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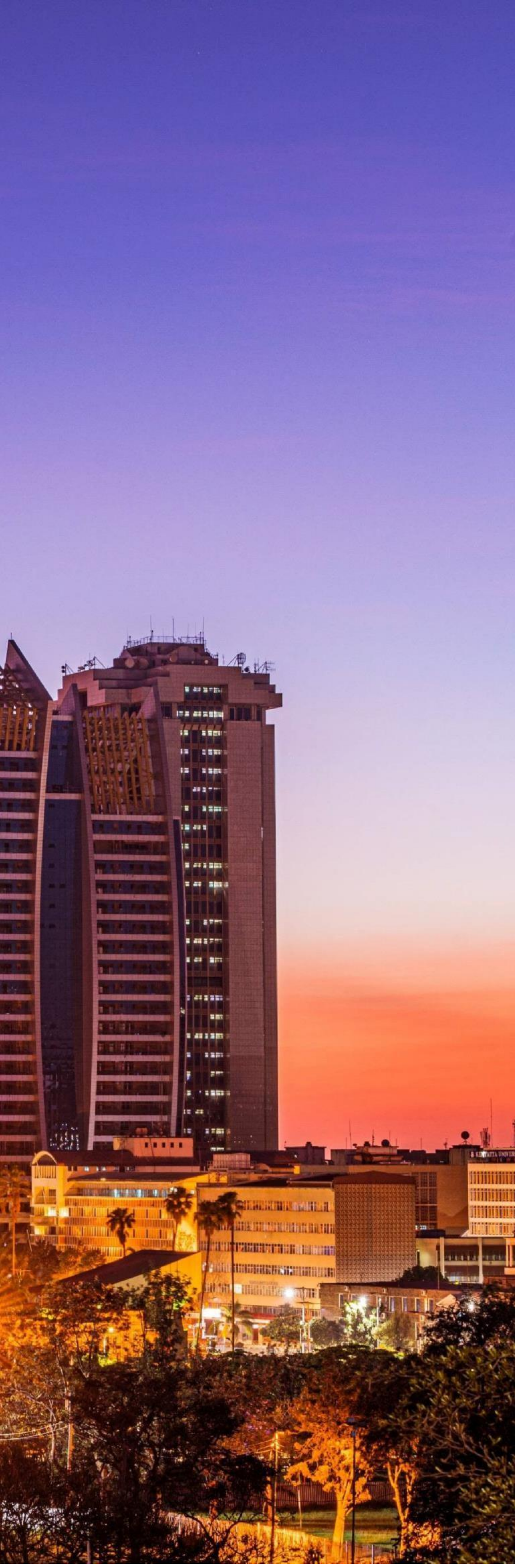
FINANCIAL SERVICES SECTOR REPORT

Q1 2026



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Accolades

CHAMBERS AND PARTNERS

Firm Ranking

Banking and Finance - Band 3

LEGAL 500

Firm Ranking

Banking and Finance - Tier 2

IFLR 1000

Firm Ranking

Banking and Finance - Tier 4

Testimonials

"The professionals are all uniformly efficient, quick, comprehensive, and thorough. On technology too, I consider the firm as using the most modern tools."

Legal 500 2025 | Commercial, Corporate, and M&A

"Very dedicated, thorough, and knowledgeable."

Asset Finance | IFLR 1000 2024

"She's a very good lawyer, very knowledgeable, and great to deal with."

Suzanne Muthaura -Banking & Finance| IFLR 1000 2024

ABOUT US

MMAN Advocates is a leading Kenyan corporate law firm that aims to provide innovative and meaningful legal solutions for its clients.

Central to our culture is a commitment to deliver a superior experience for our clients by understanding their needs and exceeding their expectations.

OUR REPUTATION

We are proud to be consistently ranked by internationally recognized legal directories, Chambers Global, IFLR1000 and Legal 500 as one of the leading commercial law firms in Kenya.

OUR GLOBAL PRESENCE

MMAN is the Kenyan member of the Eversheds Sutherland Africa Alliance, the largest legal network in Africa with firms in 37 countries. Eversheds Sutherland is a leading global legal services provider which has 66 offices across the world.

MMAN is also the Kenyan member of TerraLex, a leading international legal network with more than 155 independent law firms in 100 countries.

