Captain J.N. Wafubwa -vs- HOUSING FINANCE (K) LTD **HCCC NO. 385 OF 2011- Delivered on 26th April 2012 by E.K.O. OGOLA Judge**	**Summary of the facts** The defendant, a banking institution extended a mortgage facility to the plaintiff, the borrower for a period of 18 years, but did not service the same as contracted and soon fell into heavy arrears which are not disputed. The defendant then sought to exercise statutory power of sale and staged a public auction and sold the property for Kshs. 4.5 million to M/S United Millers Limited who were the highest bidder at the fall of the hammer on 8th November 1996. The said Purchase accordingly in terms of the sale paid the requisite fee of 25% down payment amounting to Kshs. 1,125,000.00 but failed to complete the transaction within the stipulated time frame as per the conditions of sale and they forfeited the full deposit of Kshs. 1,125,000.00 to the defendant. Another auction was arranged on 11th July 1997 but the same could not proceed as the plaintiff had injunction order against the sale, which was dismissed, stated obita, that the plaintiff cannot be a beneficiary to the auction deposit. Arising from the above the plaintiff filed a suit claiming:- ▪ An order that the balance Kshs. 3,395,662.80 be paid to the plaintiff ▪ An order for general damages against the defendant for the illegal eviction from the suit properties. ▪ Mesne profit of Kshs. 15,000.00 p.m. The result of the evidence from all the parties is that the main disagreement between the parties related to the 25% deposit sum of Kshs. 1,125,000.00 paid pursuant to the aborted auction sale. The plaintiff claims the sum as dues to the mortgage account and the defendant submit that the same is for the Bank's Profit and Loss account. **Court's Ruling** The defendant was not in any way involved in the eviction of the plaintiff from the suit property. No amount of legal imagination or insinuation can make a defendant a party to the suit. That being so, prayer b and c were dismissed. In relation to **right of redemption** the plaintiff lost the same at the fall of the hammer. However, this fall of the hammer, apart from divesting the plaintiff of his right of redemption, did not transfer the property to the purchaser as the contract was not concluded. The plaintiff's right of redemption was subsequently revived, either

	in law or by waiver by the defendant or by both the law and the waiver and conduct of the defendant. This is because the property was later sold by private treaty which means the plaintiff lost his right of redemption at the second sale and not the auction. **Judge's general observation (*dicta)*** A customer was loaned Kshs. 650,000.00 in 1989. Within a few years he is in arrears and soon his property is auctioned at an inconclusive auction pursuant to which a deposit of 25% is paid, which is actually enough to clear the loan arrears and balances. In 2009, the same property is sold by private treaty at the same price of Kshs. 4.5 million it was meant to be sold 13 years earlier. The entire 4.5 million was taken by the bank, which in 2009 still required more than Kshs. 11 million from the charger. That can easily be Kshs.15 million now. Really where is justice? Banks cannot just hide behind the contracts they make; regardless of how unjust they are, to literally destroy their customers. Without their customers the banks cannot operate. A time has come for banks in Kenya to look into the eyes of their customers and answer the question: Are banks Kenyan? Or have they just entered Kenya for business? Banks in Kenya reign large. I am reminded of a predictor who after killing their prey is not satisfied to leave the carcass to the vultures, but become both the predator and the vulture, killing the prey and gleaning the meat from the carcasses to ensure the prey is really dead. I am also reminded of a robber killing his victim and not only attending the funeral, but insisting on carrying the casket to the grave to confirm that his victim is dead and buried. Else, how does one explain a situation or cases at hand? Wasn't there any time when the defendant in this matter could say" this is the case and times to close this account". It is a sorry state of affairs in our country. As all sectors of our society are being reformed, banks should not be left behind. They need to look into the balls of their customers eyes and answer the question: "are banks Kenyan?"
Johnson Kiema M. Mulaimu -vs- HOUSING FINANCE (K)	The plaintiff sort the following orders:- ▪ A permanent injunction to restrain the defendant from auctioning, transferring or dealing in any manner with the plaintiff's property

