FINANCIAL SERVICES SECTOR REPORT

Q2 2026

Contents

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

"They offer really personalised solutions”

Legal 500 2026 | Commercial, Corporate, and M&A

“MMAN Advocates’ Banking, Finance and Capital Markets Team has consistently demonstrated deep technical expertise combined with a practical, commercial approach.”

Legal 500 2026 | Banking, Finance, and Capital Markets

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

Suzanne Muthaura | IFLR 1000 2026 | Financial & Corporate

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.

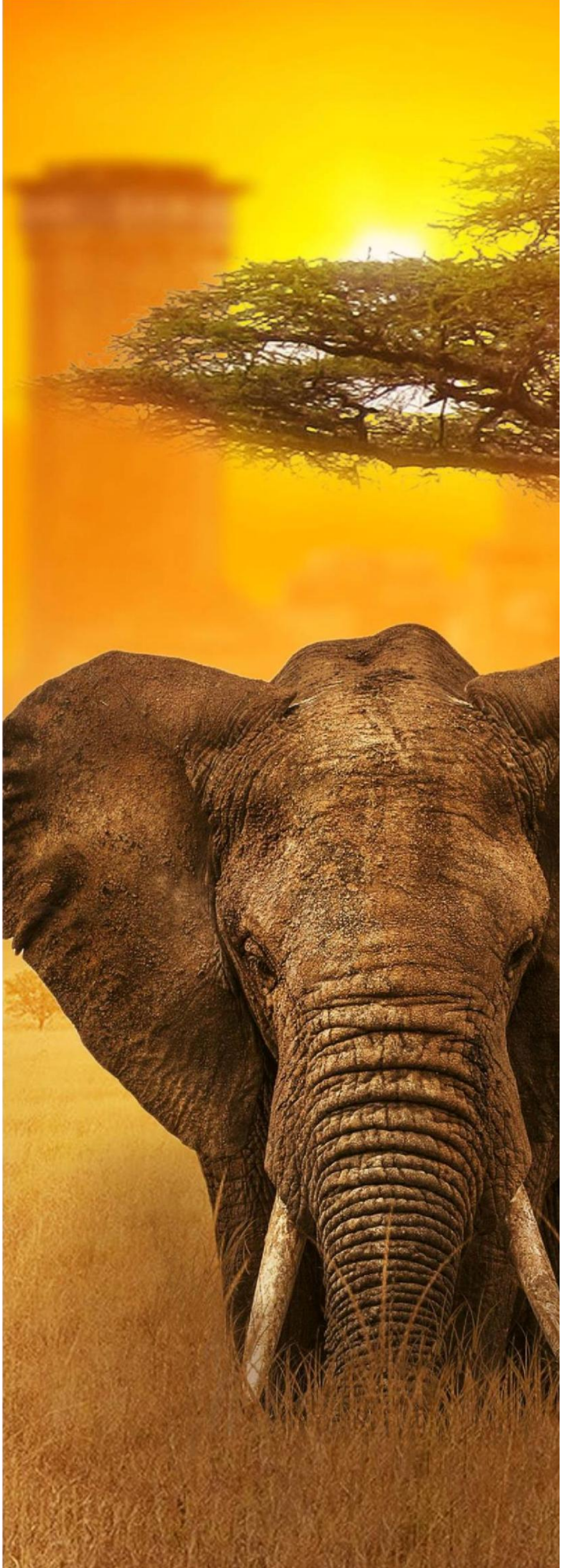
OUR REPUTATION

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 140 independent law firms in over 135 countries.



BANKING

I. Regulatory & Policy Developments

a) Draft Financial Consumer Protection Framework for Kenya

On April 14, 2026, the Central Bank of Kenya (CBK) published a Notice inviting the public, industry stakeholders, consumer groups, and all interested parties to review and submit comments on the Draft Financial Consumer Protection Framework for Kenya ("the FCP Framework"). The FCP Framework was drafted by the Consumer Protection Framework Technical Working Group (TWG) made up of regulators from the CBK, the Capital Markets Authority (CMA), the Insurance Regulatory Authority (IRA), the SACCO Societies Regulatory Authority (SASRA), the Communications Authority of Kenya (CA), and the Competition Authority of Kenya.

The FCP Framework sets out a comprehensive approach to financial consumer protection, which is largely rooted in consumer protection principles. It sets out regulatory standards that establish the minimum requirements for Financial Service Providers (FSPs) to comply with, comprising six FCP principles, including fair treatment and responsible conduct, disclosure and transparency, product design and suitability, fund and asset protection, and complaint resolution, including debt collection. It defines market conduct supervision by outlining regulators' roles and enforcement approaches, and by promoting cooperation and coordination. It also emphasizes consumer awareness and financial literacy through clear communication and targeted education initiatives.

The deadline for public participation was set for 28th April 2026.

b) Monetary Policy Committee Decision

The Monetary Policy Committee (MPC) met on 9th June 2026 and resolved to retain the Central Bank Rate (CBR) at 8.75%. They explained that the decision was informed by pressures linked to the ongoing tension in the Middle East and the effect on fuel and energy prices locally. The Committee also noted that the CBR and the Kenya Shilling Overnight Interbank Average (KESONIA) remained closely aligned at 8.75%

c) 2026/2027 Budget Statement on the amendment to the core capital implementation schedule

During the budget statement delivered on 11th June 2026, The National Treasury Cabinet Secretary announced amendments to the core capital implementation schedule under the Business Laws (Amendment) Act, 2024. The final compliance deadline for the KES 10 billion core capital threshold was extended from 2029 to 2032, and the phased annual milestone previously prescribed for the intervening years were removed. Banks are now required to meet the KES 10 billion threshold by 31st December 2032.

II. Legislation

The Finance Act, 2026 has amended several acts as follows:

<u>The Income Tax Act, CAP 470</u>

a) Definition of "Management of Professional Fee"

The definition of management or professional fees has been expanded to expressly include interchange fees and merchant service fees arising from transactions where a payment card is used as the mode of payment. This broadens the scope of fees that may be subject to the tax and compliance obligations applicable to management or professional fees, reflecting the growing significance of electronic payment systems in commercial transactions.

Interchange fees are charges payable to the card-issuing banks for facilitating debit and credit card transactions, while merchant service fees are charges imposed by payment service providers and acquiring institutions for processing and settling card payments. These fees form part of the overall cost incurred by businesses when accepting card-based payments from customers.

With this amendment, businesses, banks should assess the tax and reporting implications of card-processing fees that fall within the expanded definition. Banks making or receiving such payments should review their contractual arrangements, accounting treatment and compliance processes to ensure adherence to the requirements applicable to management or professional fees.

The Supreme Court of Kenya recently struck out a bid by the Kenya Revenue Authority to demand withholding tax from these fees on the basis that the interchange fees did not constitute management or professional fees. Expressly including interchange fees and merchant service fees in the statutory definition, provides a clear legal basis for taxing such payments under the Income Tax Act.

This amendment is effective 1st July 2026.

b) Definition of "Royalty"

The Finance Act has expanded the definition of royalty under the Income Tax Act to include payments made for the use of, or the right to use, proprietary digital payment card networks or platforms. The amendment specifically covers consideration paid for access, participation or usage rights in such systems through a payment card, irrespective of whether the payment is periodic or transaction-based and irrespective of the description assigned to the payment.

Banks that make payments for access to, participation in, or use of proprietary payment card networks and platforms such as Visa or Mastercard will be particularly impacted given their role as issuers and acquirers within these networks and the fees they pay for network participation and processing services. To the extent that such payments fall within the expanded definition of a royalty, they may become subject to withholding tax, increasing compliance obligations and potentially raising the cost of card-based payment services.