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BANKING

I. Guidelines, Circulars, Notices, and Public Participation.

Circular on Changes to the CBK Discount (Overnight) Window Facility

On 10 February 2026, the Central Bank of Kenya (CBK) issued Banking Circular No. 1 of 2026, announcing key amendments to the CBK Discount (Overnight) Window Facility. The changes are intended to strengthen monetary policy transmission and complement earlier reforms introduced under the Monetary Policy Implementation Framework.

The Circular highlights the following approved adjustments:

1. Revised Interest Rate Margin - The applicable rate for accessing the Discount Window has been reduced from 75 basis points above the Central Bank Rate (CBR) to 50 basis points above the CBR. This adjustment aims to improve liquidity management and reduce the cost of overnight borrowing for banks.

2. Collateral Requirements Maintained - Banks accessing the facility must continue to provide Government of Kenya securities as collateral, which will be discounted by the applicable CBK haircut when determining their lending value.

3. Intra-day Liquidity Facility (ILF) Terms Unchanged – CBK has confirmed that all current terms and conditions for accessing the Intra-day Liquidity Facility (ILF) will continue to apply without any changes.

Effective Date: 10 February 2026

INVESTMENTS

I. Guidelines, Circulars, Notices, and Public Participation.

a) Circular on Optimal Utilization of Government Assets

On 12th February 2026, the National Treasury issued the Circular on Optimal Utilization of Government Assets to provide policy and operational guidance to Ministries, Departments, Agencies (MDAs) and County Governments on improving the management and use of public assets. The objective of the Circular is to ensure that public assets deliver maximum value for money and are managed in a manner that supports productivity, accountability, fiscal sustainability and improved service delivery.

The Circular directs MDAs and County Governments to enhance the productive use of key public assets, especially land, buildings, road corridors, way-leaves and other facilities that remain idle or underutilized. In relation to land and physical assets, entities are required to identify and document parcels and facilities that have commercialization potential, and to pursue suitable models—including leasing, Public Private Partnerships, joint ventures, licensing, or granting development rights—subject to regulatory approvals. These measures also extend to the use of government buildings, where institutions must rationalize office space, prioritize government-owned premises over external leases, and ensure that residential units are priced in line with market rates.

The Circular further encourages the exploration of revenue-generating opportunities within road corridors and way-leaves, as well as the optimization of other public assets, including the government fleet, through shared use and reduced duplication to lower operational costs. To support accountability and timely implementation, all

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MDAs and County Governments are required to submit a comprehensive report within ninety (90) days of the circular being issued, detailing identified idle assets, proposed commercialization approaches, and progress made toward optimal utilization.

Effective Date: 12th February 2026

b) Circular No. 3 of 2026

The Capital Markets Authority (CMA) issued the Circular on **Independent Auditor Reporting Requirements for Collective Investment Schemes and Alternative Investment Funds** on 12th February 2026. It applies to all Collective Investment Schemes (CIS) and Alternative Investment Funds (AIFs) registered under the Capital Markets Act, the Capital Markets (Collective Investment Schemes) Regulations, 2023, and the Capital Markets (Alternative Investment Funds) Regulations, 2023. The Circular requires Fund Managers to ensure that the external auditors appointed for their schemes conduct audits that meet the minimum scope prescribed by the Authority.

Under this scope, auditors must first confirm the assets under management, including verification of the existence and completeness of the scheme's assets and liabilities, confirmation of ownership, and assessment of whether valuations are recorded at appropriate and accurate amounts. The audit must also include a detailed review of all underlying transactions relating to the purchase, sale, and transfer of assets to ensure the transactions occurred and are properly attributable to the fund.

Further, auditors are required to assess the composition of the portfolio and confirm adherence to the approved investment policies, asset allocation limits, and investment powers set out in the applicable regulations and scheme documents. They must also perform an independent recalculation of performance returns or yields, evaluating the methodologies used to ensure consistency with regulatory and scheme requirements.

Finally, the scope includes the evaluation and testing of the scheme's valuation, pricing, and return-calculation processes, with a focus on accuracy, consistency, adequacy of supporting documentation, systems, and internal controls. Fund Managers must also ensure that the appointed auditor submits a separate report to CMA and the Trustee detailing any instances of non-compliance identified during the accounting period.