LTD **HCCC NO. 308 OF 2007- Delivered on 13th December 2012 by J.M. Mutava Judge**	▪ An order compelling the defendant to render accounts in respect of the plaintiff's mortgage. ▪ An order compelling the defendant to refund any money overpaid to it in the event the court finds an overpayment once accounts are rendered. ▪ Cost of the suit and interest. **Summary of the facts** The plaintiff charged his property to the defendant to secure a facility of Kshs. 1,900,000.00 advanced to him by the defendant, which was to be repaid by way of monthly installments of Kshs. 45.544.00 for a period of ten (10) years. Pursuant to the loan agreement, the plaintiff paid a sum of Kshs. 91,088.00 being the deposit, a sum of Kshs. 21,329.00 being legal fees and the first installment of Kshs. 45,544.00 since 1996 and has paid a total of Kshs. 4,497,400.00 which the defendant had not accounted for. The plaintiff further contention is that the sum of Kshs. 4,497,400.00 already paid to the defendant is over and above what is required under Section 39 of The Central Bank of Kenya Act. On 3rd July 2006, the bank raised a claim of Kshs. 3,507,557.90 and the bank threatened to sell the property if he did not pay the money. The plaintiff did not pay the money as he required to defendant to render accounts. Thereafter he filed suit against the defendant. He then contacted IRAC for recalculation of his mortgage account, of which a report was given showing that he, owed the defendant a sum of Kshs. 929,416.38. Mr. Wilfred Abincha Onono, the managing consultant of IRAC confirmed that his findings in the report were that as at 31st July 2006 the recalculated loan balance owed was Kshs. 929,416.38 compared to the defendant's recalculated figure of Kshs. 3,506,064.00 **Court's Ruling** By consent order recorded on 5th July 2007, Hon. Mr. Justice Michael Khamoni direct each party to engage an expert to re-calculate the plaintiff mortgage account, which order has never been stayed, set aside or appealed against. Pursuant to that order the plaintiff engaged IRAC. Through the consent order, the court reduced the scope of the dispute between the parties to the single question of determining the correct quantum of interest

	payable. The dispute between the parties as to interest of rate payable, variation of such rates and the contractual commitments in that regard, the effect of Legal Notice No. 1458/1990, issues of variation notification of variation of interest, issues of whether proper accounts were kept, issues of levying default charges and their justifications, issues raised under Section 44A and 52 of The Banking Act and all other issues relating to the mortgage account were addressed in the expert report. The court adopted the expert report by IRAC, which had not been sufficiently disputed by the defendant. Terms of judgment: - ▪ Judgment entered for the defendant against plaintiff in the sum of Kshs.929, 416.38 already deposited in court. ▪ The sum stated supra is released to the defendant. ▪ Judgment entered for the plaintiff in term of the first prayer. ▪ That the defendant forth with discharge and release the plaintiff's property.
HCCC No. 2198 of 2000 **Prof David Musyimi Ndetei - vs- Daima Bank Ltd** Judgment delivered on 11/10/2005 Before**: Lady Justice Mary Kasango**	The plaintiff went to court seeking among other prayers a declaration that the defendant bank was not entitled to make certain irregular debits on his account namely; excess fee, facility fee, arrangement fee etc. Interest Rates Advisory Centre (IRAC)'s expert testimony was that indeed the bank had levied extra charges which it could not prove had prior approval from Central Bank of Kenya. Mr. Gerald Nyaoma, an official from the CBK, testified that Charges not sanctioned by the Central Bank of Kenya are illegal. He stated that under Section 44 of The Banking Act, any licensed financial institution was required at the commencement of its business to inform CBK the rates it was adopting as its charges; once that notification is given, that institution was prevented by Section 44 from changing that rate without Central Bank's approval. The **Lady Justice Mary Kasango**, while finding for the plaintiff stated that the defendant herein failed to discharge the evidential burden of disproving that the charges were compliant to the requirements of Section 39

