Plaintiff to carry out the valuation in accordance with the ordinary standard of care, skill and diligence expected of a professional valuer. As stated, the Plaintiff pointed out various instances to claim that the valuation was not done professionally. First, was the issue of the report being co-signed by a person who was not an employee of the Defendant. However, the Defendant stated that the said person was a registered valuer and a director of the Defendant at the time and that he was independently hired to carry out the valuation on behalf of the Defendant. The Plaintiff did not produce any rebuttal evidence to challenge the competency of the said co-signor and I find that the report was indeed prepared by qualified professionals. The fact that the person hired was not employed by the Defendant is not proof of negligence and going through the regulatory framework of valuers under the Valuers Registration Board (VRB) and the Institution of Surveyors of Kenya (ISK), I find that it is not uncommon for valuation companies to hire independent valuers who are not directly employed by the company. Independent valuers, who are registered and licensed, can operate as freelancers or consultants and are often engaged by valuation companies for specific projects. What is important is that independent valuers are registered, licensed, and adhere to professional standards to maintain credibility and compliance
15. Second, the Plaintiff also stated that negligence was evident in the Defendant relying on an official search before receiving instructions, not having an inspection date or sketch plan, and misrepresenting the property as prime. Further, that the report did not state the methodology used in arriving at the valuation and that the property was stated to be “prime” when it was not considering the presence of a mangrove forest in the Property. In response, the Defendant stated that the report followed standard methodologies, including the comparative method and the income capitalization method, although this was not explicitly detailed in the report. DW 1 admitted that it is indeed a prerogative for a valuer to indicate the methodologies, analysis and workings in the report and that the basis of a valuation was the methodology used and that this was included in the report by Crystal Valuers. DW 1 also admitted that the presence of the mangrove forest on the property has an effect on the value of the land and that the Defendant’s report stated that the Plaintiff could clear the same whereas that of Crystal Valuers stated that the mangrove forest was protected hence the difference in the values. In the letter of instructions dated 21<sup>st</sup> November 2014, the Plaintiff also states that “we would like to know the basis on which the forced sale value has been determined”
16. From the above, I find that the Defendant did not proceed to value the property in a manner that is ordinarily expected of a professional valuer. In my view, inclusion of the methodology that forms the basis of a valuation in the report enhances its credibility, transparency, comprehension and justification. This allows clients to understand how a value was derived and helps them make informed choices based on the said report. I would also expect a valuer to know that mangrove forests are protected, as this is relevant to their professional responsibilities, particularly when valuing properties or land that may include or be adjacent to such ecosystems. This is because the law, that is the [\*Environmental Management and Co-ordination Act\*](#) (Chapter 387 of the Laws of Kenya) and the [\*Forest Conservation\*](#)



and Management Act (Chapter 385 of the Laws of Kenya) protects such ecosystems and it would be important for a valuer to know of this and factor it into the valuation process. The fact that the Defendant did not know that the mangrove forest sitting on the subject property was protected and that consultations with relevant legislation, gazette notices, or local authorities to confirm the status of such areas was needed in conducting the valuation speaks of the Defendant's negligence.

17. Based on the aforementioned omissions alone, it is therefore my finding that the Defendant was negligent in the manner in which it prepared the valuation report.