This amendment is effective 1st July 2026.

c) Bad debts deductibility

The Income Tax Act has been amended to provide that deductible bad debts include the principal amount, accrued interest and any other amount relating to the debt, provided the debt has become bad in accordance with the Income (Bad Debts) Guidelines. Previously, although the Guidelines permitted deductions for irrecoverable debts, they excluded amounts that were capital in nature, creating uncertainty regarding the deductibility of certain components of a debt.

The amendment provides greater clarity by expressly allowing a deduction for all amounts forming part of a qualifying bad debt. This is particularly relevant for banks, that extend credit, as it enables a broader tax deduction where debts are irrevocably written off and satisfy the requirements of the Guidelines.

The change is expected to align the tax treatment of bad debts more closely with the commercial reality of credit losses, reduce potential disputes on the scope of deductible amounts, and provide additional tax relief for taxpayers with significant bad debt exposures.

This amendment is effective 1st July 2026.

The Value Added Tax Act, CAP 476

a) VAT Relief on Collateral Realisation and Repossessed Assets

The Finance Act has amended Part I of the First Schedule to the VAT Act to expand the scope of exempt financial services under the VAT Act to include the making of advances or granting of credit, as well as the sale, disposal or realization of collateral, repossessed assets or secured property arising from the enforcement of security for loans. As a result, when a bank enforces security and disposes of a repossessed asset to recover an outstanding loan, that transaction will now be treated as an exempt supply for VAT purposes.

Previously, while the provision of a loan was clearly recognized as an exempt financial service, the Kenya Revenue Authority had maintained that the subsequent sale of repossessed collateral constituted a separate taxable supply subject to VAT. This amendment now clarifies that the disposal of repossessed assets forms part of the underlying exempt financial service and should not be treated as a separate taxable supply for VAT purposes.

This amendment is effective 1st July 2026.

b) The Central Bank of Kenya (Amendment) Act, 2026 (Act No. 23 of 2026)

The Central Bank of Kenya (Amendment) Bill, 2026 (National Assembly Bill No. 27 of 2026) was gazetted on 19th May 2026, passed by the National Assembly on 25 June 2026 and assented to by the President on 6 July 2026 as the Central Bank of Kenya (Amendment) Act, 2026 (the **CBK Amendment Act**). The CBK Amendment Act, which was published in Kenya Gazette Supplement No. 175, amends the Central Bank of Kenya Act (Cap. 491) and comes into force on 24 July 2026. The key changes are as follows:

1. **Financial stability mandate** — The Central Bank of Kenya's (CBK) secondary objects are recast to require the CBK to foster the stability, resilience, liquidity, solvency, integrity and proper functioning of a market-based financial system, and the soundness, safety and effective regulation of the banking system. Price stability remains the primary object.

2. **A statutory Emergency Liquidity Assistance (ELA) framework** — Section 36 of the principal Act is repealed and replaced. The CBK now may, where it considers it necessary for the preservation of financial stability, provide emergency liquidity assistance to banks or microfinance institutions that:

    a) meet the Bank's criteria of solvency and viability;
    b) are not subject to liquidation; and
    c) are assessed by the CBK to be systemically important or likely to cause instability of the financial system.

The emergency liquidity assistance granted under subsection (2) shall be discretionary in nature, temporary, and subject to such terms and conditions as may be determined by the Bank.

3. **Funding line to the Kenya Deposit Insurance Corporation (KDIC)** — A replaced section 46A empowers the CBK to lend to the KDIC for periods not exceeding three years, secured on treasury bills or specified government securities, and updates obsolete references to the Deposit Protection Fund Board.

4. **Gold and precious metals** — The CBK may now hold "any other precious metals" as part of its official reserves and may buy, sell, import, export, transfer, hold or otherwise deal in gold, other precious metals and foreign exchange — a reserve-diversification measure.

5. **Vetting of Deputy Governors** — Deputy Governor nominees now expressly require the approval of the National Assembly (previously "Parliament"), aligning their appointment process with that of the Governor.

6. **Capacity building** — The CBK is given an express function (and corresponding expenditure power) to provide capacity building and training to its staff, the general public, government institutions and persons from other jurisdictions.

The CBK Amendment Act gives Kenya its first statutory crisis-lending backstop. Notably, however, the new framework is stricter than prior practice: only solvent, viable and systemically important institutions qualify for ELA, and all assistance must be collateralised. Smaller, non-systemic banks and microfinance banks in distress may therefore find themselves channelled towards prompt corrective action or resolution through the KDIC rather than emergency lending. Commentators have also noted that National Assembly vetting of Deputy Governors introduces a political dimension to appointments at the CBK's leadership.

Effective date: 24th July 2026.

c) The Finance Act, 2026 — key measures for banks and payment service providers

The Finance Act, 2026 is discussed in detail above under the Income Tax Act and VAT Act amendments. The cross-cutting measures most relevant to banks and payment service providers are summarised below by reference to that discussion.

The Finance Bill, 2026 (National Assembly Bill No. 26 of 2026) was gazetted on 30 April 2026 and subjected to public participation in May 2026, during which the Departmental Committee on Finance and National Planning received over

100,000 memoranda. The Bill was passed by the National Assembly on 18 June 2026 and assented to on 23 June 2026 as the Finance Act, 2026 (the **Finance Act**). The bulk of its provisions took effect on 1 July 2026. The measures of greatest consequence to banks and payment service providers are:

1. **Withholding tax on card fees** — See the discussion above on the expanded definition of "management or professional fees".

2. **Payment networks as royalties** — See the discussion above on the expanded definition of "royalty".

3. **VAT on payment services** — The financial services VAT exemption is narrowed: payment processing, settlement, merchant acquiring and gateway or aggregation services supplied through digital platforms are now standard-rated at 16%. The Bill's original proposal to also standard-rate money transfer services was dropped at committee stage following public participation.

4. **VAT exemption for repossessed collateral** — See the VAT Act discussion above on collateral realisation and repossessed assets.

5. **Bad debt deductions** — See the discussion above on bad debts deductibility under the Income Tax Act.

6. **Interest deductibility** — The carve-out from the 30% of EBITDA interest restriction for licensed non-deposit-taking institutions is broadened: entities engaged in lending or leasing (rather than both) now qualify.

7. **Tax administration** — Withholding agents are now fully liable for principal tax, penalties and interest on failure to withhold; the Kenya Revenue Authority (KRA) may issue agency notices on banks while an appeal is pending; a consolidated general anti-avoidance rule is introduced in the Tax Procedures Act; and a tax amnesty waives interest and penalties for periods up to 31 December 2025 where the principal tax is paid by 31 December 2026.

Banks and payment service providers should review pricing, tax gross-up language, card/payment service contracts and KRA response processes in light of these Finance Act changes.

Effective date: 1st July 2026 (unless otherwise indicated).

III. Bills & Proposed Legislation

a) The Microfinance Bill, 2026

The Microfinance Bill, 2026 (National Assembly Bill No. 9 of 2026) was published on 10 March 2026 and underwent First Reading in late May 2026, with public participation before the Departmental Committee on Finance and National Planning closing on 17 June 2026. The Bill repeals and replaces the Microfinance Act, 2006 in its entirety, and if enacted will commence 90 days after publication as an Act. Existing licences are saved and remain valid as if granted under the new law. Key features:

1. **Licensing** — Carrying on microfinance bank business without a licence attracts a fine of up to KES 5 million and/or three years' imprisonment. The CBK will licence applicants by reference to financial condition, management fitness and propriety, capital adequacy, risk management frameworks and viability.

2. **Capital requirements** — Minimum core capital of KES 250 million, with a five-year compliance window; core capital of at least 10% of risk-adjusted assets and 8% of deposit liabilities; and total capital of at least 12% of risk-adjusted assets.

