



REPUBLIC OF KENYA



**Musyoka v Mwangangi & another (Petition 05 of 2019)  
[2025] KEHC 12639 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12639 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
PETITION 05 OF 2019  
F GIKONYO, J  
JULY 24, 2025**

**BETWEEN**

**FAITH SUSAN MUSYOKA ..... PETITIONER**

**AND**

**JOHNSON MUNYWOKI MWANGANGI ..... 1<sup>ST</sup> RESPONDENT**

**BANK OF AFRICA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 2<sup>nd</sup> respondent filed the notice of motion dated 1<sup>st</sup> April 2025 seeking an order directing the Land Registrar, Nairobi Registry, to remove the caution registered on property known as Nairobi/Block 160/1/24 (the suit property).
2. The application is made under section 73(1) of the *Land Registration Act*. It is supported by the affidavit sworn by the 2<sup>nd</sup> respondent's senior recoveries officer, Victor Keitany, on 1<sup>st</sup> April 2025.

**Background**

3. In brief, the background to the application is that the 1<sup>st</sup> respondent is the registered owner of the suit property. He offered the suit property as security for a loan facility advanced by the 2<sup>nd</sup> respondent. On 9<sup>th</sup> September 2010, a charge was registered over the suit property to secure repayment of Kshs. 5,455,000/-.
4. The 1<sup>st</sup> respondent defaulted in repayment of the loan, prompting the 2<sup>nd</sup> respondent to commence the process of exercising its statutory power of sale.
5. The petitioner caused a caution to be registered on the suit property on 31<sup>st</sup> January 2018.



6. The petitioner also filed the instant petition, seeking, among others, a permanent injunction to stop the 2<sup>nd</sup> respondent from selling the property.
7. On 17<sup>th</sup> January, 2020, the court dismissed the petition for lack of merit, with no orders as to costs.
8. The petitioner filed Civil Application No. E021 of 2020, FSM v JMM and Bank of Africa Limited in the Court of Appeal seeking injunctive orders. The application was dismissed through a ruling delivered on 29<sup>th</sup> January 2021.
9. Thereafter, the 2<sup>nd</sup> respondent sold the suit property to Dancan Anthony Okello Ndeda on 15<sup>th</sup> May 2022. It was then applied to the Land Registrar to remove the caution. However, its application was rejected due to lack of a court order, prompting the instant application.

### **Grounds**

10. The application is premised on the following grounds:-
  1. The registration of the transfer will not be possible unless the court issues the order sought.
  2. The 2<sup>nd</sup> respondent stands to be greatly prejudiced as it will not be able to recover the entire outstanding loan amount.
  3. The 2<sup>nd</sup> respondent will be at risk of being sued by the purchaser.

### **Mention for Directions**

11. On 12<sup>th</sup> May 2025, Mr. Sikuku, for the 2<sup>nd</sup> respondent, stated that the application was served. There was no appearance for the petitioner.
12. As I was preparing the ruling, I did not sight an affidavit of service in respect of the application either in the physical file or on the Judiciary's Case Tracking System (CTS). There was only an affidavit of service in respect of the ruling notice dated 16<sup>th</sup> May 2025.
13. The court cannot confirm that the petitioner was served and given an opportunity to respond.
14. The failure to serve the application offends the principle of fairness and the rules of natural justice, which require that a person should not be condemned unheard.

### **Directions**

15. In the interests of justice, I direct the 2<sup>nd</sup> respondent to serve the application upon the petitioner and thereafter to take out a mention for directions and confirmation of service.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 24<sup>TH</sup> DAY OF JULY, 2025**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

Sikuku for Appellant

No appearance for respondent



