



**Nyaribo v Nyabomite Farmers Co-op Soc. Ltd (Civil Appeal  
E1208 of 2024) [2025] KEHC 6055 (KLR) (Civ) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6055 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1208 OF 2024**

**AC MRIMA, J**

**MAY 15, 2025**

**BETWEEN**

**DAVID NYARIBO ..... APPLICANT**

**AND**

**NYABOMITE FARMERS CO-OP SOC. LTD ..... RESPONDENT**

**RULING**

1. Before this Court for determination is an application by way of a Notice of Motion dated 20<sup>th</sup> January 2025 where the Applicant moved this Court seeking the following orders: -
  - a. .... spent
  - b. ....spent
  - c. That this court be pleased to review and vacate the Orders of Hon. Lady Justice Ouya Tabitha Wanyama on 9<sup>th</sup> December, 2024 directing the applicant to deposit Kshs. 1,000,000/- in court.
  - d. That this court be pleased to allow the applicant to deposit into Court, Title to his land known as Title No. Kisii/West Mugirango/Nyamaya/220 valued at Kshs. 4,500,000/- by Senior Government Valuer, Kisii County as security instead of the Kshs. 1,000,000/-
  - e. That costs be in the cause.
2. The Applicant posited that that depositing the sum of Kshs 1,000,000/= in Court within 30 days as directed has been impossible and as such he instead offered a Title deed to his land as security for the decree. The application was supported by an affidavit and written submissions.
3. The application was opposed through a Replying Affidavit sworn by one Tom Magutu Getange, the Respondent's Counsel and written submissions. It was argued that since the High Court in Nyamira



in High Court Civil Appeal No. 13 of 2020 delivered its judgment on the appeal, then there can be no other appeal over the issues before Court and that the application be dismissed with costs.

4. This Court recalls dealing with a similar matter in Nairobi [Milimani] High Court Civil Appeal No. E1178 of 2024 Josiah Oyaro -versus- Nyabomite Farmers Co-operative Society Limited wherein it delivered a ruling on 19<sup>th</sup> day of February 2025. In that matter, Mr. Getange, Learned Counsel appeared for the Respondent herein, Nyabomite Farmers Co-operative Society Limited, and Mr. Mbuthia, Learned Counsel, appeared for the Appellant. After a consideration of a Notice of Preliminary Objection dated 13<sup>th</sup> November, 2024 which raised similar issues as those raised by the Respondent in this application, the Court found that the then Applicant was within his right to challenge the execution process even after the dismissal of the main appeal since execution must also ipso facto comply with the law. Since this Court has not changed its position on the issues raised by the Respondent, it will deal with the application on its merit.
5. Section 94 of the *Civil Procedure Act*, Cap. 21 of the Laws of Kenya provides that a Court may, in appropriate circumstances, order the payment of a decretal sum or impose conditions for the execution of a judgment, including the deposit of money or property as security. The instant application, therefore, is embedded on a provision of the law. Order 21 Rule 12 of the Civil Procedure Rules, 2010 also allows a Court the discretion to determine the manner in which a security is to be provided to satisfy a decree, including the option of securing the decree with property, as an alternative to a monetary deposit. Further, Section 3A of the *Civil Procedure Act* grants a Court inherent powers to make such orders as are necessary to meet the ends of justice or to prevent the abuse of the Court's process. This includes granting alternative forms of security where the circumstances of the case warrant such a decision.
6. In *Mrao Limited v. First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, the Court of Appeal held that a Court has discretion in determining the form and sufficiency of security required to protect the interests of the parties. It re-affirmed the purpose of security as to safeguard the interests of the party entitled to the benefit of the judgment, and it must be considered whether the proposed security is adequate and practical in the circumstances.
7. In this case, the Applicant seeks to vary the earlier order by my sister Hon. Lady Justice Ouya that required the deposit of Kshs. 1,000,000/= as security by instead offering a Title deed to his land. The Applicant pleads that depositing the Title deed to his land, which is of equivalent value to the sum required, would be a more practical and feasible alternative. According to the record, the Applicant's land proposed to be the security was valued at Kshs. 4,500,000/- by the Senior Government Valuer, Kisii County. There is also no evidence to suggest that the property is encumbered or otherwise unavailable to satisfy the decree. Based on the information provided, it appears that the Title deed to the land is a valuable asset that can serve as sufficient security for the purposes of this case, if the application succeeds.
8. In *Kenya Commercial Bank v. Muthiora & Another*, the Court affirmed that title deeds to immovable property can be an acceptable form of security, particularly when the value of the property is commensurate with the amount in dispute. In the present case, the value of the land offered as security appears to be more than adequate to cover the decree.
9. On a careful consideration of the application, this Court finds that the Applicant is desirous of complying with the Court order and to that end, he only seeks to substitute the security.
10. In the interests of justice and having regard to the circumstances of the case, this Court finds the application as merited and makes the following final orders: -



- (a) The Order made on 21<sup>st</sup> November 2024 requiring the Applicant/Appellant to deposit the sum of Kshs. 1,000,000/= as security is hereby varied to the extent that the Applicant will instead offer security through Title No. Kisii/West Mugirango/Nyamaya/220 pending the determination of this appeal.
- (b) The Land Registrar in Kisii County shall upon service of this order place a restriction over Kisii/West Mugirango/Nyamaya/220 and the Applicant shall within 45 days of this ruling create a Legal Charge in favour of the Respondent over the said Kisii/West Mugirango/Nyamaya/220.
- (c) In the event, the Applicant fails to create the Legal charge as ordered in [b] above, the stay orders in place shall stand discharged and the Respondent shall be at liberty to levy execution.
- (d) This appeal is hereby transferred to the High Court of Kenya at Nyamira since the substantive appeal being Civil Appeal No. 13 of 2020 was determined by that Court.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**A. C. MRIMA**

**JUDGE**

Ruling No. 1 virtually delivered in the presence of:

Mr. Mbuthia, Learned Counsel for the Appellant.

Mr. Getange, Learned Counsel for the Respondent.

Maurice/Amina – Court Assistants.