3. **Shareholding and governance** — A 25% cap on individual shareholding (with exceptions for banks, state entities and approved holding companies); boards of at least five directors, a majority of them non-executive and at least one-third independent, chaired by an independent non-executive director; significant shareholders (5% or more) barred from management; and CBK fit-and-proper vetting.

4. **Consumer protection** — Prior written CBK approval for new products and changes to fees; pre-contract disclosure of the total cost of credit; 30 days' notice of changes to terms

and rates; and an in duplum-style cap limiting recovery on non-performing loans to the principal, interest not exceeding the principal, and reasonable recovery costs.

5. **Supervision and resolution** — Consolidated group-wide supervision (including holding companies and significant foreign operations); real-time supervision through secure CBK online access to institutions' systems; prompt corrective action powers (dividend bans, 45-day capital restoration plans, removal of officers and deposit-taking freezes); and the KDIC as liquidator on voluntary liquidation.

6. **Non-deposit-taking entities** — Entities that are not licensed to take deposits are prohibited from taking deposits or cash collateral, on pain of a KES 5 million fine and/or three years' imprisonment, and the Cabinet Secretary may by regulation extend specified provisions of the Act to prescribed non-deposit-taking microfinance businesses.

With fourteen licensed microfinance banks holding total deposits of approximately KES 43.9 billion — and the top five holding over 80% of sector assets — the KES 250 million core capital floor is expected to drive recapitalisation, mergers or exit among the smaller players. Microfinance banks should begin capital planning early in the five-year window, and groups with microfinance subsidiaries should assess the impact of consolidated supervision on their structures.

See also: the Competition (Amendment) Bill, 2026 (discussed under FinTech below), whose proposed prohibition on abuse of a superior bargaining position is directly relevant to lenders following the Competition Authority of Kenya's February 2026 decision fining a commercial bank KES 33.18 million for unilateral variation of credit facility terms.

IV. Judicial Developments

Ethics and Anti-Corruption Commission & another v Aboo. Supreme Court Petition E044 of 2024 (Consolidated with E046 of 2024); [2026] KESC 44 (KLR) (19 June 2026) (Judgment) (Find Link Here)

BRIEF SUMMARY OF THE CASE:

The Assets Recovery Agency (ARA), supported by the EACC, obtained High Court orders forfeiting KES 19.68 million held in three Equity Bank accounts belonging to the respondent, whose husband, a KRA officer, had been investigated (but never charged) for bribery. The Court of Appeal reversed the forfeiture, holding that the agencies had failed to link the funds to crime and that the respondent had reasonably explained her sources. On certification as a matter of general public importance, the Supreme Court addressed whether a connection between crime and the property must be proved in civil forfeiture under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), when the evidentiary burden shifts, and what constitutes a reasonable explanation of source of funds.

KEY FINDINGS AND DETERMINATIONS:

The Court held that under Section 92(1) of POCAMLA the incidence of crime remains central: the ARA must establish, on a balance of probabilities, a nexus between the property and the commission, intended commission, or proceeds of an offence, although no conviction or specific charge is required.

This was expressly distinguished from unexplained-assets forfeiture under Section 55 of ACECA, where disproportion between assets and known legitimate income suffices to raise a rebuttable presumption.

On burden of proof, the Court confirmed the shifting-evidentiary-burden framework: once the agency adduces credible evidence, the burden shifts to the account holder to explain the source of funds, and a credible explanation shifts it back to the agency to rebut. Mere suspicion arising from large deposits, absence of receipts, or a spouse's abandoned corruption investigation does not meet the threshold.

IMPLICATIONS AND RECOMMENDED ACTIONS:

- For banks and other reporting institutions, the decision does not dilute POCAMLA reporting and freezing obligations, but it recalibrates the litigation environment around preserved accounts: forfeiture will fail where investigators cannot evidence a crime-property nexus, so institutions responding to ARA/EACC preservation orders should insist on precise identification of the statutory basis (POCAMLA versus ACECA) since the elements and burdens differ materially.

- Compliance teams should preserve complete KYC, transaction-monitoring and source-of-funds documentation, which is now decisive evidence in the shifting-burden analysis for all parties.

- Customers and institutions facing forfeiture applications should scrutinise whether the agency investigated and rebutted explanations actually given. Litigators acting for account holders gain a strengthened defence template; those acting for agencies should advise thorough, documented investigations before filing.

Consolidated Bank of Kenya Limited & another v Chepkonga Chebon (Civil Appeal No. E120 of 2021) (Court of Appeal at Eldoret) (26 June 2026) (Judgment) (Find Link Here)

INTRODUCTION:

The Court of Appeal at Eldoret reversed a High Court decision that had discharged a guarantor and nullified a bank's intended exercise of the statutory power of sale, on the basis that the loan facility had been restructured without the guarantor's consent. In allowing the bank's appeal, the Court took the position that where the charge and the deed of guarantee themselves anticipate variation, splitting, or restructuring of the principal facility, a subsequent variation of that kind does not release the guarantor. The Court also confirmed that alleged non-service of a statutory notice is not, by itself, a ground for nullifying an intended sale.

The decision is important reading for banks, microfinance banks and saccos that lend against guarantees and land charges. It restates the primacy of the parties' bargain, reins in the discharge doctrine where the guarantee document has been drawn to cover the very kind of change that occurred, and clarifies the remedy that follows from an irregular statutory notice.

BACKGROUND:

Consolidated Bank of Kenya Limited (**the Bank**) advanced a loan facility of KES 6,000,000 to Lomsons Enterprises Limited (**the principal borrower**). Further sums were advanced. Chepkonga Chebon (**the Respondent**) was one of the guarantors, and he provided as security his parcel of land known as Eldoret Municipality/Block 10/1747.

By a letter of offer dated 7 November 2012, the Bank restructured the facilities. The overdrafts that had earlier been extended were converted into a term loan of KES 76,023,660 repayable over 60 months at KES 1,972,096 per month. The total sum guaranteed by the Respondent and the other guarantors, taken together, was KES 72,228,217.60. The Respondent's prorated portion of that liability, as at 18th March 2015, was KES 5,650,488.

The principal borrower did not repay. The Bank moved to enforce its securities. The Respondent then instituted proceedings in the Environment and Land Court at Eldoret, in ELC No. 251 of 2014, by an amended plaint dated 15 July 2015. He sought a declaration that the Bank's intended exercise of the statutory power of sale over Eldoret Municipality/Block 10/1747 was a nullity. The suit was defended and was later transferred to the High Court at Eldoret, where it was registered as HCCC No. 62 of 2018.

PROCEDURAL POSTURE:

In a judgment delivered on 29 June 2020, the High Court at Eldoret found in favour of the Respondent. The learned Judge took the view that no statutory notice under section 96 of the Land Act had been served on the Respondent, and that the restructuring of the facility had fundamentally altered the initial obligations. Since the Respondent had not participated in the restructure, the learned Judge held that he could not be held to the altered terms. On that footing, she made three declarations: that the Bank's intended exercise of its statutory power of sale was a nullity; that the Respondent was discharged from his obligations as a guarantor and that the charge over his property was to be discharged; and that a permanent injunction issued restraining the Bank and its auctioneers from selling or otherwise dealing with the property. Costs were awarded to the Respondent.

Dissatisfied, the Bank and its auctioneers (Protus Wanga t/a Timeless Dolphin Auctioneers) filed an appeal to the Court of Appeal at Eldoret. The appeal was heard virtually on 21st April 2026 before Gachoka, Korir and Ndolo JJA. Judgment was delivered on 26th June 2026.

