

The Sanctity of the Signature A Commentary on I&m Bank Limited V Buzeki Enterprises Limited (Milimani Hcc Civil Suit No. E375 of 2019) [2026] (Judgment)

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INTRODUCTION

In the high-stakes world of commercial banking, the negotiability of financial instruments is sacrosanct. The High Court’s decision delivered today, on the 13th February 2026 in I&M Bank Limited v Buzeki Enterprises Limited reaffirms a bedrock principle of Kenyan law: a Promissory Note is an unconditional promise to pay that must be interpreted strictly within its four corners. This judgment serves as a robust defence of commercial certainty and clarifying the critical distinction between the assignment of a debt and the novation of a contract.

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FACTS OF THE CASE

The Plaintiff, I&M Bank Limited, moved to the court to recover a liquidated sum of KES 864,758,278.00 The claim was founded on a Promissory Note executed by the Defendant, Buzeki Enterprises Limited, in favor of a third party, RT (East Africa) Limited. This note was later assigned to the Bank as collateral security for credit facilities provided to RT.

The Defendant resisted the claim by alleging that the note was never intended to be an absolute liability. Instead, they argued that payment was subject to an oral condition precedent, that the funds would only be paid upon the successful sale of a property known as Taru Ranch. Buzeki Limited further challenged the Bank's right to sue, claiming that the assignment of the note was invalid because it lacked the debtor's express consent.

DECISION OF THE COURT

The Court identified five pivotal issues for determination:

Firstly, is the "Four Corners" Doctrine and the Unconditional Promise. Here, the Court found that the suit instrument met all statutory criteria under Section 84 of the Bills of Exchange Act. On its face, the note promised to pay a sum certain on a fixed maturity date (30th November 2016) without any mention of Taru Ranch or other contingencies. The Judge emphasized that permitting unwritten conditions to undermine such instruments would destroy their function as "cash equivalents" in commerce.

Secondly is the Taru Ranch ambush and the Parol Evidence Rule. The Court held that the oral Taru Ranch defence was legally inadmissible on two fronts. First, the Parol Evidence Rule under Sections 97 and 98 of the Evidence Act, provides that oral evidence cannot be admitted to contradict or vary the terms of a written contract. The alleged oral condition was legally repugnant to the written maturity date on the note. Secondly, is that the defendant failed to mention the Taru Ranch story in its 2019 Statement of Defence, introducing it only years later at trial. The Court dismissed this as litigation by ambush, ruling that parties are strictly bound by their pleadings.

Thirdly is the issue of Assignment vs. Novation and whether debtor Consent is necessary. The Court clarified the often-confused boundary between Assignment (the transfer of a right/benefit) and Novation (the creation of a new contract). It held that while novation requires the consent of all parties, a creditor is generally free to assign a debt without the debtor’s permission. By issuing a note to order, Buzeki had effectively given advance consent for the instrument to be negotiated to third parties like the Bank.

Fourth, is whether the Bank was a Holder for Value. The Defendant attacked the assignment for lack of consideration. However, the Court ruled that the Bank’s act of discounting the note by advancing immediate liquidity to RT in exchange for the debt constituted fresh and valuable consideration under Section 27 of the Bills of Exchange Act.

Lastly, the court dismissed the plea of Sub Judice. The Defendant alleged the suit was an abuse of process due to a separate case (Civil Suit No. E134 of 2018). The Court dismissed this objection, noting that there was no strict identity of parties or issues and that a bank has an independent right to pursue its securities regardless of a customer’s other disputes.

CONCLUDING REFLECTIONS

This judgment is a resounding victory for the sanctity of the signature. It underscores that in high-value commercial transactions, the written word is king. For financial institutions, the takeaway is clear: Promissory notes are quasi-cash as they carry statutory protections that ordinary contracts do not, making them a formidable tool for debt recovery. Secondly, assignment is a Creditor's Right: Banks do not need a borrower's permission to assign debt instruments, provided the instrument contains no express restrictions on transfer.

Ultimately, the court entered judgment for the Bank for the principal sum of KES 864,758,278, plus court-rate interest and costs, a firm reminder that commercial law favours those who record their agreements with precision.

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