

Professional Negligence in Property Valuation: A Wake-Up Call for Valuers and Lenders

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Introduction

The High Court has delivered a landmark ruling, in a matter where the firm of Wamae & Allen LLP represented the Bank, reshaping professional accountability in property valuations for mortgage lending. In the case of ***NCBA Bank Kenya PLC v NW Realite Ltd Valuers and Property Consultants Limited [2026] eKLR***, the High Court confirmed that valuers owe a direct duty of care to banks that rely on their reports even without a formal engagement letter. The decision rejects the defence that a valuation is a "mere professional opinion" and addresses the costly consequences of negligent overvaluation of securities.

Brief Factual Background

In March 2014, NCBA Bank (the Plaintiff) instructed NW Realite Ltd (the Defendant) to value six (6) parcels of land in Kilifi, Machakos, and Malindi for mortgage security purposes. The Defendant issued three (3) reports containing open market, forced sale, and insurance values of the properties for mortgage lending purposes.

Based on the Defendant's reports, the Bank advanced credit facilities to a borrower, using the properties as security. However, when the borrower defaulted and the Bank attempted to realize the securities, it discovered that the properties had been grossly overvalued, with variances of about 58% to 87.9% overvaluation. The Bank contended that the Defendant had failed to exercise the degree of skill and care expected of a professional valuer, leading to a substantial financial loss when the assets failed to fetch the anticipated prices.

The Bank sued for professional negligence and negligent misstatement, pleading direct reliance on the overstated 2014 figures.

The Core Issues: Duty of Care and Margin of Error

In its analysis, the court centered on one pivotal legal question: *Whether the Defendant was negligent in preparing the 2014 valuation reports.*

Duty of Care

The court opined that a duty of care arises whenever a valuer knows the report will be used by a lender to advance funds and perfect security. Since the reports were expressly prepared for lending and addressed to the Bank, knowledge of reliance established proximity and foreseeability.

Breach of Duty

The court confirmed that the permissible margin of error in the industry margin is 10–15% and accordingly found that the valuations provided were outside permissible professional margins of error, signalling that professionals cannot hide behind market fluctuations if their initial assessments are fundamentally flawed. The valuations were also found to be lacking clear methodology in support of the figures.

Causation, Quantum, and Relief

The Bank proved actual reliance on the said reports as the valuations drove credit decisions and the overstated forced sale values directly impaired recovery upon the borrower's default. Special damages were strictly proved to the cumulative overstatement of forced sale values which crystallised at **Kshs. 534,500,000**, which the court awarded as compensation for loss suffered.

Conclusion & Impact for the Banking Sector

This judgment serves as a vital precedent for both financial institutions and professional service providers in Kenya. On the one hand, professionals are now put on notice that "opinion-based" work like valuation is not immune to litigation. If a valuation is used as the basis for a financial decision and is later proven to be recklessly inaccurate, the valuer can be held personally or corporately liable for the shortfall.

On the other hand, financial institutions may need to implement more rigorous valuation audits or secondary reviews for high-value facilities to avoid the risks of relying on a single valuation. Nevertheless, the judgment provides a powerful tool for recovery in cases where defective professional advice leads to non-performing loans and depleted security.

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