	of the Central Bank of Kenya Act Cap 491 when the restrictions were there and Section 44 of the Banking_Act which require Central Bank's prior approval to any increase in bank charges. The plaintiff got a judgment for a refund of Kshs.5.5 Million thereby setting precedent for aggrieved borrowers.
HCCC No. 298 of 2008 **Duncan Nderitu Wamae -vs-** **Housing Finance** **Ruling delivered on 09/07/2008** **Before: Kimaru J.**	The plaintiffs applied for an interlocutory injunction to restrain the defendant, its servants and/ or agents from selling, alienating, transferring or dealing whatsoever with the Plaintiffs property known as LR 209/8294/351 South C. The Plaintiffs initially borrowed Kshs. 3,363,760 in 1996 and after paying off Kshs. 8,657,177.45, Housing Finance later served them with a demand letter of Kshs. 2,788,179.20. Suspecting irregularities in the conduct of the account, they approached IRAC to have their accounts scrutinized after which they moved to court to challenge the balance demanded by the Bank submitting that they had already paid up to 2 1/2 times of the amount advanced and still a huge amount was being demanded. **Justice Kimaru** ruled that the Legal Charge document obligated HFCK to notify the plaintiff on any change in interest rates. From the documents annexed to the affidavit and more particularly the Interest Recalculation Report by IRAC, it was clear to the Court that over time, the defendant had varied interest applied to the plaintiff's account with no evidence showing notification by the defendant to the plaintiff. Referring to **Section 44A** of the **Banking Act (the *In-Duplum* Rule, effective 1st May 2007), the Court** ruled that even though the loan became Non- Performing after the coming into effect of the said amendment, the defendant failed to issue a notice setting out **when** the said loan became non- performing and should have also issued a further notice declaring the amount that was owed by the plaintiffs at the time it purported to exercise its statutory power of sale The court found that since prima facie (on the face of it) the defendant did not follow the requirements as to notices as per **Section 44A** of The **Banking Act**, the right to sell the suit property in exercise of its statutory power of sale had not accrued. Interlocutory injunction granted pending the hearing and determination of the suit. ***Consequently, it is now clear that before a Bank or Lender can exercise their statutory power of sale, they must first satisfy the Court that;***

	a) The borrower has received Notification of all interest rate changes/variations for each variation or change to the applicable interest rate made by the Bank/Lender ***b) The Bank/Lender must inform the borrower when their account last became Non-Performing for conformity with Section 44A of The Banking Act*** ***c) The Bank/Lender must inform the borrower what the respective amounts owing are on Principal Outstanding and Interest Outstanding*** **This is the first case to interpret the new requirements introduced by Section 44A of The Banking Act and their effect on existing Loans, Mortgages and Advances.**
HCCC NO. 563 OF 2006 **Paul Hudson Kamau -vs-** **Housing Finance (K) Ltd** **Ruling Delivered on 05/12/2008** **Before : Lessit J.**	The plaintiff obtained a loan of Kshs. 1 million in 1993 which was repayable in 12 years. DESPITE the client having consistently made monthly payments to the Bank, as at 30th June 2005, the Arrears outstanding amounted to Kshs. 2,464,148.80. Suspecting irregularities in the conduct of the account, he approached IRAC to have the account scrutinized after which he moved to court to challenge the sale of his property on the grounds that: ▪ The Defendant had unjustifiably purported to execute its power of sale over the Plaintiff's property. ▪ The Applicant was never served with the Mandatory ninety (90) days notice ▪ The Defendant had FLAGRANTLY breached Section 44 of *The Banking Act* with impunity and purported to enforce the contract despite the breach. It was also the Plaintiff's case that he was within the schedule of payment and claimed that the huge balance claimed had arisen from illegal interest charges imposed by the Defendant without sanction of Section 39(1) of *The Central Bank of Kenya Act* and in contravention OF Section 44 of *The Banking Act*. HFCK, on their part, contended that the Judge should not consider the report of IRAC as it was a nullity. In her ruling, Justice Lessit stated that: **That area which skill can be helpful to court** in determination of questions of fact and in this instance, the issue whether the Defendant imposed the correct interest rate on the Plaintiff's account. Invoking the provisions of Section 48 of *The Evidence Act* on expert witnesses, the Judge ruled that; 1. IRAC's Interest Recalculation Report was admissible in court and should be tested at trial.

