



REPUBLIC OF KENYA



**Bii v KCB Bank Kenya Limited (Miscellaneous Civil Application  
E049 of 2023) [2025] KEHC 19033 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19033 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CIVIL APPLICATION E049 OF 2023**

**JK SERGON, J**

**DECEMBER 18, 2025**

**BETWEEN**

**JOSEPH KIMUTAI BII ..... APPLICANT**

**AND**

**KCB BANK KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The application coming up for determination is a chamber summons dated 28th May, 2025 seeking the following orders;
  - (i) Spent
  - (ii) Spent
  - (iii) Spent
  - (iv) Spent
  - (v) That the ex - parte proceedings of 19.3.2024 be set aside and all other consequential orders issued pursuant thereto and the Respondent be granted leave to file a Replying Affidavit to this Miscellaneous Application and the same be heard and determined on merit.
  - (iv) That costs of this Application be provided for.
2. The application is supported by grounds on the face of it and an affidavit in support of the application sworn by Roselyne Chepkoech, the Credit Administration Manager of the Respondent's Kericho Branch and well conversant with the issues in dispute herein.
3. She avers that she has the authority of the Respondent herein to swear this Affidavit.



4. She avers that the Applicant only wrote to the Bank once, on the 16.1.2023, inquiring about the status of a loan he had guaranteed for one Stephen Gesisa Buge (their customer) and not severally as alluded in his Application, vide a letter dated the 6.3.2023 they responded to his enquiry and informed him that the said customer owed the Respondent a total of kshs. 752, 622.03/= being unpaid loan debt plus interest accrued thereof and that the loan debt currently stands at kshs. 900,138.15/- . She attached a copy of the customer's current Bank Statement as at 27.5.2024.
5. She avers that it is true that the subject loan debt was secured vide a Charge registered against the Applicant's title in respect of the land parcel known as Kericho / Kaplelartet / 1268 for a loan sum which amounts have not been settled, she attached a copy of the Charge Document and a copy of the Letter of Offer in respect of the subject loan.
6. She avers that discharging the said security will be detrimental to and defeatist of the Respondent's future attempt to recover the loan debt and that the Respondent is aggrieved by the ruling of this Court made on the 19.3.2024 and or the subsequent order issued on the 3.4.2024 having been condemned unheard.
7. She avers that the Respondent was not served with the subject Miscellaneous Application and as such was not able to file a Replying Affidavit thereto as contended by the Applicant and should now be allowed to so do, she attached a copy of the Respondent's Draft Replying Affidavit.
8. She reiterated that the Respondent has a good Defence to the subject Miscellaneous Application which raises triable issues and which issues cannot be exhaustively ventilated via this suit as they will require viva - voce evidence that can only be tested by cross examination.
9. She avers that the application is brought in good faith, without inordinate delay and is not intended to obstruct or delay the cause of justice and that the Respondent will not suffer any prejudice if the Orders sought are granted.
10. Joseph Kimutai Bii the respondent filed a replying affidavit in response to the instant application.
11. He avers that he was vehemently opposed to the said application as the same is baseless, misconceived, frivolous and an abuse of the court process.
12. He avers that it is true in the year 1997 one Stephen Gesisa Buge used his property Kericho/ Kaplelartet/1268 alongside Kericho /Kipchimchim/2977 i.n.o. Charles K. Kirui to secure a loan with the Respondent herein.
13. He avers that since the said borrower was unable to pay the loan, the Bank proceeded to sell the 1st property Kericho /Kipchimchim/2977 to recover their money in full and that the loan was paid in full from the proceeds of the sale and for close to 24 years the bank has never contacted him about any pending/unpaid amount and that the said borrower confirmed this fact in his affidavit.
14. He avers that in the month of January 2023, he visited the Respondent's Kericho branch and was advised to instruct his advocates to draft a discharge of charge for execution by the Respondent and that his advocates drafted a discharge of charge and the same was submitted to the respondent's Kericho branch. He avers that he has visited the bank severally to no avail hence necessitating the instant application.
15. He avers that he has looked at two statements from the Respondent/Applicant herein one dated 16.1.2023 indicating that there is an outstanding sum of Kshs. 752,622.03 and another one showing the balance Kshs. 900,138.15 which is an unjustifiable variance, he therefore has reason to believe that the officials of the Respondent/Applicant are just cooking up figures to try and swindle him.