Effective Date: 12th February 2026

FINTECH

I. Guidelines, Circulars, Notices, and Public Participation.

Request for stakeholder comments/public participation on the Draft Virtual Assets Service Providers (VASP) Regulations, 2026 (link here)

The National Treasury, working through a Multi-Agency Task Force and in consultation with the Central Bank of Kenya (CBK) and the Capital Markets Authority (CMA), has developed the Draft Virtual Asset Service Providers (VASP) Regulations, 2026, together with a Regulatory Impact Statement (RIS). These Regulations are issued under the Virtual Asset Service Providers Act, 2025 (Act No. 20 of 2025) and are intended to operationalize the Act by establishing a comprehensive legal and supervisory framework for licensing and regulating Virtual Asset Service Providers operating in or from Kenya.

The draft Regulations and the accompanying RIS have been published on the National Treasury, Central Bank of Kenya, and Capital Markets Authority websites for public review. The National Treasury is currently undertaking nationwide public participation, inviting

stakeholders to submit comments, inputs, or memoranda on or before 10 April 2026.

SUMMARY OF REPORTED DECISIONS OF THE SUPREME COURT OF KENYA AND COURT OF APPEAL THAT TOUCH ON THE FINANCIAL SERVICES INDUSTRY

This summary covers reported decisions of the Supreme Court of Kenya and the Court of Appeal delivered between 1 January 2026 and 31 March 2026 that touch on the financial services industry — banking, insurance, pensions and social security, micro-lending, asset recovery and capital markets.

A. Supreme Court of Kenya

The Supreme Court delivered no merits judgment dedicated exclusively to a banking, insurance or capital markets question during the quarter. Its financial-services-relevant output came in three rulings on access to the apex Court and one ruling materially affecting registered chargees.

1. **Sehmi & another v Tarabana Company Ltd & 5 others, Petition (Application) E033 of 2023; [2026] KESC 15 (KLR) (30 January 2026)**

Although a land-fraud appeal in form, the ruling has direct consequences for chargee banks and other lenders that take real-property security. The Court reaffirmed that the burden of proving status as a *bona fide* purchaser for value without notice rests squarely on the party asserting it, and that the assertion must be proved strictly — including innocence in fact, payment of value, and acquisition of a legal estate. For lenders, the message is that pre-disbursement due diligence on root of title and on the bona fides of the immediate vendor of charged property must be properly documented; reliance on a registered title alone is insufficient where the integrity of the underlying chain of transactions can be impeached. The decision is now routinely cited in banker-and-customer disputes where the validity of charged security is in issue.

2. **Kimweli & 46 others v National Social Security Fund, Application E025 of 2025; [2026] KESC 7 (KLR) (23 January 2026)**

A pensions-sector ruling concerning access to the Supreme Court in a dispute between contributors and the NSSF. The Court applied the established two-part test under article 163(4)(b) of the Constitution and declined certification, the matter not raising a question of general public importance. The ruling is a useful reminder that scheme-specific or contributor-specific disputes with the NSSF will generally not warrant escalation beyond the Court of Appeal absent a transcendent public-interest question.

3. **Micro-City Computers Limited v Board of Trustees Social Security Fund, Application E022 of 2025; [2026] KESC 11 (KLR) (30 January 2026)**

A contract-law ruling in a dispute over a contract awarded by the NSSF Board of Trustees. The Court declined certification, treating the matter as turning on the construction of the parties' commercial documents rather than any constitutional or general public-importance question. Counterparties contracting with public pension administrators should not expect the Supreme Court to be readily available as a third tier of merits review on contractual interpretation issues.

B. Themes and observations

The theme that emerges from the quarter is that first, the apex Court's certification jurisprudence is being deployed to filter out scheme-specific pension and social-security disputes that lack a question of general public importance. Second, that the root of title

jurisprudence that has been generated by the apex court is enduring and has been reiterated thus far by that court.