	2. The burden to show compliance with Section 39 of *The Central Bank of Kenya Act* and Section 44 of *The Banking Act* lies with the Defendant. **HFCK did not make any attempt to explain whether it complied with these statutory provisions.** 3. The court found that there was *prima facie* evidence that the Defendant may have contravened statutory provisions and that it may not have calculated the interest properly which events may have led to an increase instead of a decrease in the plaintiff's loan balance. **Where damages can be an adequate remedy, an injunction should issue where the respondent is shown to be high handed or oppressive in its dealing with the Applicant which is the case in this matter.** An injunction was therefore granted on the above grounds and upon the Plaintiff depositing in court within 30 days Kshs. 166,739.54 which he admitted to be owing to the Defendant.
John Silas Lenana Puleiy -vs- HOUSING FINANCE (K) LTD **HCCC NO. 144 OF 2003- Delivered on 16th October 2009 by Joyce. N. Khaminwa Judge**	The plaintiff went to court seeking among other prayers a declaration that that the defendant overcharged and received more money than it was entitled to under the charge. Defendant charged interest contrary to the provisions of Section 44 Banking Act, Central Bank of Kenya Amended Act 2000 and auction of the property was irregular, unlawful, and wrongful and calculated to the chargers right of redemption and the plaintiff had suffered loss and damages all amounting to Kshs. 5,938,849/60. An expert and qualified accountant (Mr. Onono Managing Consultant IRAC) gave evidence and stated that the defendant had charged Kshs. 63,681/10 contrary to Section 44 of the Banking Act and concluded that the account had been overcharged by sum of Kshs. 3,726,377/77 as at 30/09/2002. The Lady Justice, **Joyce. N. Khaminwa** while finding for the plaintiff stated that the plaintiff had demonstrated that he was overcharged unlawfully and lost a sum amounting to Kshs. 5,938,494/60. The plaintiff got a judgment for a Kshs. 5,938,494/60 plus interest at court rates from the date which the suit was filed and the cost of the suit.

Walter and Grace Ominde -vs- EAST AFRICAN BUILING SOCIETY Judgment delivered on 22/09/2006 Before**: Osiemo J.**	**Summary of facts** The plaintiffs applied for a loan facility of Kshs. 750,000.00 with security of a Charge dated on 22nd May 1991. The Plaintiffs repaid the Bank over 2.5M, but the Defendant still claimed a balance of over 1 Million. The Plaintiff challenged this balance as constituting illegal interests and charges. **Osiemo J** entered judgment in favour of the plaintiffs as: • The Plaintiffs had fully paid and settled the charges due under the Legal Charge and ordered a discharge of security together with a refund for the sums paid (Kshs. 15,558.56) in excess. • A permanent injunction was also issued restraining the defendant from disposing or otherwise interfering with the plaintiffs' property. • The learned Judge found that failure by EABS to incorporate the alleged Society's rules in the charge document entitling it to charge fines on arrears was unlawful and amounted to non-disclosure. EABS cannot later purport to charge additional interest based on such non-contractual rules.
Francis Joseph Kamau Ichatha -vs- HOUSING FINANCE COMPANY OF KENYA LIMITED **HCCC No.414 of 2004- Judgment delivered on 4th August 2014 by G.V. ODUNGA Judge.**	**Summary of facts** The defendant was applied for a mortgage facility of Kshs. 1,300,000.00 in 1991 and a further 300,000.00 in 1992 from the defendant. The property known as L.R. No. 13689 situated in Langata, Karen, Nairobi (the suit property) was offered as security for the loan. The plaintiff was to pay a monthly installment of Kshs. 26,273.00 at the rate of 18% p.a. for a period of 15 years. It was a term of the contract that the said rate would only be varied with the concurrence and prior written approval of both parties and in any event not without at least 4months notice. The defendant however went in breach of the said terms and varied interest to 26% p.a. making it impossible for the plaintiff to service his loan. The defendant negligently and fraudulently managed the plaintiff's account by debiting illegal, non- contractual and unconscionable charges thereby clogging the plaintiff's equity of redemption. Apart from that the defendant employed the use of faulty banking computer software system which led to errors in calculation of interest.

