REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
MCOMMSU NO. E894 OF 2024
JANE NJERIMBURIA..... coercive eens PLAINTIFF/APPLICANT
VERSUS
ABSA BANK KENYA PLC ....oovrviiiciriecticeeecc cee, 15" DEFENDANT/RESPONDENT
TREVOR AUCTIONEERS . csoneemens cnsussssmmmmmmes scons sxmsas 2ND DEFENDANT/RESPONDENT
REPLYING AFFIDAVIT
|, SAMUEL NJUGUNA residing in Nairobi and of Post Office Box number 30120-00100
‘Nairobi in the Republic of Kenya do hereby make oath and state as follows:
1. Tam employed by the 15st Defendant/Respondent as Secured Lending Team
Leader - Collections & Recoveries and duly authorized to swear this affidavit
on behalf of the Bank and the 2nd Defendant/Respondent who acted on
instructions of the Bank.
2. 1 am aware and familiar with the matters herein.
3. There is now produced and shown to me the exhibit marked “SN1" from
pages 1 to 149 being the exhibits contained in this affidavit and hereafter
referred to as “the exhibit".
4. | have read and understood the Plaintiffs Application dated 2nd October
2024 and the Supporting Affidavit thereto and being aware of the matters
pertaining thereto urge this honourable Court to dismiss/strike out the
application and the suit on the following grounds.
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5. The Plaintiff has admitted obtaining credit facilities from the 1st Defendant
Bank. The facilities included a home loan, personal loan and credit card
facility.

6. The home loan facility was for a total Kshs. 6,577,482.25 payable by 312
monthly instalments which were to end by 24h June 2036. True copies of the
home loan facility letter and the staff personal loan offer letter are at pages
1 to 4J of the exhibit.
7. It was a term of the home loan facility letter dated 26th May 2010 that it
would amount to default leading to demand for immediate repayment of
the loan if the Plaintiff failed to make any repayment of the loan as agreed.
8. As admitted by the Plaintiff, the Plaintiff executed a charge over the suit
property to secure the various facilities. A true copy of the charge is at pages
5 to 17 of the exhibit.
9. The Plaintiff has failed to disclose to this honourable Court that the Plaintiff
failed to pay the monthly installments in breach of the terms of the facility,
leading to default and the attendant consequences.
10.1t is not in dispute that following the said default by the Piaintiff, the 1st
Defendant issued the Plaintiff with the requisite statutory notices as follows:
i” 3 months’ statutory notice dated 16th January 2024 issued under
Section 90 {1} and (2} of the Land Act.
i. 40 days’ statutory notice dated 25th April 2024 issued under Section
96(2) of the Land Act, 2012.
See 18 to 25c of the exhibit for copies of the statutory notices and
evidence of posting/service and email correspondence.
11. Foliowing continued default even after issuance of the statutory notices, the
1st Defendant Bank proceeded to instruct the 2nd Defendant to issue a forty-
five (45) day Redemption Notice and Notification of sale which were duly
served. See page 26 to 47 of the exhibit.
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12. Following the issuance of the notices to the Plaintiff, the Plaintiff approached
the Bank unequivocally admitting default and seeking for a discount on the
outstanding debt as she sought to sell the property via private treaty.
13.The scheduled auction was cancelled as a show of good faith in resolving
the matter. See page 40A of the exhibit.

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14. The Bank indulged the Plaintiff and communicated a conditional discount
of the amount payable as full and final settlement. See pages 48 and 49 of
the exhibit for copy of the letter and email correspondence.
15.The Plaintiff accepted the condition discounted balance for settlement,
and she was also allowed to sell the charged property via private treaty.
16. Various emails were exchanged between the Bank and the Plaintiff as
evidenced at pages 50 to 56 of the exhibit.
17.The Plaintiff proceeded to get a buyer for the charged property and even
negotiated a sale agreement, but it seems the transaction failed despite
support from the Bank. See pages 57 to 70 of the exhibit.
18.Thereafter, the Plaintiff opted to retain the services of the Bank's advocates
in her sale of the suit property and a sale agreement was prepared and she
executed the same together with her purchaser. See page 72 to 89 of the
exhibit.
19. The Plaintiff also issued the Bank with written authority to release the title
documents to the purchaser after full payment of the purchase price to the
Bank. See page 90 to 93 of the exhibit.
20.However, the Plaintiff and the intended purchaser went silent after
execution of the sale agreement.
21.The Bank was left with no option but to revoke the conditional offer for
settlement and proceed with the realization of the security in recovery of
the full debt outstanding. See page 94 and 95 of the exhibit for a copy of
the email correspondence between the Bank and the Plaintiff.
22.The 2nd Defendant Auctioneer issued the Plaintiff with a courtesy notice
dated 5h September 2024 as admitted by the Plaintiff.
23.As admitted by the Plaintiff, the Property was duly advertised in the
newspaper as required by the law.
24.The Property was duly valued as required by the law. See page 96 to 116 of
the exhibit.
25.As at 18h June 2024, the balance due was Kshs 7,125,908.35 detailed as
follows:

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Outstanding
Prestige Plus Bouquet
account 0948935678 199,903.55
[I
26.As at 11th October 2024, the balances due were as follows:
po
Product Account Number Balance
Prestige Plus Bouquet
account 09248935678 287,557.10
Absa Staff Personal Loan
1513089000050956
Total |
See pagel17 to 149 exhibit for copies of the statements.
27.The interest charged on the facility is as per the contract between the
parties and the facility has not breached the in dupium rule, contrary to the
unfounded allegations of the Plaintiff.
28.The last loan repayment instalment should have been paid by 11th January
2023 as per the agreed loan repayment schedule, but the Plaintiff has been
a constant defaulter hence the Bank's exercise of statutory power of sale.
29.1t is clear from the disclosures contained in this affidavit that the Application
and the Plaint do not raise any single legal grievance and the Plaintiff's suit
is an attempt to aid the Plaintiff avoid her contractual obligations and is an
abuse of the process of this Court.
30.1 am advised by the advocates for the Defendants, Walker Kontos

Advocates, whose advice | verily believe to be true, that:
a. Contracts are made to be performed and, in default of performance,
to be enforced by the Courts in accordance with the law and nothing
else.
b. The Applicant's while seeking equitable reliefs must come to court with
clean hands. Failure to disclose the clear default in repayment of the
debt takes the Applicant outside the realm of exercise of the Court's
discretion in her favour.
c. Those who come to equity must do equity and failure to pay the loan
takes the Applicant outside the realm of exercise of the Court's
discretion.
d. The Applicant has failed to satisfy the threshold for grant of the
equitable order of injunction.
e. This Court should uphold and enforce the contractual obligations of
the parties.
31.1tisin the inferest of justice and for the sake of judicial consistency and public
confidence in this Honourable Court that the Plaintiffs’ application be
dismissed forthwith, with costs.
32.1 swear this affidavit from facts within my knowledge and as contained in my
employer's file, save as to matters deponed to on information and belief,
the sources and grounds whereof have been disclosed.
Sworn at Nairobi by the said
SAMUEL NJUGUNA
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Deponent