16. He contends that if indeed the loan has been outstanding for 24 years the Respondent/Applicant ought to have realized its security by exercising its statutory power of sale.
17. He reiterated that the borrower no longer owes any money to the Respondent/Applicant as the 1st property Kericho /Kipchimchim/2977 was sold to fully pay the loan and the account was closed 24 years ago.
18. He therefore urged this Court to dismiss the Respondent/Applicant's application and release the title deed as duly discharged.
19. Stephen Gesise Buge the respondent filed a replying affidavit in response to the instant application.
20. He avers that he was offered a loan facility by the Respondent herein in the year 1997 and used two properties as security namely Kericho /Kipchimchim/2977 i.n.o. Charles K. Kirui and Kericho/ Kaplelartet/1268 belonging to the Joseph K Bii the applicant herein and that when he fell into arrears the Bank proceeded to sell the 1st property Kericho /Kipchimchim/2977 to recover their money in full and that for close to 24 years the bank has never contacted him about any pending/unpaid amount.
21. He avers that he has looked at two statements from the Respondent/Applicant herein one dated 16.1.2023 indicating that there is an outstanding sum of Kshs 752,622.03 and another one showing the balance Kshs 900,138.15 which is an unjustifiable variance and that the officials of the Respondent/Applicant are just cooking up figures to try and swindle the elderly applicant herein.
22. He reiterated that he no longer owed any money to the Respondent/Applicant as the 1st property Kericho /Kipchimchim/2977 was sold to fully pay the loan and the account was closed 24 years ago.
23. He therefore urged this Court to dismiss the instant application and release the title deed to the applicant duly discharged.
24. I have considered the application, responses to the application and find that the issue for determination is whether to ex - parte proceedings of 19.3.2024 should be set aside and all other consequential orders issued pursuant thereto and the Applicant be granted leave to file a Replying Affidavit to this Miscellaneous Application and the same be heard and determined on merit.
25. The Applicant maintained that discharging the said security will be detrimental to and defeatist of its future attempts to recover the outstanding loan amount.
26. The Respondent contended that he no longer owed any money to the Respondent as the 1st property Kericho /Kipchimchim/2977 was sold to fully pay the loan and the account was closed 24 years ago. He was therefore adamant that in the circumstances he was entitled to have the Bank release the title deed in respect to Kericho/Kaplelartet/1268 as duly discharged.
27. The law on setting aside of ex parte orders is found under Order 12, rule 7 of the Civil Procedure Rules, 2010 which provides thus: - "Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just." This provision is amplified by Order 51, rule 15 which provides that the Court may set aside an order made ex parte. In *Njoroge v Njoroge* (Miscellaneous Application E642 of 2023) [2024] KEHC 5251 (KLR) (Commercial and Tax) (30 April 2024) (Ruling) where the court set aside ex parte orders, the court stated as follows; "It then follows that the decision whether or not to set aside an ex parte order is discretionary. The discretion is intended to be exercised to avoid injustice and hardship resulting from accident, inadvertence or excusable mistake or error, but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice." In the instant matter, it is the Applicant's case that they were not served with



the subject Miscellaneous Application and as such they were not able to file a Replying Affidavit and further that they have a good Defence to the subject Miscellaneous Application which raises triable issues. Based on the foregoing, I am persuaded that the application dated 28th May, 2025 has merit and consequently it is hereby allowed.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Cherono holding brief for Lang'at for Applicant

No appearance for the Respondent

