



**Nduati v Republic (Criminal Appeal E003 of 2022)  
[2025] KEHC 4878 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4878 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL APPEAL E003 OF 2022  
EM MURIITHI, J  
APRIL 24, 2025**

**BETWEEN**

**JOHN KING'ORA NDUATI ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 5/9/2024 the applicant/Interested Party surety seek specific orders for the discharge of security presented to court for pursuant to bail pending appeal herein granted by the Court as follows:
  - “ 1. That this Application be certified urgent and service thereof be dispensed with at first instance.
  2. That this Honourable Court be pleased to is rue an order to the effect that the restriction placed against Title Number Ruiru/Kiu Block 2/24207 on the 24th March 2022 in Chief Magistrates Court Kerugoya Appeal Case No. E003/22 be lifted and all related documents be updated accordingly.
  3. That costs of this application be provided for.”
2. The grounds of the application are set out as follows:
  - “ 1. The Applicant herein, being the owner of property Title Number Ruiru/Kiu Block 2/24207 presented the same to stand as security for the accused herein in Chief Magistrate Court Kerugoya Appeal Case No. EOO3/22.



2. The aforementioned property was subjected to a verification process and thereafter a restriction was registered against the title by the Ruiru District Land Registrar.
  3. However, later on, another property was submitted and accepted by the court to stand as security in the aforesaid case.
  4. To effect the foregoing position, the Honourable Deputy Registrar wrote a letter to the Divisional CID Officer, Ruiru Division declaring that the property Title Number Ruiru/Kiu Block 2/24207 be therefore released to the Applicant herein as it was no longer a security for the Accused.
  5. The Divisional CID Officer, Ruiru has however, hitherto, refused to discharge the said property citing lack and/or absence of a court order bearing the court's seal, and/or the signature of the Honourable Judge thereon.
  6. Consequently, it is just, fair and reasonable that the Court issues an order directing the Divisional CID Officer, Ruiru to lift the restriction placed on the Applicant's property and subsequently discharging the property by Ruiru Lands Office.
  7. The Respondents will not suffer any prejudice whatsoever as a consequence of the release of the security document since the same has been replaced.”
3. In response, Mr. Mamba Counsel for the DPP in a Replying Affidavit sworn on 24/2/2025 supports the application urging that a different security was provided for surety as follows:

“replying Affidavit.

I, Mamba Vincent of P.O. Box 1224-10300, Kerugoya in the Republic of Kenya do hereby make oath and state as follows: -

1. That I am the Prosecution Counsel in the office of the Director of Public Prosecution and one of the counsels who has conduct of this matter hence competent to swear this affidavit.
2. That I have read the application by the applicant dated 5th September 2024.
3. That the applicant being the owner of all that parcel of Land known as Ruiru/Kiu Block 2/2407 presented the same as surety for an accused in Kerugoya Chief Magistrate's Court No E003 of 2022.
4. That the same was verified and a restriction was registered.
5. That on 29th March 2023, a different title was used as security and as such, all that parcel of Land known as Ruiru/Kiu Block 2/2407 needed to be discharged and returned to the Applicant with no encumbrance.
6. That after the said discharge, the Deputy Registrar [Kerugoya] wrote to the Director of criminal investigation [Ruiru] informing them of the discharge but the said office has refused to discharge the property citing lack and/or absence of a Court Order to that effect.



7. That the Orders dated 4th October 2024 are part of the Court records. [see the two Court Orders attached and Marked JKN -1]”
4. The Court does not see any reason for any objection to the making of the orders sought there being already in place a substitute security approved by the Court and there being no objection to the DPP who has the constitutional prosecutorial mandate under Article 157 of *the Constitution*.

#### **Orders**

5. Accordingly, for the reasons set out above, the Court grants the application dated 5/9/2024 as prayed.
6. There shall be no orders as to costs.
7. File closed pending determination of the appeal in the Court of Appeal.

Order accordingly.

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Mamba for the DPP.

M/s Muiruri & Wachira, Advocates for the Interested Party.

