



Equity Bank (Kenya) Limited v Ng'ang'a; Muinde & 3 others (Interested Parties) (Civil Case E839 of 2021) [2026] KEHC 1207 (KLR) (Commercial and Tax) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1207 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E839 OF 2021
F GIKONYO, J
FEBRUARY 5, 2026**

BETWEEN

EQUITY BANK (KENYA) LIMITED PLAINTIFF

AND

JOAKIM KIMANI NG'ANG'A RESPONDENT

AND

APOLLI MUTISYA MUINDE INTERESTED PARTY

DON PAUL NGUMBAU MUINDE INTERESTED PARTY

BOREHOLE ENGINEERING INTERESTED PARTY

COSMAS KAMUYU MWAURA INTERESTED PARTY

RULING

1. The plaintiff sought in the notice of motion dated 13.5.2025 for an order to compel the defendant to comply with the partial mediation settlement agreement dated 15.9.2023, adopted as an order of this court on 3.6.2024 by executing the replacement charge in favour of the plaintiff over 3 unregistered apartments (numbers 6, 7 and 8 erected) on the property comprised in the Certificate of Lease Title Number Kiambaa/ Ruaka/ 3238 (formerly Kiambaa/ Ruaka/2818) and to execute and/ or furnish the plaintiff with any other document necessary for the successful registration of the replacement charge over the three apartment units by the Kiambu Land Registry within 14 days of the date of this order.
2. The plaintiff also seeks that in default of compliance with the above order, an order directing the Land Registrar, Kiambu District Land Registry to forthwith execute and register the replacement charge and to execute and/ or carry out any other document/ process necessary for the registration of the replacement charge.



3. The application is supported by the affidavits sworn by the plaintiff's manager of legal services, Kariuki Kingori on 13.5.2025 and 27.6.2025.
4. The application is opposed by the defendant through affidavits sworn on 28.5.2025 and 5.8.2025 and by the 1st interested party through grounds of opposition dated 9.6.2025.

Background

5. The plaintiff filed this suit seeking similar orders to compel the defendant to execute a replacement charge over all the property comprised in the Certificate of Lease Title Number Kiambaa/ Ruaka/3238 (formerly Kiambaa/ Ruaka/2818).
6. In the backdrop, the defendant obtained a staff development loan from Stanbic Bank Limited in 2008 which he used to buy and develop the subject property. The plaintiff bank offered him employment in 2011 and took over the loan.
7. In 2014, the defendant applied for discharge of charge to facilitate conversion of the title from freehold to leasehold, and thereafter charge the resulting subleases registered in his name. The valuation conducted before the discharge confirmed that the value of the units that were his personal residences sufficiently covered the loan amount at the time.
8. A dispute ensued after the defendant allegedly defaulted and the plaintiff bank filed the originating summons herein seeking to enforce the registration of a replacement charge over the entire property.
9. The parties agreed to have the matter referred to mediation which culminated in an agreement that the plaintiff would register a replacement charge over three apartment units to be identified by the defendant.
10. The parties reduced the terms of the mediation settlement into a partial mediation settlement agreement dated 15.9.2023, subsequently adopted as an order of the court on 3.6.2024.
11. The plaintiff provided the defendant with a list of valuers, the defendant chose his preferred valuer and identified apartments 6, 7 and 8. The valuer carried out the valuation of the three apartments and issued a valuation report dated 12.11.2024 to both parties.
12. The plaintiff prepared a replacement charge based on the valuation report, but the defendant failed to execute it.

Applicant's case

13. The plaintiff contends that unless the orders sought are granted, it stands to suffer irreparable loss as the loan facility extended to the defendant remains unsecured. It also contends that the defendant's refusal to comply with the mediation settlement agreement is designed to defeat justice and to render the proceedings a nullity. The defendant's refusal to comply is against the rule of law.

Defendant's response

14. The defendant contended that the application is misleading, premature and designed to subvert the partially concluded mediation process and unilaterally alter the terms of engagement previously agreed upon by the parties.
15. The defendant asserted that the replacement charge over the three apartments was the subject of a professional undertaking by Prof. Albert Mumma & Company Advocates, which the firm and the



plaintiff had attempted to renege. The replacement charge was not achieved through the mediation process. The mediation only assisted in buttressing the position.

