



REPUBLIC OF KENYA



Mama Watoto Supermarket v NCBA Ltd & another (Civil Application E141 of 2025) [2025] KECA 1802 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KECA 1802 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E141 OF 2025
MSA MAKHANDIA, JA
OCTOBER 30, 2025**

BETWEEN

MAMA WATOTO SUPERMARKET APPLICANT

AND

NCBA LTD 1ST RESPONDENT

LIDYA N. WAWERU T/A PURPLE ROYAL AUCTIONEERS 2ND RESPONDENT

(Being an application from the Ruling and order of the High Court of Kenya at Kakamega, (Mbungi, J.) dated 3rd October, 2025 in HCCC No. E009 of 2025)

RULING

1. Mama Watoto Supermarket, “the applicant”, through Messrs. Marisio Luchivya & Company, Advocates filed the instant application under Rule 5(2) (b) of the court of appeal rules, seeking various injunctive orders. The application was made under certificate of urgency and as required by the rules of this Court, it was placed before me as the duty judge then, for consideration. Having carefully perused and considered the application, I was not satisfied that it was. Consequently, I declined to certify it as such.
2. My aforesaid decision was communicated to the applicant by the Deputy Registrar of this Court via email dated 17th October 2025. Invoking Rule 49 (5) of the court of appeal rules, the applicant by way of a letter dated 22nd October, 2025 requested for an interpartes hearing, strictly on the question of urgency. The file was once more placed before me for directions whereupon I directed the applicant to serve the application on the respondents for interpartes hearing limited to that question only. I also directed that the question shall be determined solely on the basis of written submissions and without appearance of counsel or parties.



3. Pursuant to those directions, parties duly filed their respective written submissions. However, I note that the respondents' written submissions do not address the limited question of urgency. Rather they address the substantive application. To that extent therefore, they are irrelevant to the issue at hand. On that score alone, the averments and depositions by the applicant in support of the question of urgency remain unchallenged and uncontroverted. Indeed, the applicant in its submissions has alluded to the fact that the 2nd respondent has since advertised for sale by public auction, the suit properties on 27th November 2025.
4. To my mind now, the urgency of hearing the application has been made out. I accordingly review my earlier order and now certify the application as urgent.

DATED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF OCTOBER, 2025.

ASIKE-MAKHANDIA

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