APPELLANTS' CASE:

The Appellants took issue with the trial court's reasoning on the discharge point. Their submissions were, in summary:

a) The terms of the contract between the principal borrower and the Bank had not been varied in any manner that would release a guarantor. What was labelled a restructure was a prorating of the debt and an extension of the repayment period by conversion of an overdraft that was already due into a term loan. That accommodation was contractual.

b) The charge and the deed of guarantee contained express clauses that contemplated and authorised the very changes that the High Court had treated as discharge-triggering. In particular, clause 10.3.1 of the charge permitted the Bank to consolidate, split, determine or vary any credit; clause 10.51 gave the Bank irrevocable authority to use the charge instrument as security for further financial accommodation; clause 4 of the deed of guarantee entitled the lender to grant time or indulgence to the debtor without releasing the guarantor; and clause 4.6 provided that the security would not be discharged by anything which would not have discharged the guarantor had he been the principal debtor.

c) Reliance was placed on Paramount Bank Limited v First National Bank Limited & 2 others [2023] KECA 1424 (KLR) and Kenindia Assurance Company Limited v Commercial Bank of Africa Limited & 2 others [2006] KECA 347 (KLR). The Appellants distinguished David Harris v Middle East Bank Kenya Limited & 3 others [2019] KECA 820 (KLR) on the ground that in that case the bank had failed to prove execution of the second guarantee and had extended the guarantor's exposure without consent.

d) By finding that the restructure discharged the guarantor, the learned Judge had, in effect, rewritten the charge and the guarantee and had resurrected a default suretyship principle that the Respondent had expressly waived. That was an error in law. The Appellants relied on *National Bank of Kenya Limited v Pipelastic Samkolit (K) Limited & Another (2001) KECA 362 (KLR)*.

e) On the statutory notice point, even if a notice had not been served, that was not a ground for nullifying the intended sale. The proper course was to stop the sale pending compliance with the law. Nullifying the contractual securities and coupling that with a perpetual injunction was a remedy inconsistent with the Land Act.

f) The Respondent had not discharged the burden of proving the particulars he had pleaded. Further, the learned Judge had granted relief that was not founded on the pleadings, since the issues of restructure and voiding of the guarantee had not been pleaded but had emerged only in cross-examination.

RESPONDENTS' CASE:

The Respondent asked the Court to uphold the High Court's decision. His position, in summary, was as follows:

a) By the restructuring agreement dated 7 November 2012, the overdrafts were converted into a 60-month term loan of KES 76,023,660. The security given was Eldoret Municipality/Block 10/1747. The Respondent was not consulted on the conversion, and that alone amounted to a breach of the guarantee agreement.

b) Support for the discharge argument was drawn from Halsbury's Laws of England (5th ed., vol. 49, para 1214) and (4th ed., vol. 20(1), para 324), and from *Holme v Brunskill (1878) 3 QBD 495*, *Cooperative Bank of Kenya Limited v Washington Otieno Ogindo (2012) eKLR* and *David Harris v Middle East Bank Kenya Limited & 3 Others (2019) eKLR*.

c) The Bank could not unilaterally split the loan and convert it into a term loan for a single guarantor at KES 3,423,700. The unilateral change amounted to a fundamental breach that entitled the Respondent to be discharged.

d) There was, in any event, no right to exercise the statutory power of sale because there was no evidence of outstanding indebtedness. The intended recovery flouted the *in duplum* principle and the provisions of the Banking Act.

e) The statutory notices were invalid. They stated an amount of KES 72,228,217.60 to be recovered from the Respondent, in breach of section 90(2) of the Land Act, and the chargor was not informed of the specific sum to pay. Reliance was placed on *Amina Hersi Moghe & 2 Others v Diamond Trust Bank Limited & Another (2019) eKLR*.

ISSUES FOR DETERMINATION:

Distilled from the pleadings and submissions, the questions the Court set itself to answer were:

1. Whether the restructure of the facility amounted to a variation of the guarantee that discharged the Respondent as guarantor.

2. Whether the alleged failure to serve a statutory notice under section 96 of the Land Act rendered the intended exercise of the statutory power of sale a nullity.

3. Whether the learned Judge granted relief that was not founded on the pleadings.

HELD:

On the effect of the restructure on the guarantee:

The Court examined the charge and the deed of guarantee. Clause 10.3.1 of the charge provided that the Bank was at liberty, at any time and without affecting its rights, to *"consolidate, split, determine or vary any credit to or accounts of the charger and mode of repayment thereof."* Clause 10.51 gave the Bank an irrevocable authority, pursuant to section 82(1) of the Land Act, to utilise the charge instrument as security for further financial accommodation. Clause 4 of the deed of guarantee entitled the lender, in its absolute discretion and without the guarantor's consent, to grant time or indulgence to the debtor. Clause 4.6 of the deed of guarantee provided that the security would not be discharged by anything which would not have discharged the guarantor had he been a principal debtor.

The Court held that the restructure complained of, namely the conversion of the overdraft into a term loan and the prorating of the debt among guarantors, was of the very kind that clauses 10.3.1 of the charge and 4 of the deed of guarantee had contemplated. Following *Paramount Bank Limited v First National Bank Limited & 2 others [2023] KECA 1424 (KLR)*, where the conversion of an overdraft into a term loan was held to be a contemplated variation, the Respondent's challenge on that front could not succeed.

The Court further held that, in treating the splitting of the loan as a variation that discharged the charge without settlement of the underlying liability, the learned Judge had rewritten the terms of the guarantee. That was impermissible. The Court cited *National Bank of Kenya Ltd v Pipelastic Samkolit (K) Ltd & Another (2001) KECA 362 (KLR)*, where it had earlier said:

> *"A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved."*

On the facts, no coercion, fraud or undue influence had been pleaded or proved. The express anti-discharge clause in clause 4.6 of the deed of guarantee, taken with the evidence of the Bank's credit officer, Bernard Javan Oliko, that the Respondent's title could only be released upon payment of the full guaranteed sum, closed the argument. The trial court's finding that the Respondent's obligations as guarantor had been discharged, with the consequence that the statutory power of sale had not crystallised, was therefore erroneous.

On the statutory notice and valuation:

The Court reviewed the record and confirmed that the requisite statutory notices had been served on the principal borrower and the guarantors, and that a valuation of the property had been carried out. The premise on which the High Court had held that no section 96 notice had been served was, on the Court of Appeal's reading of the evidence, not made out. Beyond that, the Court accepted the Appellants' submission that, even if a notice had been irregular, the appropriate remedy would have been to stop the intended sale pending compliance, not to nullify the securities and issue a perpetual injunction.

On reliefs granted outside the pleadings:

Although the Court did not need to labour the point given its findings on the merits, it accepted the Appellants' complaint that the discharge case, as advanced at the trial, drew heavily on matters that had come out in cross-examination rather than from the pleadings themselves. Read together with the findings on the charge and guarantee, this reinforced the conclusion that the reliefs granted by the High Court could not stand.

Disposition:

The appeal was allowed. The Court set aside the judgment of the High Court delivered on 29th June 2020 in its entirety, dismissed the suit at the trial court with costs to the Appellants, granted the Bank liberty to exercise its statutory power of sale, and awarded the costs of the appeal to the Appellants.

RATIO OF THE CASE:

Where the charge instrument and the deed of guarantee expressly contemplate variation, splitting, restructuring or the grant of indulgence in respect of the principal facility, a variation of that kind, even if effected without the guarantor's prior consultation, does not discharge the guarantor. The parties are held to the bargain they wrote. A court cannot rewrite the contract to import a default suretyship rule that the guarantor has expressly waived, absent pleaded and proved coercion, fraud or undue influence.

Further, alleged irregularity or non-service of a statutory notice does not, by itself, render the intended exercise of the statutory power of sale a nullity. The remedy is to stop the intended sale pending compliance with the statutory requirements, not to nullify the securities.

