



**Family Bank Limited v Odongo & 2 others; Letshego Kenya Limited
(Interested Party) (Environment and Land Miscellaneous Application
E010 of 2024) [2025] KEELC 3761 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3761 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E010 OF 2024
BN OLAO, J
MAY 13, 2025**

BETWEEN

FAMILY BANK LIMITED APPLICANT

AND

NEWTON ROLF ODONGO 1ST RESPONDENT

ALBERT NDONGA ODERA 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

AND

LETSHEGO KENYA LIMITED INTERESTED PARTY

RULING

1. Family Bank (the Applicant herein) have approached this Court vide their Originating Summons dated 12th November 2024 in which the following orders are sought:
 1. Spent.
 2. That this Honourable Court may be pleased to issue an order directing the 3rd Respondent to rectify the register in relation to L.R NO Bukhayo/Bugengi/2508 by cancelling the encumbrance registered as entry number 3 in favour of the Applicant.
 3. That this Honourable Court may be pleased to issue an order directing the 3rd Respondent to rectify the register in relation to L.R NO Bukhayo/Bugengi/2508 by deleting the encumbrance registered as entry number 2 in favour of the Applicant.



4. That this Honourable Court may be pleased to issue an order directing the 3rd Respondent to rectify the register in relation to L.R NO Bukhayo/Bugengi/2508 by reinstating the encumbrance registered as entry number 1 in favour of the Interested Party.
 5. That costs of this application be awarded to the Applicant.
 6. Any other order that this Honourable Court may deem fit to grant.
2. The application is premised on Section 80 of the *Land Registration Act*, Section 3A of the *Civil Procedure Act* as well as Order 37 Rule 4 of the Civil Procedure Rules 2010. It is also anchored on the grounds set out therein and supported by the affidavit of George Ochieng Afuodi the Applicant's Busia Branch Manager.
 3. Newton Rolf Odongo, Albert Ndonga Odera And The Chief Land Registrar have impleaded as the 1st, 2nd and 3rd Respondents respectively while Letshego Kenya Ltd have been impleaded as an Interested Party.
 4. The gist of the application is that on or about 30th January 2024, the 1st and 2nd Respondents trading as Cathdera Textile Enterprises opened an account number XXXXXXXXXXXXX with the Applicant's Busia Branch and requested for a loan facility of Kshs.2,000,000.00 as working capital. A loan facility of Kshs.1,500,000.00 was approved by the Applicant and secured on the title deed for the land parcel L.R NO Bukhayo/Bugengi/2508 (the suit property). The Applicant subsequently registered a legal charge over the suit property in it's favour but on 12th September 2024, it discovered that a fraudulent loan had been offered to the 1st and 2nd Respondents and yet there was a previous non-performing loan of Kshs.1,000,000.00 whose loan balance was Kshs.560,351.95 with arrears of Kshs.113,049.00. It was further reported that the 1st and 2nd Respondents had a 67% chance of defaulting on the repayment of the loan. The 1st and 2nd Respondents are guilty of material non-disclosure in breach of their letter of offer by, inter lia, concealing critical information and acting in bad faith. In light of the foregoing, the Applicant notified the Interested Party of these developments. The Interested Party granted the Applicant a 30 day period from 29th September 2024 to secure a discharge of the suit property and return the securities in the same condition as stipulated in the professional undertaking dated 25th July 2024. A discharge of charge was prepared but the 1st Respondent declined to execute it and has remained unresponsive to any request thereof hence this application. It is in the interest of justice and fairness that this application be allowed as prayed.
 5. The following documents are annexed to the application:
 1. Acceptance of the application by the 1st and 2nd Respondents for a Banking facility of Kshs.2,000,000.00.
 2. Acceptance of the application by the 1st and 2nd Respondents for a Banking facility of Kshs.1,500,000.00.
 3. Letter dated 25th July 2024 addressed to the Interested Party by the Applicant.
 4. Discharge of charge.
 5. Legal charge over title L.R NO Bukhayo/Bugengi/2508.
 6. Credit Reference Bureau Report in respect to the 1st and 2nd Respondents.



6. When the application was placed before me on 19th November 2024, I directed that it be canvassed by way of written submissions and be served upon the Respondents and the Interested Party who would have 21 days from the date of service to file and serve their responses and submissions.
7. However, although served with the application and submissions by the Applicant, neither the Respondents nor the Interested Party filed any responses or submissions. Instead, when the matter was mentioned on 11th February 2025, Mr Macharia counsel for the Applicant informed the Court that he had not been served with any response nor submissions by the Respondents. Mr Oyando counsel for the Interested Party informed the Court that he would not be opposing the application. Submissions had however been filed by Mr Macharia instructed by the firm of Mukele Moni & Company Advocates for the Applicant. This application is therefore not opposed.
8. I have considered the application un-opposed as it is. There is no doubt that this Court has the requisite jurisdiction to grant the orders sought by the Applicant. Section 80 (1) of the *Land Registration Act* provides that:

A80(1):“Subject to subsection (2), the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

It is not in dispute that the 1st and 2nd Respondents had knowingly misrepresented their financial status to the Applicant while seeking the loan facility. The 1st and 2nd Respondents had a non-performing loan of Kshs.1,000,000.00 with a balance of Kshs.560,351.95 in arrears and had a 67% chance of defaulting yet they misrepresented their financial status leading the Applicant to approve the loan which would not otherwise have been approved had the Applicant been made aware of the 1st and 2nd Respondents’ true financial position. The Applicant having withdrawn it’s commitment by withholding the disbursement of the loan amount, the 1st and 2nd Respondents have refused to sign the discharge forms upon request. That refusal is a manifestation by the 1st and 2nd Respondents to unjustly obtain funds from the Applicant yet there is a clear likelihood of default as confirmed by the Credit Reference Bureau. This not only exposes the Applicant to financial risk but also amounts to a violation of the law vide Section 11(1)(h) of the *Banking Act* which provides, inter alia, that business shall not be conducted in a “fraudulent or reckless manner.” It will also amount to the 1st and 2nd Respondents benefiting from their fraud. This application must therefore be allowed.

9. The up-shot of all the above is that having considered the Originating Summons dated 12th November 2024, I issue the following disposal orders:
 1. An order is hereby issued directing the 3rd Respondent to rectify the register to the land parcel NO Bukhayo/Bugengi/2508 by cancelling the encumbrance registered as entry number 3 in favour of the Applicant.
 2. An order is hereby issued directing the 3rd Respondent to rectify the register to land parcel NO Bukhayo/Bugengi/2508 by cancelling the encumbrance registered as entry number 2 in favour of the Applicant.
 3. An order is hereby issued directing the 3rd Respondent to rectify the register to land parcel NO Bukhayo/Bugengi/2508 by reinstating the encumbrance registered as entry number 1 in favour of the Interested Party.
 4. No order as to costs.



**RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 13TH
DAY OF MAY 2025 WITH NOTICE TO THE PARTIES.**

BOAZ N. OLAO

JUDGE

13TH MAY 2025