HIGHLIGHTS OF THE RELEVANT COURT OF APPEAL CASE LAW FOR THE FINANCIAL SERVICES SECTOR – Q1 [2026]

a) **City Finance Limited & 2 others v Nyanja Holdings Limited & 3 others (Civil Appeal 224 of 2020 & E166 & E174 of 2021 (Consolidated)) [2026] KECA 106 (KLR) (30 January 2026) (Judgment) (Find Link Here)**

INTRODUCTION:

In a judgment of considerable significance to banks, microfinance institutions and other lenders that take real property as security, the Court of Appeal at Nairobi (Musinga (P), Ngugi and Odunga JJA) restated the protection enjoyed by a chargee that has exercised its statutory power of sale, and by the resulting purchaser. The Court reversed a High Court decision that had cancelled a private treaty sale, ordered re-transfer of the property to the chargor, and made adverse findings against an advocate who was not party to the suit. In doing so, the Court of Appeal reinforced longstanding authority that, **once a charged property has been sold under the statutory power of sale, the chargor's remedy lies in damages and accounts against the chargee, not in setting aside the sale**.

The decision is a useful authority for lenders defending challenges to completed sales, and for purchasers seeking certainty of title. It also restates two procedural disciplines that often surface in lender-borrower disputes namely that fraud must be specifically pleaded and strictly proved against the purchaser before a sale can be impeached, and that adverse findings cannot be made against a person who has not been joined and afforded a hearing.

BACKGROUND:

The dispute traces back to the early 1990s. City Finance Bank Limited (hereafter, "**the Bank"**) advanced lending facilities to Nyanja Holdings Limited (hereafter, "the Borrower" or "**the 1st Respondent"**). The facilities were secured by a mortgage over, among other properties, L.R. No. 7583/1 Karen Estate, Nairobi ("**the Suit Property"**), which was registered in the name of Mr. George Njau Mbugua Nyanja, the 2nd Respondent and a director of the 1st Respondent. Mrs. Enid N Nyanja, also a director of the 1st Respondent, was the 3rd Respondent.

Repayment difficulties arose. Disagreements followed on the quantum of indebtedness, the interest applied by the Bank, and the propriety of the Bank's accounting. In 1991 the Bank instituted HCCC No. 1965 of 1991 to recover the sums it claimed to be due and to enforce its securities. In 2008, the borrower and its directors filed HCCC No. 251 of 2008 challenging the accounts, the interest charged, the statutory notices and the Bank's entitlement to exercise the statutory power of sale. The two suits were eventually consolidated.

Following a ruling delivered on 28 January 2011 by Ochieng J., which confirmed that no orders of injunction were subsisting, the Bank exercised its statutory power of sale and sold the suit property by private treaty to Redmars Holdings Limited (**Redmars**). Mr. James Singh Gitau, an advocate, acted in the conveyancing on behalf of the Bank. The sale and the role of Mr. Gitau later became central to the trial before the High Court.

PROCEDURAL POSTURE:

In a judgment delivered on 30 July 2020, the High Court (Kasango J) found that the Bank had charged interest that was illegal and unconscionable, that the 1st Respondent had in fact overpaid the loan, and that the sale of the

suit property by private treaty was unlawful. The learned Judge cancelled the sale, ordered the property re-transferred to the 2nd Respondent, dismissed the Bank's counterclaim, and made adverse observations on the role of Mr. Gitau, who was not a party to the proceedings.

Three appeals followed: Civil Appeal No. 224 of 2020 was lodged by the Bank. Civil Appeal No. E166 of 2021 was filed by Redmars as the purchaser. Civil Appeal No. E174 of 2021 was filed by Mr. Gitau, in respect of the adverse findings made against him. The three appeals were consolidated and heard together. Judgment in the consolidated appeals was delivered on 30 January 2026.

APPELLANTS' CASE:

The Bank and Redmars, the Purchaser, were largely aligned. They submitted that:

(a) Once the suit property had been sold pursuant to the statutory power of sale, the equity of redemption was extinguished and the High Court's remedial jurisdiction was correspondingly limited.

(b) Even where there were irregularities in interest computation, accounting, valuation, or the manner of sale, those matters could not justify setting aside a completed sale or ordering re-transfer of the property, particularly where the purchaser was entitled to statutory protection and no fraud or collusion had been pleaded and strictly proved against it.

(c) Section 69B (2) of the repealed Indian Transfer of Property Act protects a purchaser's title, and that title cannot be impeached on grounds relating to the propriety of the power of sale or compliance with notice requirements.

(d) In any event, the ruling of Ochieng J. of 28 January 2011 confirmed that no injunctive orders subsisted at the time the Bank exercised its statutory power of sale, so the Bank was not acting in defiance of any court order.