CONCLUSION & IMPLICATION:

For banks, microfinance banks, deposit-taking saccos and other credit providers that lend against guarantees and land charges, the decision is welcome. It restores the primary role of the loan documents in defining the parties' rights, and cuts back on attempts to import a general discharge rule where the parties themselves have written it out. In particular, the case supports the following propositions:

a) Well drafted anti-discharge clauses in a deed of guarantee will be given full effect. A guarantor who has expressly agreed that the lender may grant time or indulgence to the debtor, or that the security is not affected by matters which would not have discharged a principal debtor, cannot resile from that bargain.

b) Clauses in a charge that permit the lender to consolidate, split, vary or determine the credit will justify the very kind of restructuring that lenders routinely carry out, including the conversion of an overdraft into a term loan and the prorating of a joint indebtedness among several guarantors.

c) A trial court that rewrites the loan and guarantee documents by treating a contemplated variation as a discharge-triggering event will be corrected on appeal. Absent pleaded and proved coercion, fraud or undue influence, the parties are held to their agreement.

d) An allegation that a statutory notice under the Land Act was not served, or was defective, will not on its own justify nullification of the securities. At most, it will delay the intended sale pending compliance.

e) Where a borrower or guarantor advances a discharge or nullification case at trial, the court will not be quick to grant relief that has emerged only in cross-examination and was not squarely pleaded.

For litigators acting for banks and other lenders, the decision is a useful authority to place before the trial court in cases where a guarantor invokes *Holme v Brunskill* and the general discharge principle. Its force lies in the emphasis on reading the specific clauses of the parties' instruments and giving them effect, and in its treatment of statutory notice objections as a timing issue rather than an existential one.

For loan origination and documentation teams, the decision is a reminder that time spent drafting the anti-discharge, variation and continuing security clauses at the outset pays for itself several times over on enforcement. The clauses that looked like ordinary boilerplate in the Consolidated Bank charge and guarantee were, in the end, the pivot on which the whole appeal turned.

RECOMMENDED ACTION:

In light of this decision, we recommend that banks, microfinance banks, deposit-taking saccos, investment vehicles and other secured lenders take the following steps:

a) Review your standard charge and guarantee templates and confirm that they contain express clauses permitting consolidation, splitting, restructuring and variation of the credit, and clauses that entitle the lender to grant time and indulgence to the debtor without releasing the guarantor. Confirm that the guarantee includes an express anti-discharge clause of the kind found in clause 4.6 of the Consolidated Bank deed of guarantee.

b) On any material restructuring of a facility, keep a proper contemporaneous record of the loan file, including the letter of offer, board or credit committee approvals, and correspondence with the guarantors, so that the Bank can point to those documents where a discharge case is later raised.

c) On enforcement, continue to serve statutory notices strictly in accordance with sections 90 and 96 of the Land Act, and keep proof of service in a form the Court can readily accept. Where a notice defect is pointed out before sale, correct it rather than proceed, since the Court of Appeal here indicated that a defective notice will only delay, not defeat, the intended sale.

d) In litigation, insist that any discharge case pleaded by a guarantor be tied to a specific pleaded particular, resist attempts to introduce fresh discharge grounds in cross-examination, and place the relevant charge and guarantee clauses squarely before the court from the outset.

e) Where the borrower or a guarantor invites the trial court to nullify the securities on the strength of alleged notice defects, remind the court that the ordinary remedy is to stop the sale pending compliance, and rely on this decision for that proposition.

INSURANCE

I. Regulatory & Policy Developments

a) Insurance Regulatory Authority Notice on enforcement of the Digital Marine Cargo Insurance System, June 2026

In June 2026, the Insurance Regulatory Authority (IRA) confirmed that the digital platform underpinning mandatory local marine cargo insurance, developed jointly with the Kenya Revenue Authority (KRA) and Safaricom PLC pursuant to its early notice of 22 May 2026, has now been developed. The IRA confirmed that from 1st July 2026, all importers will be required to digitally place Marine Cargo Insurance cover for their imports from insurers licensed under the Insurance Act prior to obtaining customs clearance. A Digital Marine Cargo Insurance Certificate will be requested through an insurer's portal, the Coral Mini App hosted on the M-PESA Super App, or other portals connected to the IRA's electronic platform and the eCitizen payment gateway.

Ahead of the 1st July 2026 effective date, the IRA issued a Public Notice in June 2026 inviting stakeholders to a virtual sensitisation on the Digital Marine Cargo Insurance System

II. Legislation

a) The Finance Act, 2026 — measures affecting insurers

The Finance Act, 2026 (see Banking above for the legislative history) makes one change specific to the insurance sector: section 19 of the Income Tax Act, which governs the taxation of insurance companies, is amended to replace references to the "life insurance fund" with the "statutory fund" as defined under section 45 of the Insurance Act. The effect is to align the tax computation with insurance regulatory law and to bring annuity and pension-linked arrangements held within the statutory fund into the section 19 computation, with business outside the statutory fund taxed under ordinary rules.

Insurers are also affected by several cross-cutting Finance Act measures discussed in the Banking and Investment sections above, including the expanded withholding tax definitions, the general anti-avoidance rule, withholding-agent liability, the tax amnesty and internal reorganisation relief. Insurance groups should refer to those sections when assessing sector impact.

No insurance-specific Bill was published in Q2 2026. The thirteen draft insurance regulations and guidelines published by the Insurance Regulatory Authority in Q4 2025 (covered in our previous edition) remained pending as at the date of this report.

INVESTMENT

I. Legislation

The Finance Act, 2026 has amended several acts as follows:

<u>The Income Tax Act, CAP 470</u>

a) Treatment of tax losses for large pre-1 July 2025

The Income Tax Act has been amended to introduce a special loss carry-forward regime for taxpayers that had invested at least KES 10 billion before 1 July 2025 and had accumulated tax losses before that date. Those deficits are deemed to have arisen in the 2025 year of income and may be carried forward and deducted from future taxable profits until fully utilised, overriding the ordinary statutory limitation period.

This amendment is effective 1st July 2026.

b) Classification of REIT transfers as exempt income

The Income Tax Act has been amended to classify capital gains arising from the transfer of property to a Real Estate Investment Trust (REIT) registered under Section 20 of the Act as exempt income. Consequently, property transfers into qualifying REITs can be undertaken without an immediate CGT consequence, facilitating the movement of real estate assets into REIT structures.

This amendment shall be effective as of the 1st of July 2026.

c) Exemption of stamp duty on transfers to real estate investment trusts

The Finance Act has introduced a significant amendment to the Stamp Duty framework by expanding the scope of transactions that may qualify for stamp duty relief where assets are transferred into an authorized Real Estate Investment Trust (REIT). In addition to conventional conveyances and transfers of legal title, the amendment now expressly recognises instruments that transfer a beneficial interest in property to a REIT.

This change reflects a broader legal appreciation of the distinction between legal ownership and beneficial ownership in property-holding structures and is intended to accommodate the diverse mechanisms through which real estate assets are contributed to REIT vehicles.

This stamp duty relief complements the CGT exemption for transfers of property into registered REITs discussed above.

This amendment shall be effective as of the 1st of July 2026.

d) The Sovereign Wealth Fund Act, 2026 (Act No. 25 of 2026)

The Draft Kenya Sovereign Wealth Fund Bill, 2025 — covered in our Q4 2025 edition — was formalised as the Sovereign Wealth Fund Bill, 2026 (National Assembly Bill No. 7 of 2026), published on 25 February 2026. Following public hearings in April 2026, the Bill was passed with amendments on 2 July 2026 and assented to on 8 July 2026 as the Sovereign Wealth Fund Act, 2026, which comes into force on 24 July 2026. The Act retains the three-component architecture of the draft Bill — a Stabilisation Component, a Strategic Infrastructure Investment Component and a Future Generations (Urithi) Component, each held in a separate account at the CBK, with all resource revenues first deposited into a CBK Holding Account. Key features and notable changes from the draft:

1. **A 30% floor for future generations** — In the most significant floor amendment, the minimum annual allocation to the Urithi Component was raised from 10% (as published) to 30%, with the remaining 70% split between the Stabilisation and Strategic Infrastructure Components as determined annually by the Cabinet Secretary in consultation with the Board.