	In June and July 2005 the defendant exercised its statutory power of sale and sold the suit property. The plaintiff approached IRAC in 2003 and later in on July 2006 to do a recalculation on his accounts and it was realized that the defendant was owed no money by the plaintiff. The plaintiff accused the defendant of mishandling his account for over 21years. **Court's Ruling** • That the defendant was not entitled to penalty interest, interest on arrears or default charges as they were not provided for in the charge document • Variation of interest was unlawful as the contractual notice of 4 months was not given to the plaintiff • That the defendant's calculations where not free from error. The defendant could not explain how he arrived at his figures • The issue as to whether the defendant was in breach of provisions of the banking Act were not perused sufficiently and have not been proved to the required standard. Terms of Judgment • Taking into account the court's findings with respect to un contractual charges, variation of interest rates and errors in calculation it was ordered that accounts be taken by both parties. • The court directed the parties to appoint accountants and an umpire and file their report in 45 days from the date of the appointment. **Judge's general observation (dicta)** In the words of the judge "Can it therefore be said that a practice in which the Banks unilaterally decide to load the customer's account with penalties at their own discretion whose rates are only known to the Bank is such a certain practice that it can be said to amount to trade usage? In my view that would amount to stretching the word "certain" too far. For one to say that the penalty is certain not only ought there be certainty as to the levy of the interest but since the rate is not contained in any contractual document, the rate also must be certain and must be known in the market otherwise such levying of interest would violate the provisions of **Article 46(1) (b) of the Constitution**. To argue otherwise would in my view open an avenue in which the right of redemption may easily be clogged or fettered…."

	"In my view a party ought not to mutate the terms of a contract unilaterally to the detriment of the other party to the contract. This in my view is what the people of this Republic realized when they enacted unto themselves Article 46(1)(b) and (c) of the Constitution which provides for the rights to the information necessary for consumers of goods and services to gain full benefit from goods and services and to the protection of their health, safety, and economic interests…."
James Mungai Magari Vs HOUSING FINANCE COMPANY OF KENYA LIMITED **HCCC 376 of 2007 Judgment delivered on 8th March 2013 by A.Mabeya Judge**	**Summary of facts** The plaintiff and his deceased wife, Rahab Muthoni Mungai, obtained a loan facility from the defendant for the principal sum of Kshs. 2,225,000.00 secured by a charge dated 6th October 1998 over Title No. Ndumberi/Riabai/689/6. The plaintiff claims from the defendant a refund of Kshs. 1,827,140.29 being excess interest charged on his mortgage account held with Housing Finance Company. According to the plaintiff he commenced repayment of the loan facility on 12th October 1998. Without issuing notice and contrary to what was agreed to by the parties, the defendant levied interest on arrears at rates higher than what was agreed in contravention of express terms of the charge instrument. The defendant also lumped insurance charges which could not be explained or accounted for. For this reason, the plaintiff sort opinion from IRAC who advised him that Kshs. 1,827,140.29 should not have been paid as charges and were illegal and arbitrary. **Court's decision** 1. In clause 5 variation of interest had to be accompanied by a notice that had to be served on the borrower not less a month before it took effect. • The defendant produced letters in court to show interest variation which the plaintiff denied ever receiving. The issue was those letters served on the plaintiff? How was service affected? The judge's opinion was that service cannot be implied it has to be proved. • According to the letters it was evident the variation took effect at an earlier date than the required 1 month. By giving a shorter notice of application of interest, the lender clogs a borrower's equity of redemption by distorting the amount due.

