



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 443 of 2008**

**JOHN BUNDI MAGIRI .....PLAINTIFF**

**VERSUS**

**CO-OPERATIVE BANK OF KENYA LTD.....1<sup>ST</sup> DEFENDANT**

**ISABEL WARUGURU MWANGI.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

Notice of Motion dated 19/6/2008 seeks order made by this court on 6/5/09 dismissing the 2<sup>nd</sup> defendant's application filed and dated on 29/10/2008 be set aside. That application was filed by Isabel Waruguru Mwangi seeking orders to evict the plaintiff from the property Nairobi/Block 82/2190 situate on Tena Estate, Nairobi. The order for costs was sought. The outcome of that application was the Ruling attached dated 6/5/2009.

On page 2 of that Ruling this court stated:-

***“On 30/7/2008 an injunction was issued by High Court restraining the 2<sup>nd</sup> defendant from interfering with the plaintiff's quiet occupying of the plaintiff's property until 5/8/2008. The orders were extended from time to time the 2<sup>nd</sup> defendant has filed a defence and a counter-claim for order for possession against the plaintiff and mesne profits at the rate of Kshs.12,000/= per month until possession is granted.”***

I have perused the record and I said:-

***“I see there are several issues to be tried between the parties. The suit is to be tried together not by installment and it is my view that the parties ought to set the suit down for hearing.”***

The second defendant's statement of defence was not filed until 2<sup>nd</sup> February 2009 and the ruling was on 6/5/2009. Earlier on 25/11/2008 this court had delivered another ruling on an application dated 29/11/2008 by the plaintiff in that case. I dismissed that application saying:-

***“I have examined the 2<sup>nd</sup> defendant's affidavit and statement of defence and it is clear that she purchased the property in an auction and there is no evidence on her part such as would warrant her sale being cancelled. I do not see any reason to keep her from her property. She is the registered owner.”***

That was on 25/11/2008. The court is now being asked by the purchaser, 2<sup>nd</sup> defendant to set aside the dismissal of her application dated 29/10/2008 and grant orders as prayed in that application. It is clear this court overlooked the first order which was really in favour of second defendant. The 2<sup>nd</sup> defendant was supported by first defendant.

In the circumstances, the order for review is granted. The ruling and orders made by this court dated 6/5/2009 are hereby set aside. The second defendant's application filed on 29/10/2009 is hereby allowed and orders granted as prayed except that the plaintiff shall have 60 days within which to vacate on the prayer for mesne profits at Kshs.12,000/= p.m., this was not proved and is not granted.

Costs of this application shall be in the cause.

It is so ordered.

**DATED, SIGNED and DELIVERED** at Nairobi this 23<sup>rd</sup> day of October 2009.

**JOYCE N. KHAMINWA**

**JUDGE**