

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
COMM CASE NO. E670 OF 2025(OS)

BETWEEN

WINNIE ADHIAMBO ODERAH.....1ST PLAINTIFF

RUTH ORUENJO.....2ND PLAINTIFF

MOURINE ORUENJO.....3RD PLAINTIFF

AND

I&M BANK LIMITED.....DEFENDANT

AND

LIBERTY LIFE ASSURANCE

KENYA LIMITED.....INTERESTED PARTY

JUDGMENT

1. The present application for determination by the court is the Originating Summons dated 7th October 2025 by the Plaintiffs who are the Administrators of the estate of Evans Umidha Oruenjo (“the Deceased”) where they seek to compel the Defendant (“the Bank”) to execute and register a Discharge of Charge in respect of the property Ngong/Ngong/99390 and for it to release the original title deeds for the said property and; Kajiado/Kaputiei North/107449 together with the original logbook of motor vehicle registration number KCW ***M. The Plaintiffs also seek an order for the Bank to provide accurate bank statements for the Deceased's listed accounts.

2. The Application is supported by the affidavit of the 1st Plaintiff sworn on 7th October 2025. It is opposed by the Bank through the replying affidavit of its Senior Manager-Legal Department, Andrew Muchina sworn on 28th October 2025 and by the Interested Party (“the Insurer”) through the replying affidavit of its Legal Officer, Ruth Kemunto, sworn on 28th October 2025.
3. The parties have also supplemented their arguments by filing written submissions that I have considered and I will be making relevant references to them in my analysis and determination below.

Analysis and determination

4. The single issue for determination is whether the court should allow the reliefs sought by the Plaintiffs in their application, that is; for the Bank to execute the Discharge of Charge, release the subject titles and motor vehicle logbook and furnish the Plaintiffs with bank statements of the Deceased’s various accounts listed in the application.
5. It is not in dispute that the Deceased (borrower) took out various loans with the Bank, using the subject properties and vehicle as collateral. He also took out a Mortgage Protection Policy cover with the Insurer for the facilities. After the borrower died on 12th July 2024, the Bank depones that the Insurer paid out a sum of Kshs. 5,619,974.73. The 1st Plaintiff, who is also the widow of the Deceased, deposited a personal sum of Kshs. 1,355,876.00 into the Deceased's account to further reduce the outstanding arrears. The Bank has stated that even after all these payments, there still remains a debit balance of Kshs. 1,338,757.24, which ought to be

- settled by the 1st Plaintiff as the joint borrower and that the facilities are yet to be fully settled.
6. On its part, the Insurer has stated that as admitted by the Plaintiffs, it has fully settled and paid up the loans secured by the properties and that the outstanding loan balance was paid to the Bank, exclusive of the loan arrears which had accrued prior to the claim being settled. Assuming these positions to be correct, it would mean that the total debt of the borrower at his death on 15th July 2024 which was Kshs. 7,453,425.22 was lessened by the insurance pay-out of Kshs. 5,619,974.73 and the 1st Plaintiff's payment of Kshs. 1,355,876.00, leaving a balance of Kshs. 477,574.49. This, the Court believes, represents the interest that had accrued between the date of death and the date of the insurance pay-out which the Bank has stated, it had reversed, leaving a residual balance of zero.
7. In **Anne N Parmena v Housing Finance Company of Kenya Limited [2015] KECA 476 (KLR)** it was held that:
- “We have stated that interest from the date of death is not payable in the event that a mortgage protection policy is in place. In the instant case, we are comforted as we note that the learned judge appreciated the consequence of delay when he stated that “by waiting for almost two years...the respondent allowed the debt to grow.” We adopt the same reasoning and state that by waiting for forty months, the respondent allowed the debt to grow.”***
8. Notably, it is not clear how the Bank arrived at an outstanding sum of Kshs. 1,355,876.00 when the Insurer paid the outstanding

principal sum as per the covers and the 1st Plaintiff has also made a significant payment of Kshs. 1,355,876.00. The Bank dismissively and casually refers to this payment by the 1st Plaintiff as being insufficient when it was most reasonably made in the belief that it would clear any residual obligations after the insurance payout, thereby facilitating the release of the family home. In the absence of such evidence, the Court is entitled to infer that this payment, combined with the insurance payout, was sufficient to settle any legitimate outstanding balance.

9. From the submissions of the parties, what is clear to me is that the Bank arranged the insurance as per the facility letters and held the Master Policy. It had a duty to the borrowers to ensure that the insurance cover was adequate for the loan facilities they were taking.
10. On this the court reiterates the finding in the case of **Mary Wambui Muturi -v- Housing Finance Company Limited Nairobi HCCC No. 346 of 2006 (2012) eKLR** where it was held:

“It is clear from the testimony of both the plaintiff and the defendant’s witnesses that mortgage protection cover was a condition that had to be fulfilled alongside registration of the mortgage. Similarly, such cover was required to be in place before the first drawdown of the loan. Evidence was led by the plaintiff demonstrating that the deceased executed all the forms that he was required to sign before the sum advanced was disbursed to him. Although the defendant retorted that failure to effect the insurance

cover was due to failure by the deceased to pay premiums, I take the view that it was incumbent for the defendant as a prudent mortgagee and lender to ensure that cover was put in place in terms of the mortgage protection policy as an integral part of the security documentation held. That the defendant went on to plead with the insurance company for payment of an ex gratia sum to settle part of the debt corroborates the view that it was the defendant's obligation to ensure that cover was in place. By pursuing that payment, the defendant in effect acknowledged the negligence on its part in ensuring that cover was in place. While therefore the defendant wishes the court to believe that the estate of the deceased was not entitled to benefit at all from the proceeds of the sum that was paid by the insurance company on account of non-payment of premiums by the deceased...In the result, the plaintiff's suit against the defendant succeeds. While it may appear strange that in this matter the deceased obtained a loan facility, repaid nothing and now his estate is absolved of any repayment obligation in respect of the facility, this court is minded that a lender is in a position of knowledge and experience and should exercise utmost prudence and circumspection in all its lending procedures. An omission of effecting cover to a mortgage facility is not an omission a prudent banker

should be seen to have overlooked as such cover provides a fairly straightforward recourse in the event of the risk insured taking place. Lenders should therefore bear the full brunt whenever omissions of the nature in this suit are committed.”

11. The express purpose of a Mortgage Protection Policy is to pay off the outstanding loan balance on the death of the borrower. If the insurance payout of Kshs. 5,619,974.73 was less than the actual principal outstanding at death, which was part of the Kshs. 7,453,425.22 claimed by the Bank it implies that the Bank may have failed to secure adequate insurance coverage for the full loan amount. The Insurance Certificates annexed by the Bank as “AM-3” show maximum coverage of Kshs. 6.5 million, but the total facilities were Kshs. 8.3 million. There was already an insurance shortfall built into the loan structure. The other scenario could be that the Insurer incorrectly calculated the payout and underpaid the claim.
12. Equally, the Court observed that the Insurer did not make any effort to provide evidence of the amount paid towards the payoff and left it to the Bank to tell the Court the amount paid towards clearing the loan. There was nothing difficult for the Insurer to produce evidence of the amount paid to the Bank. In addition, the Court notes elements of mischief by both the Bank and the Insurer in that; had there been evidence from the Insurer as to the amount paid by them, there would have also been an explanation as to why the Insurer paid out an amount less than the amount covered under the policies. Also, why did it take over a year for the Insurer to act?

13. In any event, the Court finds that there is no accounting justification for the amount claimed by the Bank and agree with the Plaintiffs that the facilities now stand settled. **Section 85(1)** of the **Land Act** provides as follows:

85. Right to discharge

(1) Subject to the provisions of this section, the chargor shall, upon payment of all money secured by a charge and the performance of all other conditions and obligations under the charge, be entitled to discharge the charge at any time before the charged land has been sold by the chargee or a receiver under the power of sale.

14. From the above provision, the right to discharge can be exercised by the chargor upon the payment of all money secured by a charge and the performance of all other conditions and obligations under the charge. The process of discharging a charge is thus subject to the fulfilment of the terms and conditions in the charge. However, the use of the word “shall” means that this is not a discretionary act but a statutory obligation that crystallizes upon the full satisfaction of the secured debt (see: **Kiore v Chief Registrar of Titles [2024] KEELC 564 (KLR)**).

15. Consequently, the Court finds that the facilities advanced to the Deceased and the 1st Plaintiff were fully settled by the combined effect of the Mortgage Protection Policy payout from the Insurer, the subsequent payment made by the 1st Plaintiff and the Bank’s reversal of interest applied. The securities ought to be discharged and original documents released to the Plaintiffs.

16. The Court also finds merit in the Application for the production of bank statements. As a guarantor of the facilities and a joint owner of the charged property, the 1st Plaintiff has a legitimate interest in understanding the account transactions, especially concerning the alleged accrual of interest and penalties after the Deceased's death.

Conclusion & disposition

17. In light of the foregoing findings, the Court finds merit in the Plaintiffs' Originating Summons dated 7th October 2025, and issues the following final orders:

- 1) The Defendant, I&M BANK LIMITED, is hereby ordered and compelled to execute and register a Discharge of Charge in respect of the property known as L.R. NO. NGONG/NGONG/99390 within fourteen (14) days from the date of this ruling.**
- 2) In the event the Defendant fails, refuses, or neglects to comply with Order (1) above, the Deputy Registrar of this Court is hereby authorized and directed to execute all necessary instruments to effect the discharge of the charge and further charge on behalf of the Defendant.**
- 3) The Defendant is hereby ordered to release to the 1st Plaintiff the original title deed for the property known as L.R. NO. NGONG/NGONG/99390 within seven (7) days of the registration of the discharge.**

4) The Defendant is hereby ordered to release to the Plaintiffs the original title deed for the property known as L.R. NO. KAJIADO/KAPUTIEI NORTH/107449 and the original logbook for motor vehicle registration number KCW *M within fourteen (14) days from the date of this ruling.**

5) The Defendant is hereby ordered to provide the Plaintiffs with accurate and complete bank statements for the accounts of the late Evans Umidha Oruenjo, specifically for accounts:

a) 01900763882910

b) 0190076388401505

c) 0190076388401506

d) 0190076388401507

within fourteen (14) days from the date of this ruling.

6) The costs of this suit are awarded to the Plaintiffs, to be borne by the Defendant and the Interested Party

JUDGMENT delivered virtually, dated and signed at **NAIROBI**

This **31st** day of **October** 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Eddy Owiti for Plaintiffs

Mr. Mwai Muthoni h/b for Mr. Kabaiku for Defendant

Court Assistant: *Carlos*