(e) The learned Judge of the trial court erred in dismissing the Bank's counterclaim without substantively determining it, and in granting reliefs that were not pleaded.

Mr. Gitau's appeal was narrower but raised distinct issues. He complained that he had been condemned unheard, that adverse findings had been made against his professional reputation by a court that had no jurisdiction over him, and that the High Court had relied on alleged advocate partnerships, conflicts of interest, and improper influence on the Bank's decision-making which were neither pleaded nor put to him.

RESPONDENTS' CASE:

In opposing the appeals, the 1st to 3rd Respondents urged the Court of Appeal to uphold the High Court's judgment. They submitted that:

(a) The High Court was entitled to interrogate the entire lending relationship, including the accounts, interest computation and the manner in which the Bank exercised its statutory power of sale.

(b) The sale of the suit property was so tainted by illegality, unconscionable interest, overpayment and abuse of the statutory power of sale that it could not attract statutory protection, and the High Court was entitled to cancel it in order to do substantive justice.

(c) The dismissal of the Bank's counterclaim required no separate or

formal determination because its factual and legal foundation had been extinguished by the High Court's findings on accounts and overpayment.

(d) The observations against Mr. Gitau flowed from the evidence on record and were incidental to the High Court's evaluation of the transaction. The High Court did not purport to determine his rights or liabilities.

ISSUES FOR DETERMINATION:

The Court of Appeal distilled four interrelated issues for determination:

1. Whether the learned Judge erred in nullifying the statutory sale and ordering restoration of the property to the chargor instead of limiting the available remedies to damages or accounts.

2. Whether alleged irregularities in the service or content of the statutory notice entitled the High Court to impeach a completed sale.

3. Whether the learned Judge erred by failing to substantively determine the Bank's counterclaim and reach clear consequential conclusions.

4. Whether the learned Judge erred by determining matters that were neither pleaded nor litigated, and by making adverse findings against Mr. Gitau, who was not a party, without affording him a hearing.

HELD:

On nullification of the statutory sale:

The law on the remedies available to a chargor once charged property has been sold under the statutory power of sale is settled. Once a valid sale has taken place, the equity of redemption is extinguished and the court's remedial jurisdiction is limited. Following **Mbuthia v Jimba Credit Finance Corporation Ltd [1988] KLR 1** and **Palmy Company Limited v Consolidated Bank of Kenya Limited [2014] eKLR**, absent fraud or collusion to which the purchaser is a party, a completed sale in exercise of the statutory power of sale is unimpeachable, and the court cannot grant orders cancelling the sale or directing re-transfer of the property. The chargor's remedy lies in damages.

On the pleadings before the High Court, fraud was pleaded but its particulars were confined to allegations of undervalue, speed of registration, the use of a private treaty, and alleged subsisting court orders. There was no pleading of conspiracy involving advocates, no allegation of professional misconduct against Mr. Gitau, and no pleading of collusion implicating the purchaser. Fraud must in any event be strictly proved to a standard higher than a balance of probabilities. Suspicion, conjecture or inference will not suffice. The High Court's findings of fraud rested largely on inference and perceived gaps in documentation and were therefore insufficient to sustain nullification of the sale.

On alleged irregularities in the statutory notice:

The confirmation by Ochieng J. that no injunctive orders subsisted disposed of any argument that the sale had been conducted in contempt of court. Beyond that, defects in statutory notice, even if proved, do not revive the equity of redemption or justify cancellation of a completed sale. They may found a claim in damages against the chargee, but they do not entitle a court to unravel a sale protected by statute.

On the Bank's counterclaim:

A counterclaim is a substantive cause of action that must be determined on its own terms.

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Where a court reaches findings that would defeat a counterclaim, it must still say so plainly and reach clear consequential conclusions. The High Court's extensive findings on accounts and overpayment did not obviate the need for an express determination of the counterclaim. The dismissal was therefore set aside and the counterclaim remitted to the High Court for determination on its merits, limited to issues of accounts, indebtedness, interest and any consequential relief, but without disturbing the title of Redmars to the suit property.

On the adverse findings against the non-party advocate:

Parties are bound by their pleadings, and a court may not determine issues not pleaded or litigated. More fundamentally, adverse findings against a non-party offend the audi alteram partem rule.