	2. Did the defendant arbitrarily levy penalty interest charges, interest on arrears and interest rates higher than what was agreed by the parties? The contract between the parties is contained in the charge document which did not contain any charge or term called default interest or interest in arrears. Once parties have reduced into writing the terms of their contract, none should be allowed to operate outside the same. 3. Was IRAC competent to express on matters of interest rates? The report by IRAC was plausible. The court found in favour of the plaintiff.
HCCC No. 10 of 2010 Scholastica Nyaguthii Muturi Vs Housing Finance Co. & Evanson Kamau Waitiki judgment delivered by E.K.OGOLA JUDGE on the 17th FEBRUARY 2017	**Summary of facts** The plaintiff took a loan with the 1st defendant in January 1998 worth Kshs. 3,000,000.00. The security for the loan was L.R. 14668-Muthithi Gardens, Kiambu Municipality and L.R. No. 14667. She had 15years to pay back the loan at an interest of 26% p.a. and monthly instalments of Kshs. 66,398.00. The defendant then varied interest rates unlawfully resulting in her being overcharged and her loan balance being inflated. This she realized after paying Kshs. 3,973,306. The defendant alleged she was in arrears the repayments of her loan resulting in her selling one of her properties at Kshs. 3,500,000.00. At the time of filing this suit the plaintiff alleges to have paid a total of Kshs. 8,373,306.00 which was composed of illegal charges, levies and interests. This was confirmed after the plaintiff sort the services of IRAC whose report revealed that the plaintiff was indebted to the 1st Defendant to the tune of Kshs. 3,585,092.61 as at 1st August 2008. IRAC's recalculations were backed by statute to show the misrepresentations the bank had made towards the handling of the plaintiff's account. IRAC's recalculations were guided by statute: i) Section 39(1) of the Central Bank of Kenya (Amendment) Act 2000- the 1st defendant violated the sections as regards the interest rates charged upon her account. During this period the rates were capped and should not have been varied. The maximum rate of interest applicable was Treasury Bill rate plus 4%. ii) Section 44A – the In Duplum rule- the banks were barred from charging interest on non-performing loans at double the principle amount.

iii) Section 44 of the banking Act- the 1st defendant had varied interest rates and other charges related to the plaintiff's account without proper permission thus contributing to her account being inflated and resulting in a wrongful sale of the suit property. Since is emerged that she had fully paid her debt.

Court's decision:
The court found that the plaintiff had proven its case on a balance of probability and gave orders as follows:

a) That the plaintiff had completed paying the loan advanced to her by the 1st defendant.

b) That the defendant was to refund to her the entire purchase price of Kshs. 16,000,000.00 paid for the suit property to the plaintiff with interest thereon at 26% p.a. with effect from the date of auction in 2011 to the date of the judgment. The sum due was to attract interest at court rates from the date of this judgment until the decree is fully settled.