2. **Funding sources** — The Fund is financed from the Government's share of profit petroleum, petroleum and mining royalties (routed through the KRA), bonus and assignment payments, earnings on government participation interests, and privatisation proceeds.

3. **Governance** — The Board comprises a Chairperson appointed by the President; the Principal Secretaries for the National Treasury, Mining and Petroleum; the Governor of the CBK; four independent members competitively appointed; and the Chief Executive Officer (ex officio, non-voting). Members must have at least ten years' senior experience and satisfy Chapter Six of the Constitution.

4. **Withdrawal discipline** — Stabilisation withdrawals require Cabinet Secretary justification, Board approval and appropriation through a supplementary budget; Strategic Infrastructure withdrawals may only be made against beginning-of-year balances for approved budget priorities; and no withdrawals or transfers may be made from the Urithi Component except for reinvestment. Fund components may not be used as collateral or to make advances to government entities, and Controller of Budget approval — extended at committee stage — now applies to withdrawals from all three components.

5. **Investment restrictions** — The Fund may not invest in speculative derivatives, unlisted real estate, private equity, art or commodities. The Urithi and Stabilisation Components are confined to international investment-grade instruments, while the Strategic Infrastructure Component may hold a broader range of debt instruments for domestic infrastructure financing.

6. **Oversight and transition** — The Fund is audited by the Auditor-General, with quarterly reporting, consolidated financial statements within three months of year-end and annual reports tabled in the National Assembly. Pending constitution of the Board, the Cabinet Secretary appoints an interim manager.

For the investments industry, the Act creates a significant new institutional investor with offshore, investment-grade-only mandates for two of its three components — mandates likely to favour global fixed-income managers, with the CBK as custodian. The Fund's seeding strategy is tied to the Government's privatisation programme, including the planned Kenya Pipeline Company IPO and the announced sale of a 15% stake in Safaricom, which will themselves reshape the Nairobi Securities Exchange pipeline. Pension funds may find co-investment opportunities alongside the Strategic Infrastructure Component. Commentators have nonetheless queried the absence of a genuinely independent investment manager and the breadth of Cabinet Secretary discretion.

Effective date: 24th July 2026.

e) The Income Tax (Amendment) Act, 2026 (Act No. 11 of 2026)

The Income Tax (Amendment) Bill, 2026 (National Assembly Bill No. 20 of 2026), published on 2 April 2026, was assented to on 11 May 2026 as the Income Tax (Amendment) Act, 2026. The Act makes two related changes to facilitate corporate restructuring:

1. **Capital gains tax relief** — A new paragraph 6(2)(i) of the Eighth Schedule to the Income Tax Act provides that no chargeable “transfer” occurs where property passes from a company to its shareholders in proportion to their shareholding as part of an internal reorganisation (or in the reverse direction as consideration for shares). “Internal reorganisation” expressly excludes any transfer involving a third party.

2. **No deemed dividend** — A corresponding amendment to section 7 provides that such in-specie distributions are not deemed to be dividend distributions, removing the attendant withholding tax exposure.

The amendments remove a longstanding friction in group reorganisations: banking, insurance and fund management groups restructuring to comply with holding-company or group-structure requirements can now hive assets up or down without triggering capital gains tax or deemed-dividend withholding tax, provided the transfer is strictly proportional and involves no third party. The relief complements the stamp duty relief for group restructurings introduced by the Finance Act, 2025. Because the exclusion of third parties is absolute, the relief will not assist pre-sale carve-outs where a disposal follows; advisers have also flagged the absence of a minimum holding period or anti-abuse safeguards, and the Controller of Budget has warned of an open-ended revenue risk.

Commencement date: 15th May 2026

f) Finance Act, 2026 — investment sector impact summary

1. **REITs** — See the detailed REIT CGT and stamp duty discussion above.

2. **Indirect transfers** — Gains realised by non-residents on shares or interests deriving their value from Kenya are taxable without the previous 20% shareholding threshold, extending Kenyan capital gains tax to minority exits — a material consideration for private equity and venture capital investors in Kenyan financial institutions.

3. **EAC dividends** — The preferential 5% withholding tax rate on dividends paid to East African Community citizens is repealed in favour of the standard 15% non-resident rate.

4. **Non-resident investors** — Non-residents are exempted from the requirement to obtain a KRA PIN in order to open investment bank accounts, easing foreign portfolio access to the Kenyan market.

5. **Trusts** — Trust income is now taxed at a single point, at the trustee level, with dividends and interest final at the trustee and distributions exempt in beneficiaries' hands.

Effective date: 1st July 2026.

II. Bills & Proposed Legislation

a) The Trust Administration Bill, 2026

The Trust Administration Bill, 2026 (National Assembly Bill No. 29 of 2026) was published on 20 May 2026 in Kenya Gazette Supplement No. 124, formalising as a government Bill the draft published by the Business Registration Service for consultation in 2025. The Bill underwent the first reading on 16 June 2026 and was referred to the Departmental Committee for Justice and Legal Affairs on the same day. Thereafter, public participation of the Bill was undertaken until 2nd July 2026. The Bill proposes the most far-reaching reform of Kenyan trust law in decades, consolidating the law on charitable trusts, non-charitable purpose trusts and family trusts into a single statute and repealing the Trustees (Perpetual Succession) Act (Cap. 164) and the Trustees Act (Cap. 167). Key proposals:

1. **Mandatory registration** — A written trust must be registered (or incorporated) to be valid and enforceable. Registration confers a unique identifier without legal personality; trustees may instead elect incorporation, which confers body-corporate status and perpetual succession.

2. **The enforcer** — A new office in Kenyan law: an independent enforcer with power to compel trustees to comply with the trust deed, access trust documents and accounts, and pursue civil and criminal remedies against defaulting trustees.

3. **Trustees and licensing** — Minimum of three trustees for charitable and purpose trusts (one for family trusts); codified fiduciary duties of care, skill and diligence; seven-year record retention; corporate trustees must be companies whose main object is trustee services; and professional trustees and trust service providers require annual licences from the Registrar, with penalties of up to KES 5 million for unlicensed operation.

4. **Beneficial ownership transparency** — Mandatory beneficial ownership registers lodged with the Registrar, with updates within 21 days — Kenya's FATF-alignment measure for legal arrangements — plus annual returns within 30 days of each registration anniversary.

5. **Transition** — Existing trusts are given 24 months from commencement to comply (extendable by the Registrar) — quadrupled from the six months proposed in the 2025 consultation draft.

For banks with trustee departments, standalone trust companies, wealth managers and family offices, the Bill professionalises — and regulates — the trust services industry: annual licensing, main-object requirements for corporate trustees and beneficial ownership disclosure will all carry compliance cost, while mandatory registration erodes the confidentiality that has made Kenyan family trusts attractive. A critical open question is the continuity of the capital gains tax, income tax and stamp duty reliefs currently keyed to family trusts registered under the statutes the Bill repeals: the Bill contains no tax provisions or consequential amendments, and clients holding property through registered family trusts should monitor this closely. Unregistered trusts would become unenforceable — an existential compliance point for the sector.