A court cannot, consistently with due process, pronounce on the conduct, reputation or professional propriety of a person without affording that person an opportunity to be heard. Mr. Gitau had been condemned without notice, joinder or hearing. The adverse findings against him were set aside and expunged.

Disposition:

The consolidated appeals were allowed. The judgment and decree of the High Court were set aside, including the declaration that the sale to Redmars was illegal, the order cancelling the conveyance dated **21 August 2007** in favour of Redmars, the order restoring the suit property to the 2nd Respondent, and the permanent injunction against Redmars.

The Court of Appeal declared that the transfer and registration of the suit property in favour of Redmars shall not be impeached, no fraud having been specifically pleaded and strictly proved against the purchaser within section 69B(2) of the repealed Indian Transfer of Property Act.

The adverse findings against Mr. Gitau were expunged in their entirety. The respondents' remedies, if any, were declared to lie in damages or accounting against the Bank, and the Bank's counterclaim was remitted to the High Court for determination on its merits, limited to accounts, indebtedness, interest and any consequential relief, and without disturbing Redmars' title. Costs of the appeals were awarded to the appellants.

RATIO OF THE CASE:

A completed sale of charged property in exercise of the statutory power of sale is unimpeachable absent fraud or collusion specifically pleaded and strictly proved against the purchaser. The chargor's remedies for irregularities in interest, accounting, valuation or the manner of sale lie in damages or accounting against the chargee, not in setting aside the sale or ordering re-transfer of the property. Defects in statutory notice, alleged irregularity in private treaty sales, and disputes over interest do not, of themselves, restore the equity of redemption.

As corollaries, a counterclaim must be expressly determined and a court cannot make adverse findings against a person who has not been joined to the proceedings and given a hearing.

CONCLUSION & IMPLICATION:

For banks, microfinance banks, deposit-taking saccos and other secured lenders, the decision restores predictability to the enforcement of charges. It confirms that:

(a) Once the chargee has properly exercised its statutory power of sale and the property has been sold to a third-party purchaser, the borrower's recourse is limited to damages or accounting and does not extend to undoing the sale.

(b) A purchaser at a chargee's sale, including a sale by private treaty, takes a title that is protected by statute and cannot be impeached on grounds of irregularity in the power of sale or in the statutory notice.

(c) To impeach the title of such a purchaser, fraud or collusion involving the purchaser must be specifically pleaded and strictly proved. Mere allegations of undervalue, speed of registration or use of private treaty will not suffice.

(d) Defects in the statutory notice, even if proved, do not restore the equity of redemption. They may sound in damages against the chargee, no more.

For the litigation function within lending institutions, the case is a useful authority where the borrower seeks injunctive or restorative reliefs after the sale has been completed. It confirms that such reliefs are not legally available, and that the proper battleground is on accounts, interest and damages.

The decision also has process implications. It serves as a reminder that a counterclaim does not collapse into a primary cause of action and must be expressly determined, and that courts cannot make adverse findings against advocates or other persons not joined as parties. Both are points lenders should expect to deploy where a borrower invites the court to roam beyond the pleadings.

b) Star Brilliant Limited v Commissioner of Customs and Border Control Tax Appeal E1468 of 2025) [2026] KETAT 30 (KLR) (3 March 2026) (Ruling) (Find Link Here)

BRIEF FACTS:

Star Brilliant Limited (the 'Appellant') is a company that was subject to tax assessments by the Commissioner of Customs and Border Control (the 'Respondent') relating to the tax periods December 2016 and December 2017. The Respondent issued a demand notice on 6th November 2025 and, four days later, issued an Agency Notice on 10th November 2025 to KCB Bank Kenya Limited requiring the bank to debit and remit funds from the Appellant's account.

The Appellant lodged Notices of Objection on 19th and 21st November 2025. The Respondent dismissed the objection vide a decision dated 3rd December 2025 after the Agency Notice had already been issued to the bank. The Appellant then filed a Notice of Appeal at the Tribunal on 18th December 2025, challenging the Respondent's objection decision, and simultaneously filed an urgent application for stay of enforcement.

The Respondent failed to file its response within the directed timeline, filing it late on 6th February 2026. As a consequence, the Tribunal struck out the Respondent's grounds of opposition and written submissions. The Appellant's written submissions were similarly struck out for non-compliance with filing directions. The matter therefore proceeded on the strength of the Application and the Tribunal's own analysis.

