



## **Kenya Commercial Bank v Nyahururu Blocks & Iron Mongers**

High Court, at Nairobi April 15, 1985

Masime J

Civil Case No 376 of 1978

April 15, 1985, Masime J delivered the following Ruling.

On October 2, 1984 the decree-holders advocates by letter to the deputy registrar requested that this case be mentioned to consider the position of the execution ordered. A mentions date was taken for November 11, 1984. In the meantime on November 19, 1984 the really outstanding judgment debtor C S Mwangi Simba wrote to the court complaining that as a result of the execution orders made and payments emanating from various ends there was an excess payment of Kshs 54,535.55 not accounted for and which ought to be refunded to him; Mr Simba annexed to his letter certain vouchers the effect of which are that the counsel for the decree holder is holding some Kshs 54,535.35 which he has not accounted to the decreeholder and alleges that he considers the debt cleared and he should be declared relieved of it; he also claims the costs of the mentions to deal with the matter.

Mr Mahinda in reply indicated that LR 6585/482 was sold for Kshs 35,000 out of the proceeds of sale some Kshs 7,004 was paid as land rent and Kshs 18, 085.95 was claimed by Nyahururu Municipal Council in respect of arrears of Land rent and interest; the Council may waive the interest if the full Council approves the decision of the appropriate Committee further a sum of Kshs 5,689.60 went to costs of trying to sell the security before the case was filled while the salary attachment totaling some Kshs 13,488.50 went towards the costs of the suit.

I have considered the information furnished by both parties. The main dispute relates to the costs of transferring LR 65/482 and the encumbrances thereon – I regret that I do not have sufficient information about that transaction to enable me determine whose responsibility the charges for the transfer was. In the result I am unable to say whether the decretal amount has or has not been paid up in view of the conflicting statements of the parties.