III. Judicial Developments

Kungu v Dyer & Blair Investment Bank Ltd & another. Supreme Court Application E007 of 2026; [2026] KESC 42 (KLR) (19 June 2026) (Ruling) (Find Link Here)

BRIEF SUMMARY OF THE CASE:

The applicant had deposited KES 100 million with Dyer & Blair Investment Bank in 2003 for investment in shares, fixed deposits and government securities, with part of the funds placed with CFC Stanbic Bank. The High Court awarded him KES 310 million with interest at 16%; the Court of Appeal in 2017 confined damages to one year of breach, found no privity of contract with CFC Stanbic, and reduced interest to 10% based on prevailing treasury bond rates. Certification to appeal to the Supreme Court was refused in 2023, and the Supreme Court affirmed that refusal in October 2023. Two years and four months later, the applicant sought to have the Supreme Court review and set aside its own 2023 ruling, arguing that the Court had failed to conduct a proper certification review and that its decision was a nullity.

KEY FINDINGS AND DETERMINATIONS:

The Court dismissed the application on two independent grounds. First, it was filed manifestly outside the fourteen-day window in Section 21(4) of the Supreme Court Act, without leave.

Secondly, and on the merits, the applicant failed to satisfy the narrow review threshold in Fredrick Otieno Outa v Jared Odoyo Okello, which confines review to judgments obtained by fraud or deceit, nullities for want of competence, decisions procured by mistaken belief of consent, or decisions rendered on repealed or concealed law.

The Court held that once it had established that the intended appeal did not transcend the parties' private dispute, it was under no obligation to march through every certification principle in Hermanus and Malcolm Bell, and that semantic complaints about the Court "noting" rather than "reviewing" the Court of Appeal's ruling were pedantic. Dissatisfaction with the merits of a concluded decision is not a ground of review, and the application was an abuse of process.

IMPLICATIONS AND RECOMMENDED ACTIONS:

The ruling entrenches the finality of concluded commercial litigation and will be welcomed by investment banks, brokers and custodians carrying legacy litigation exposure: a dispute concluded through the certification pathway cannot be resurrected years later through review applications recasting merits grievances as jurisdictional defects.

Financial institutions should treat adverse or favourable Supreme Court certification outcomes as closing the books for provisioning and disclosure purposes and may resist late review attempts with a strong costs expectation.

The underlying appellate history also carries enduring commercial lessons for the sector: damages for breach of an investment mandate may be confined to a commercially realistic loss period, interest may be benchmarked to prevailing government securities rates rather than contractual aspiration, and privity remains a real boundary — institutions receiving funds through an intermediary should document the contractual chain carefully, and clients should contract directly with every institution they intend to hold liable.

FINTECH

I. Regulatory & Policy Developments

Draft Final National Data Governance Policy.

The Ministry of Information, Communications, and the Digital Economy published the Draft Final National Data Governance Policy in May 2026, as a proposed national framework for the governance, management, sharing, and use of data across the public and private sectors in Kenya.

The policy proceeds on the basis that data is a strategic national asset and seeks to address persistent challenges such as fragmented systems, weak interoperability, inconsistent standards, limited data sharing, and inadequate institutional coordination. In particular, it aims to promote trusted and lawful data sharing, strengthen data quality and standardisation, improve institutional efficiency, safeguard privacy and other rights, and support evidence-based planning, service delivery, and innovation. The policy also contemplates governance mechanisms for emerging technologies, including artificial intelligence, blockchain, and the Internet of Things, while emphasising secure, ethical, inclusive, and development-oriented use of data. More broadly, it is intended to provide a coherent national framework for responsible data stewardship in support of Kenya's digital economy and socio-economic transformation.

The Ministry invited stakeholders to submit comments, inputs, or memoranda on or before 5th June 2026.

II. Legislation

The Finance Act, 2026 has amended several acts as follows:

The Value Added Tax Act, CAP 476

Exclusion of digital enabling services for money transfer from exempt financial services

The Value Added Tax Act has been amended to exclude certain digital services from the scope of exempt financial services. Previously the Act broadly considered the issuance, transfer, receipt and other money dealing services exempt services. With this amendment, payment processing services, settlement services, merchant acquiring services, payment gateway services, aggregation services and similar money transfer services supplied through a software platform or digital system for a fee or commission by a payment service provider have been expressly carved out from this exemption.

As a result, fintech companies, payment service providers and digital payment platforms will be required to account for VAT on commissions and fees derived from such services.

This amendment shall be effective as of the 1st of July 2026.

The Excise Duty Act, CAP 472

Harmonization of virtual asset definitions in tax and regulatory laws

The Excise Duty Act now incorporates definitions of "virtual assets" and "virtual asset service providers", clarifying the tax scope for the existing excise duty on fees charged by virtual asset providers.

Currently, excise duty on fees charged on virtual assets transactions by virtual asset providers shall be ten percent of the excisable value. Incorporation of definitions of virtual assets and virtual asset service providers assists in determining who must charge and account for this tax.

This amendment shall be effective as of the 1st of July 2026.

The Tax Procedures Act, CAP 469B

a) Harmonization of virtual asset definitions in tax and regulatory laws

The Tax Procedures Act introduces the same virtual asset and VASP concepts for tax administration purposes, enabling KRA to administer reporting, assessment and enforcement obligations for the digital asset sector.

This amendment provides greater certainty on the application of Kenya's tax laws to the crypto and digital asset sector. By clearly defining the assets and businesses within scope, the Kenya Revenue Authority (KRA) is better positioned to administer, assess, and enforce tax compliance obligations for virtual asset businesses, including exchanges, brokers, and wallet service providers. The change also reduces ambiguity for taxpayers and supports a more consistent regulatory and tax treatment of digital asset activities.

Businesses operating in the virtual asset ecosystem should review their tax compliance obligations, as the amendment formally brings crypto and digital asset activities within a clearer and more enforceable tax administration framework.

This amendment shall be effective as of the 1st of July 2026.

b) Filing of information returns by virtual asset service providers

The introduction of new reporting obligations for Virtual Asset Service Providers (VASPs), including virtual asset exchanges, virtual asset brokers and their intermediaries, reflects a significant shift towards greater regulatory oversight and tax transparency within the digital asset sector. With the enactment of the Finance Act, 2026, VASPs are now required to submit information returns (or nil returns where no reportable activity exists) in respect of their virtual asset users. These obligations are consistent with the broader principle that intermediaries operating within financial markets may be required to collect and disclose customer information to facilitate regulatory supervision, tax compliance and the prevention of illicit financial activities.

From a compliance perspective, the new framework imposes affirmative legal duties on VASPs to establish appropriate customer identification, record-keeping and reporting processes. Failure to comply may expose entities to regulatory sanctions, administrative penalties or other enforcement measures, depending on the applicable legislative framework.

These reporting requirements also reinforce the principle of data minimization. Under this principle, VASPs may only collect, process and disclose personal data that is adequate, relevant and limited to what is necessary for the specified reporting purpose. Accordingly, firms should review their governance frameworks, privacy notices and data management practices to ensure that compliance efforts do not result in the excessive collection or retention of customer information.

This amendment is effective 1st July 2026.

c) Finance Act, 2026 — digital finance sector impact summary

The Finance Act, 2026 continues the build-out of Kenya's tax framework for digital finance. Rather than repeating the detailed VAT, excise duty and tax administration amendments above, fintechs and VASPs should refer to those sections when assessing pricing, tax gross-up clauses, customer reporting systems and data governance controls.

In particular, fintechs should apply the VAT analysis above to platform, scheme and processing agreements, while VASPs should apply the Tax Procedures Act discussion above to customer data collection, reporting infrastructure and Data Protection Act safeguards.

Effective date: 1st July 2026.