APPELLANT'S CASE:

The Appellant argued that the assessments relating to December 2016 and December 2017 were issued on 6th November 2025, well beyond the five-year statutory limitation period prescribed under **Section 29(5)** and **Section 31(4)(b) of the Tax Procedures Act, CAP 469B** ('TPA'). On this basis, the Appellant contended that the assessments were statute-barred and incapable of enforcement.

The Appellant further submitted that the Respondent had neither alleged nor proven fraud, evasion, or gross neglect the only recognised exceptions that would allow the Respondent to issue assessments beyond the five-year limit. The issuance of the Agency Notice was said to be premature, unlawful, and

invalid, being issued before the Respondent had even made its objection decision, in contravention of **Section 42(14) of the TPA**. The Appellant contended that the enforcement would cause irreparable financial loss, disruption of business, and violation of its constitutional property rights under **Article 40 of the Constitution of Kenya**.

RESPONDENT'S CASE:

The Respondent did not file a response within the Tribunal's directed timelines. Its late-filed response and written submissions were struck out by the Tribunal. As a result, no substantive case was presented by the Respondent in opposition to the Application.

HELD:

The Tribunal found that it had jurisdiction under **Section 18 of the Tax Appeals Tribunal Act, CAP 469A** ('TATA'), to stay or affect the operation or implementation of a decision under review where an appeal has been filed, as a measure to secure the effectiveness of proceedings. Having confirmed that a valid appeal was on record, the Tribunal proceeded to consider whether there was a basis for granting the stay of enforcement.

The Tribunal held that the Respondent had violated the mandatory provisions of **Section 42(14)(c) of the TPA**, which bars the Commissioner from issuing an Agency Notice where a taxpayer has appealed against an assessment specified in an objection decision within the prescribed timelines. The Tribunal observed that the Agency Notice was issued on 10th November 2025 before the objection decision had even been issued on 3rd December 2025 meaning the statutory preconditions for issuance of an Agency Notice had not been met.

The Tribunal emphasised that the use of the word *'shall'* in Section 42(14) makes compliance with the listed preconditions mandatory, not discretionary. It further noted that dismissing the Application on the basis that the Appeal had not yet been determined would be presumptuous and prejudicial to the Appellant, as the Tribunal could not at that stage determine whether taxes were due and payable.

The Tribunal accordingly found that the Application had merit and made the following Orders:

(i) The Application be and is hereby allowed.

(ii) The Agency Notice issued on 10th November 2025 by the Respondent to Messrs KCB Bank Kenya Limited be and is hereby lifted unconditionally.

(iii) No orders as to costs.

IMPLICATION:

This ruling has significant practical implications for the enforcement of tax obligations in Kenya. The Tribunal's decision reinforces that the Commissioner of Customs and Border Control is subject to strict statutory preconditions before issuing an Agency Notice under **Section 42(14) of the TPA**. In particular, an Agency Notice cannot lawfully be issued while an objection remains pending and certainly not before an objection decision has been made. Where a taxpayer has subsequently filed a valid appeal with the Tribunal, the prohibition under Section 42(14)(c) operates as an absolute statutory bar against the issuance or continued operation of such a notice.

The ruling also highlights the Tribunal's willingness to exercise its interim jurisdiction under **Section 18 of TATA** to protect taxpayers from premature enforcement action pending the determination of an appeal. Taxpayers facing enforcement action should take note that timely filing of an appeal and an urgent application for stay can be effective remedies

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against Agency Notices issued in contravention of the statutory conditions.

Additionally, the ruling underscores the importance of compliance with procedural deadlines before the Tribunal. The Respondent's failure to file its response and submissions within the directed timelines resulted in its grounds of opposition being struck out, leaving the Tribunal to determine the matter without the benefit of the tax authority's substantive arguments. Both taxpayers and the Commissioner should treat Tribunal-imposed timelines as binding and non-negotiable.

Finally, the Appellant's argument that the assessments were statute-barred under the five-year limitation period in the TPA was not substantively determined at this interlocutory stage; however, the Tribunal's finding that the Appellant had an *arguable appeal* suggests this issue along with the absence of any allegation of fraud, evasion, or gross neglect will be closely examined at the full hearing of the appeal.

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