16. The defendant asserted that the plaintiff has misrepresented facts and in making the application cast its nets wide to ensure that the suit is determined through the application without him being heard on the unresolved issues that led to the adoption of a partial mediation agreement as opposed to a full mediation agreement.
17. The defendant asserted that the plaintiff has misrepresented facts and in making the application cast its nets wide to ensure that the suit is determined through the application without him being heard on the unresolved issues that led to the adoption of a partial settlement agreement.
18. The defendant relied on *Kibosia & 11 Others v Chebelieni & another* [2024] KECA 1269 (KLR) to assert that partial agreements cannot be enforced as full settlements. He also asserted that Rule 36 (2) of the Civil Procedure (Court-Annexed Mediation) Rules, 2022 is applicable to agreed terms and not applicable to this case since the loan amount remains disputed.
19. The defendant argued that the plaintiff is acting in bad faith and intends to continue harassing him by claiming penalties and charges they caused to accrue.
20. The defendant relied on *Gurder Singh Birdi and Marinder Singh Ghatora v Abubakar Madhubitu* [CA No. 165 of 1996] to argue that specific performance is discretionary and only granted where it is just and equitable under all circumstances; *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd* [1982] KLR 485 that courts enforce agreements made in good faith and consistent with instructions, and *Serah Njeri Mwobi v John Kimani Njoroge* [2013] eKLR, that a party cannot deny their previous position if it would be unjust to allow them to do so.
21. The defendant relied on *Flora Wasike v Destimo Wamboko* [1982-88] 1 KAR 625 to assert that delay or obstruction by a party bars equitable relief, *Patel v E. A. Cargo Handling Services ltd* [1974] EA 75, that the plaintiff should not profit from its own obstruction.
22. On the conflict of interest and advocate disqualification, the defendant relied on Rule 9 of the Advocates (Practice) Rules, *Delphis Bank Ltd v Channan Singh Chatthe & 6 others* [2005] eKLR, *Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others* [2002] eKLR, *King Woolen Mills Ltd & Another v Kaplan & Stratton Advocates* [1993] eKLR and *Uhuru Highway Development Ltd v Central Bank of Kenya (No. 2)* [2000] eKLR.

1st Interested party's response

23. The 1st interested party argued that the application is misconceived, bad in law, frivolous and an abuse of the court process. It contended that the court should not entertain the application brought by the firm of Prof. Albert Mumma & Company Advocates on behalf of the plaintiff following the firm's disqualification to appear on behalf of any of the parties by the court's order.
24. The interested party also contended that the application has been brought prematurely before the plaintiff has fulfilled its obligations under the partial mediation settlement agreement. He faulted the plaintiff for coming to equity with unclean hands by failing to issue the interested parties with their respective subleases in accordance with the partial mediation settlement agreement. That the balance of convenience does not lie in favour of granting the orders sought.



Reply

25. The plaintiff retorted that it has been keen on fulfilling its obligations per the mediation agreement. It stated that the concerned parties consensually participated in the mediation process in which it appointed Prof. Mumma's firm to act on its behalf.
26. The plaintiff asserted that the defendant sold various units to the interested party but did not apply the proceeds of the sale towards retiring the bank facility and that the facility is now more than Kshs. 30 million which remains completely unserviced and unsecured greatly exposing it to great risk.
27. The plaintiff faulted the defendant for introducing foreign demands of waiver of any accrued interests as a condition of executing the replacement charge which does not form part of the agreed issues in the partial mediation agreement.
28. The plaintiff submitted that the defendant's refusal to execute the replacement charge and the subleases amounts to outright contempt.

Analysis and Determination

Disqualification of the law firm

29. The defendant submitted that the court through the ruling of 9.12.2022 upheld his objection on the ground of conflict of interest, disqualifying the firm from acting on behalf of the plaintiff. The 1st interested party urged the court not to entertain the application brought by the firm based on the earlier disqualification.
30. The plaintiff's response was that the firm was appointed as its legal representative during the mediation session based on their historical knowledge in the matter and the subsisting professional undertaking they issued to the bank as security for the release of the title to the property.
31. The plaintiff submitted that the subject application is not with respect to the dispute as originally submitted in court by the law firm pursuant to the ruling of 9.12.2022 applied but instead exclusively in respect to the enforcement of the parties voluntarily mediated partial agreement.
32. The plaintiff argued that it is ironical for the defendant and the interested party to insist that the firm of advocates proceeds to fulfil the terms of the partial mediation agreement and on the other hand insist that the said firm should not be involved in the matter.
33. The defendant confirmed that the firm participated in the mediation process as it was the firm that had prepared and issued all relevant documentation for the bank, himself and the interested parties. That the firm's involvement helped facilitate the negotiation process efficiently due to their prior familiarity with the transactions and intention was to settle the matter out of court. However, with only a partial agreement reached the matter could not be resolved out of court.
34. In the ruling of 9.12.2022, the court disqualified the subject law firm from acting for the plaintiff due to conflict of interest as it acted for both parties in the transaction leading to the proceedings.
35. The present application is seeking enforcement of a partial settlement through an order to compel the defendant to comply with the partial mediation settlement agreement dated 15.9.2023.
36. The defendant conceded that there was a partial settlement. He also conceded that he was amenable to the firm's participation in the mediation due to its historical knowledge of the matter.