III. Bills & Proposed Legislation

a) The Competition (Amendment) Bill, 2026

The Competition (Amendment) Bill, 2026 (National Assembly Bill No. 4 of 2026), published on 19 February 2026, formalizing the Bill as the parliamentary successor to the Competition Authority of Kenya's (CAK) 2024 consultation draft. The Bill modernises the Competition Act for digital markets. Key proposals:

1. **Digital markets within the Act** — New definitions of "digital activity" (online intermediation, marketplaces, search, social networking, operating systems, cloud computing and online advertising), "digital market", "strategic market position" and "superior bargaining position".

2. **Dominance below 40% market share** — In digital markets, an undertaking controlling less than 40% of the market may nonetheless be found dominant where it has market power or a significant market position, assessed by reference to network effects, entry barriers, economies of scale, data access, switching costs, multi-homing and importance as an intermediary.

3. **Unfair market conduct** — A new Part IIIA creates standalone offences of abuse of buyer power (delayed supplier payments, unilateral termination, cost-shifting) and abuse of a superior bargaining position (non-disclosure of terms, unilateral variation, unreasonable data collection, interference with a counterparty's business), each punishable by imprisonment of up to five years or a fine of up to KES 10 million, or both.

4. **Administrative penalties** — The CAK may impose administrative penalties of up to 10% of gross annual turnover and issue warnings and remedial directions, subject to fair-hearing requirements.

5. **Privatisations as mergers** — The merger definition is extended to privatisations of trading government agencies and state corporations, bringing state divestments — including of state-owned financial entities — within CAK merger control. Merger notification thresholds, fees and procedure are otherwise unchanged.

For the financial services sector, the Bill's significance is threefold. First, payment platforms, super-apps and other digital financial infrastructure can be found dominant on the strength of network effects and data access rather than market share, raising conduct risk for the sector's largest platforms and for acquirers of digital lenders and payment businesses. Second, the codified prohibition on abuse of a superior bargaining position gives the CAK a direct statutory hook against unilateral variation of facility terms and opaque contractual practices — an area in which the CAK has already acted, fining a commercial bank KES 33.18 million in February 2026 in respect of unilateral changes to credit facilities. Third, the 10%-of-turnover administrative penalty regime materially raises the stakes of non-compliance for institutions with large revenue bases.

RETIREMENT BENEFITS

I. Legislation

The Finance Act, 2026 has amended the Income Tax Act, CAP 470 as follows:

a) Classification of death benefits as exempt income

The Act has been amended to classify benefits arising due to death as exempt income. As a result, death benefits paid to beneficiaries or dependants from pension, provident and other retirement benefit schemes will be tax free and not subject to income tax.

The exemption ensures that beneficiaries receive the full value of the benefits payable upon the death of a scheme member, thereby preserving the intended financial support for surviving family members and dependants. This aligns with the broader social protection objectives of retirement benefits arrangements.

This amendment is effective 1st July 2026.

II. Bills & Proposed Legislation

The Kenya Revenue Authority (Amendment) Bill, 2026

The Kenya Revenue Authority (Amendment) Bill, 2026 is relevant to the retirement benefits sector because it proposes to include the Retirement Benefits Authority Act in the Kenya Revenue Authority's revenue collection mandate, making KRA the statutory collection agent for the RBA levy payable by retirement benefits schemes. Retirement benefits schemes, administrators and fund managers should anticipate possible changes to levy remittance channels, reconciliation processes and enforcement posture once the Bill is enacted.

III. JUDICIAL DEVELOPMENTS

Association of Retirement Benefits Schemes v Attorney General & 3 others. Supreme Court Petition E017 of 2024; [2026] KESC 36

(KLR) (15 May 2026) (Judgment, with dissent) (Find Link Here)

BRIEF SUMMARY OF THE CASE:

The appellant, an association of stakeholders in the retirement benefits industry, challenged the constitutionality of Section 2(o) of the Public Procurement and Asset Disposal Act, 2015 (PPADA), which listed "pension fund for a public entity" among the public entities bound by public procurement law. Both the High Court (Mativo J) and the Court of Appeal upheld the provision, reasoning that public-sector pension schemes perform public functions under State regulation. The appeal reached the Supreme Court on certification under Article 163(4)(b) of the Constitution on the single question whether pension funds of public bodies are "public entities" to which the PPADA applies.

KEY FINDINGS AND DETERMINATIONS:

The majority held that a pension fund registered under the Retirement Benefits Act is an irrevocable trust: once employer and employee contributions enter the scheme fund, they cease to be public money and become private trust property held for the exclusive benefit of members.

Applying the instrumentality-of-State indicia (establishment, personnel, functions, funding and degree of State control), the Court found that RBA regulation and supervision, without more, does not convert a private trust into a public entity, and that Article 227 of the Constitution — situated in the public finance chapter — is confined to entities procuring with public money.

Section 2(o) of the PPADA was accordingly declared inconsistent with Article 227(1) and void to the extent that it subjects pension funds for public entities to public procurement systems.

Ndungu SCJ dissented, holding that the social-policy function of pension schemes and the depth of statutory oversight sufficed to make them public entities.

IMPLICATIONS AND RECOMMENDED ACTIONS:

- Pension schemes sponsored by public entities are released from PPADA procurement procedures with immediate effect.
- Trustees should formally resolve to transition from PPADA tendering to trust-deed and RBA-compliant procurement policies and should document the transition to protect decisions made in the interim.
- Service providers (fund managers, administrators, custodians, insurers and ICT vendors) contracting with such schemes should expect faster, contract-driven onboarding, but should verify that schemes adopt defensible internal procurement frameworks, since trustees remain bound by fiduciary duties of prudence and best value, and members retain remedies for imprudent spending.
- Sponsors and audit committees should update compliance registers and internal audit scopes to remove PPRA oversight.
- Finally, actors should monitor any legislative response: the judgment invalidates the statutory hook, but Parliament could attempt a redraft, and the RBA may issue bespoke procurement guidance for schemes, which trustees should be ready to engage through public participation.

SACCOs

I. Legislation

No SACCO-specific Bill was published in Q2 2026. The following cross-sector legislative developments are nonetheless relevant to SACCOs and are tracked here for sector-impact purposes:

1. **VAT exemption for repossessed collateral** — See Banking above for the detailed Finance Act discussion. For SACCOs, the key impact is that the exemption reduces VAT exposure on security enforcement involving repossessed collateral. Effective 1 July 2026.

2. **The Microfinance Bill, 2026** — The Bill expressly excludes SACCOs from its scope (SACCOs remain regulated by the Sacco Societies Regulatory Authority (SASRA) under the Sacco Societies Act), while listing SASRA among the co-regulators with which the CBK is to cooperate. SACCOs should nonetheless note the Bill's prohibition on the taking of deposits or cash collateral by non-deposit-taking entities, which reinforces the licensing perimeter around deposit-taking activity.


BANK

Key Contacts

CHRISTOPHER KIRAGU
Head of Banking and Finance
Nairobi, Kenya

E: ckiragu@mman.co.ke

CAROLE AYUGI
Partner
Nairobi, Kenya

E: cayugi@mman.co.ke

SUZANNE MUTHAURA
Partner
Nairobi, Kenya

E: smuthaura@mman.co.ke

WARINGA NJONJO
Partner
Nairobi, Kenya

E: wnjonjo@mman.co.ke

JOMO NYARIBO
Partner
Nairobi, Kenya

E: jnyaribo@mman.co.ke

MMAN ADVOCATES

- **NOTARIES PUBLIC**
- **COMMISSIONERS FOR OATHS**

OFFICES:

4th Floor, Wing B, Capitol Hill Square,

Off Chyulu Road, Upper Hill, Nairobi.

TELEPHONE:

+254 20 869 7960 / +254 20 259 6994 /

+254 71 826 86 83

POSTAL ADDRESS:

P. O. Box 8418-00200,

Nairobi Kenya.

EMAIL:

mman@mman.co.ke

WEBSITE:

www.mman.co.ke