Judge's observation:

"The issue to determine is therefore this, at the time S. 44A of the Banking Act came into force on 1st May 2007, the loan herein was already non-performing. **Under the said section the bank was obligated to give notice to the plaintiff of this fact of non-performance, and calculate the sums due to the bank pursuant to that Section.** The bank did not do this. In fact, the bank could not do this because the bank had kept no records of account all along as this court has already found out in this Judgment. **Here was a bank running away from the core obligation of keeping valid records. From the documents provided by the bank it cannot be determined how much was owed to the bank by the plaintiff on 1st May 2007** when Section 44 A of the Banking Act came into force. But even if some records could be concocted by the 1st defendant bank, those records would still amount to guesswork because the bank has to date never explained why they wrote off a huge amount of over Kshs, 2,500,000 when the plaintiff had not asked for such waiver. **The manner in which the plaintiff's account was run by the bank invites no confidence to this court that the 1st defendant bank can provide a believable accounts record the basis of calculating the amounts which may be due to the 1st defendant bank pursuant to the said Section 44A of the Banking Act.** The benefit of the confusion arising from the way the bank kept the account records can only accrue to the plaintiff herein. Even so, such benefit is not given without justification. Here is the justification:

	The plaintiff borrowed Shs. 3,000,000= from the 1st defendant bank. By the time the plaintiff's suit property was sold in 2011, the plaintiff had repaid a total of Shs. 8.4 million. From the said sale of the plaintiff's property the bank took Shs. 9.6 million and has been keeping the balance of Shs. 6.3 million for the plaintiff who has rejected the same. By the time Section 44A came into force the plaintiff had evidently paid more than 3 times the original loan amount. So, even if the 1st defendant bank has not kept proper records of account to enable this court to determine how much, if any, they were owed on 1st May 2007, it is clear to this court that the plaintiff had more than repaid what was due to the 1st defendant bank….."
Out of Court Settlements	
Refund of Kshs. 4 Million Overcharge	A household name in Kenya's hospitality and restaurant industry requested IRAC to scrutinize and recalculate interest on their Overdraft account with the biggest international bank in Kenya. The IRAC Process was conducted over a sample period of only 3 years. On recalculation, IRAC found and presented three (3) scenarios; a. Over Kshs 12 million if Section 39 of *The Central Bank of Kenya Act* and Section 44 of *The Banking Act* were applied b. Over Kshs 7 million, if only Section 44 of *The Banking Act* was applied c. Kshs 3.5 Million if only a reconciliation of the Banking Facility Contracts and the overdraft account was done. To avoid litigation, the Client and the bank settled on the lowest figure, PLUS all the client's costs incurred through the IRAC process payable immediately.
	The Plaintiff, a Limited Liability Company, had obtained facilities from the Bank amounting to an aggregate sum

Client -vs- KENYA COMMERCIAL BANK	of Kshs. 45M. Due to irregularities in the Bank's conduct of the accounts, the Plaintiff approached IRAC for a recalculation of its accounts on the basis of Section 44 of The Banking Act**,** Cap 488, and Section 39 of The Central Bank of Kenya Act Cap 491 of The Laws of Kenya. IRAC's Interest Recalculation revealed that the outstanding **debit** balance demanded by KCB as at 31st October 2000 of **Kshs. 275,815,909.10DR** should actually have been a **credit** on that date of **Kshs. 32,700,117.04CR**. In other words, the bank had **overcharged** the Client by **Kshs. 308,516,026.14**. After protracted litigation, and with IRAC's Expert Evidence Support, an out of court settlement was reached where the Bank conceded to the overcharge and wrote off the whole debt of Kshs. 275,815,909.10DR
Client -vs- KENYA COMMERCIAL BANK	The bank demanded **Kshs. 103,190,217.35DR** from the borrower. IRAC's verification of the accounts revealed that the correct balance should be **Kshs. 32,754,786.37DR**, revealing an overcharge of **Kshs. 70,435,430.98**. Several negotiations later, the bank agreed to settle at **Kshs. 16 million**
Refund of Kshs. 5,268,392.77 overcharge	Another client approached IRAC as she suspected a problem with her mortgage account. The mortgage house gave a FULL refund of **Kshs. 5,268,392.77** due to overcharging of interest on the mortgage account.