



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Equity Bank Kenya Ltd & 2 others (Civil Application
E267 of 2025) [2025] KECA 1815 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1815 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E267 OF 2025
AO MUCHELULE, JA
NOVEMBER 7, 2025**

BETWEEN

SIMON P. MWANGI APPLICANT

AND

EQUITY BANK KENYA LTD 1ST RESPONDENT

**JOSEPH G. MUTURI T/A MUGA AUCTIONEERS & GENERAL
MERCHANTS 2ND RESPONDENT**

RORETE ESTATE LIMITED 3RD RESPONDENT

(Being an application for orders of temporary injunction pending the hearing of an intended appeal from the judgment of the Environment and Land Court at Nairobi (Ogotu Mboya, J.) dated 23rd April 2025 in ELC Case No. 9 of 2023 Formerly Milimani HCC No. 601 of 2008)

RULING

1. On 5th May 2025, I declined to certify as urgent the application by the applicant, Simon P. Mwangi, dated 30th May 2025 in which he sought a temporary injunction restraining the respondents, Equity Bank Kenya Ltd., Joseph G. Muturi T/A Muga Auctioneers & General Merchants and Rorete Estate Limited, from advertising, auctioning, offering for sale, leasing, mortgaging, charging, transferring, entering upon, trespassing on, taking possession of and/or otherwise dealing in any way with the property known as L.R. No. 209/10721/90 (now called L.R No. 209/12892 situated at Halai Estate South C Nairobi.
2. On 23rd April 2025 the Environment and Land Court (ELC) at Nairobi had delivered a judgment in which it had dismissed with costs the applicant's suit in which he had sought a declaration that the suit land belonged to him and had asked that the respondents be restrained by way of injunction from selling and/or auctioning the property. The suit had been defended. The court found that the



suit property was registered in the name of the 3rd respondent who had charged it for a loan which was outstanding; that the 3rd respondent had bought the property from Halai Developers Limited and obtained title. It was found that the applicant, although having entered into agreement to buy the same from Halai Developers Limited, had not paid the full purchase price, and neither had he obtained title.

3. The applicant was aggrieved and came before this Court by filing a notice of appeal and applying under Rule 5(2)(b) of the Court of Appeal Rules for injunction. This is the application he asked that it be certified as urgent. In the certificate of urgency and the affidavit sworn to support the urgency, the applicant stated that, having bought the property in 1997, he settled thereon and constructed a double storey building comprising of shops and a flat; that when the loan granted to the 3rd respondent was not settled the 1st respondent sold the property to the 2nd respondent to recover the loan. He wanted the injunction to protect the property as he pursues the appeal.
4. When I declined to certify the application as urgent, under Rule 49(5) of the Court of Appeal Rules, the applicant wrote to the Court to have the matter placed before me for interparte hearing.
5. On 23rd September 2025 learned counsel Ms. Kyumu appeared for the 1st and 2nd respondents while learned counsel Mr. Rutto appeared for the 3rd respondent. There was no appearance for the counsel for the applicant who had filed written submissions. The 1st and 2nd respondents and the 3rd respondents had filed replying affidavits and their counsel had filed written submissions on which they relied.
6. In my view, the reasons given by the applicant will be useful in the application for injunction pending the intended appeal under Rule 5(2)(b), but they did not disclose why the applicant should be accorded preferential treatment for his application to be listed for urgent consideration in the face of other applications that were filed earlier than his and which were queuing, some of them for a very long time. The established principle is that applications are heard on first come first heard basis. What is this peculiar irreparable harm that the applicant will suffer which the applicants in similar circumstances whose applications, although filed under certificate of urgency, were not certified as urgent?
7. In short, I am not persuaded that this application is urgent and dismiss the request. The application shall be served and heard in the usual manner.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

A.O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