#### **Whether the Plaintiff has suffered any loss as a result of the alleged negligence**

18. Having found that the Defendant was negligent in the manner that it prepared the valuation report, the next issue for determination is whether this negligence occasioned loss upon the Plaintiff. The Plaintiff stated that this valuation had an exaggerated open market value and resulted in the Plaintiff extending facilities to its customer that it is yet to recover. In response, the Defendant stated that its instructions were not to prepare a valuation report for purposes of extending a loan facility but to provide an "open market valuation" and "forced sale value" and that it had no idea that the report was to be used to advance a loan.
19. However, going through the instructions letter, I note that the Plaintiff sought the Defendant's comments on inter alia "...the effects of the Land Act on these properties as security for the Bank borrowings" and "[a]ny other information that you feel will be helpful in assessing whether the properties are considered good as Bank security". DW 1 also admitted that the Bank disclosed that there was a customer and that forced values are used when realizing securities. From these, I find it difficult to believe that the Defendant was not aware that the valuation was to be used for the purposes of a loan and security. The Plaintiff's instructions explicitly references assessing the property as "Bank security," which directly implies that the valuation is intended for securing a loan. DW 1 also admitted that a valuation report is an important factor when banks issue loans and that it is indeed a requirement that valuation is carried out. I therefore find that the Defendant was always aware that the valuation was to be carried out as the Bank was to issue a loan to its customer.
20. There was little or no dispute that the Plaintiff extended overdraft facilities of up to KShs.80,000,000/= to its customer as evidenced by the various Letters of Offer. I find that the Plaintiff definitely relied on the valuation report to extend these facilities as the Defendant had represented to it that it could hold security on the property and realize the same at a forced sale value of KShs.142,500,000.00/= which now turns out to be a misrepresentation borne out of the Defendant's negligence. The Plaintiff is unable to recover the outstanding loan from the customer and even if it is to realize the security, it might not be able to recover the full amount considering the Defendant overvalued the property. I find that there is a direct link between the Plaintiff's failure to recover the outstanding loan amount from the customer and the Defendant's overvaluation of the property that led to the Plaintiff issuing facilities more than it should which is a loss on its part.

#### **Whether the Plaintiff is entitled to the reliefs sought in its Plaint**

21. Having found that the Defendant was negligent and that as a result, the Plaintiff has suffered loss, the last issue to determine is whether the latter is entitled to the reliefs sought, including damages equal to the outstanding loan of KShs.106,667,295.21/=, interest at commercial rates and costs of the suit. Going through the evidence, I would agree with the Defendant that it cannot bear the liability for the entire loan amount owed by the Plaintiff's customer as it could not reasonably have foreseen that the customer would fail to service its loan. Further, since the Plaintiff still holds the security, it is possible that it could recover part of the outstanding loan from the property's future sale. In any case, I find that



the Defendant is still liable for a portion of the loss suffered by the Plaintiff at least in Restitutionary Damages; that is, putting the Plaintiff in the position it would have been in had the negligence not occurred (see Kenya Commercial Bank v Philip Odongo Kabita T/A Odongo Kabita Valuers [2002] KEHC 1156 (KLR)).

22. While there is no single formula under Kenyan law to calculate appropriate damages, I find that a difference between the loan amount disbursed (Kshs. 80 million) and the amount recoverable from the security, that is the forced sale value, as per Crystal Valuers' report (Kshs.37,500,000.00/=) would be appropriate to determine damages in this case. However, that is not all. I agree with the Defendant that the Plaintiff failed to conduct its own due diligence on the property and that it did not mitigate its losses early enough by attempting to recover the loan through legal action against the borrower or selling the security. They are therefore contributorily negligent for their own loss and I would assess this at 30%.
23. In the foregoing, I find that the Plaintiff is entitled to damages of (Kshs. 80 million – Kshs. 37.5 million) less 30% contribution which translates to Kshs.29,750,000.00/=. On interest, I would agree with Ringera J., in Kenya Commercial Bank v Philip Odongo Kabita T/A Odongo Kabita Valuers(supra) that there is no legal basis for the plaintiff claiming commercial interest as the Defendant is not a borrower and there is no contractual obligation on his part to pay damages at commercial rates. This being a claim for professional negligence which has succeeded on the basis that the Defendant has breached his duty of care to the plaintiff, the interest on damage should be applied at court rates from the date of assessment as is the usual practice.
24. Further, since the Plaintiff has been largely successful in its suit, it follows that it is the Defendant to bear the costs in tandem with the principle that 'costs follow the event'.

### **Conclusion and Disposition**

25. In the upshot, I now make the following final dispositive orders:
  1. The Plaintiff's suit is allowed to the extent that judgment be and is hereby entered for the Defendant against the Plaintiffs for the sum of Kshs.29,750,000.00/-.
  2. The Plaintiff is awarded interest on 1. above at court rates from the date of judgement until payment in full.
  3. The Plaintiff is awarded costs of the suit.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2025**

.....  
**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Mr. Kimani for the Plaintiff.

Ms. Lung'ania holding brief for Ms. Chitechi for the Defendant.

Amos- Court Assistant