37. The mediation took place after the court had disqualified the law firm from representing the plaintiff in this matter. However, the defendant was amenable to the firm representing the plaintiff in the mediation process due to its historical knowledge.
38. I agree with the defendant that the disqualification order is still in force and that the firm is not entitled to represent the plaintiff in these proceedings. I note that the defendant indicated that the firm's participation in the mediation was only to facilitate the resolution; a concession made in good faith.
39. The plaintiff is merely seeking to enforce the terms of the partial mediation settlement agreement. Thus, the application flows from the mediation process, and, the view I take is that, the firm of advocates concerned is doing nothing more than facilitating the enforcement of the partial settlement agreement between the parties. In consensual processes such as mediation, parties constitute and run the process to its very end; a sacrosanct party autonomy which must be respected by the court. Due appreciation is that this application is merely pursuant to the exercise of party autonomy and agreement.
40. The defendant and the interested party have not demonstrated that the firm's participation in this application has prejudiced them. Therefore, the court will proceed to determine the application on merit.
41. However, for the avoidance of doubt, the disqualification order is still in force, and the firm should not participate in these proceedings on the other contested issues which may breed conflict of interest.

Implementation deadlock

42. The defendant confirmed that in November 2024, the selected valuer, Ark Consultants Limited, submitted a valuation report placing the value of the three units at Kshs. 27.2 million and indicated that this is sufficient to secure the loan.
43. According to the plaintiff, the defendant has failed to execute the replacement charge and subleases in respect of the three apartment units as per the settlement agreement.
44. The defendant indicated that in good faith, in April 2025, he offered to proceed with simultaneous registration of the replacement charge and the subleases if the bank would cap the total loan amount at Kshs. 19,000,000/- and waive interest and penalties attributable to their delays but the offer was ignored.

Unfairly accrued interests and charges

45. The defendant therefore asserted that the plaintiff is not justified in accruing interest and charges against the defendant, given that the dispute and the resulting delay arose solely from its failure to honour the original agreement.
46. The plaintiff faulted the defendant for introducing foreign demands of waiver of any accrued interests as a condition of executing the replacement charge which does not form part of the agreed issues in the partial mediation agreement.

Conversion before enforcement

47. The defendant submitted that the mediation settlement agreement was partial and that there are other unresolved issues between the parties. He indicated that he filed the notice of motion dated 20.1.2025 seeking to have the originating summons converted into a plaint to enable the court to effectively



resolve the outstanding substantive issues. He thus argued that the matter ought to be converted to a plaint and heard and determined prior to the enforcement of the partial agreement.

48. The agreement reads in part: -

“Partial Mediation Settlement Agreement”

...

1. It has been agreed and confirmed that there is willingness from all parties to proceed with the replacement of the Charge dated 25th March, 2011.
2. The Defendant Joakim Kimani has agreed to provide 3 units which shall cater for the replacement of the Charge.
3. The bank suggested that it is willing to do the valuation to get the current indicative market value of the three units on the basis of a market analysis. The valuation shall be done and the purpose for this valuation is to confirm the current market value of the available units and be used for the replacement of the Charge.

If the valuation is sufficient then a replacement charge will be done. If it's not sufficient, for the replacement charge, the defendant will offer additional security at his cost.
4. Both parties have requested for appointment of an independent valuer to be chosen from the list of registered valuers on the Bank's panel. The Bank will send the defendant the list of valuers and the defendant will choose one. The valuation shall be done at the bank's cost. The Bank shall provide the defendant with a copy of the instructions to the valuer prior to scheduling the valuation exercise. The valuation report by the independent valuer shall be binding on both parties.
5. It has been agreed that the interested parties' units and their interest will be protected. The sale agreements for the interested parties shall proceed independently.”

49. In light of the arguments presented by the defendant, it is critical to note that, there was no agreement between the parties in the partial settlement agreement that the loan amount shall be capped at Kshs. 19,000,000 or that interest and penalties shall be waived before registration of the replacement charge. These are issues or demands by the defendant which are extraneous to the partial agreement. However, they may be canvassed subsequently in a trial.

50. To my mind, the simultaneous registration of the subleases and the replacement charge is meant to protect the bank's interest in securing the loan advanced to the defendant. It is also meant to protect the interests of the firm of Prof. Albert Mumma & Company Advocates which gave an undertaking to the bank.

51. The defendant's request for the registration of the sub-leases first before the registration of the replacement charge is not in good faith. So too, his proposition that the loan amount be capped at Kshs. 19,000,000/- and interest and penalties waived as a precondition to the simultaneous registration of the subleases and the replacement charge is extraneous to the partial agreement.



52. Other than introducing new conditions, the defendant acknowledges the need for simultaneous registration of the subleases and replacement charge. The simultaneous registration of the subleases and the replacement charge is the perfect way of securing the rights of the parties; it does not contravene the partial settlement agreement; it is in the implementation of the partial agreement.
53. The partial mediation settlement agreement dated 15.9.2023 was adopted as an order of this court on 3.6.2024. It is binding on and enforceable between the parties. Nothing prevents its enforcement.
54. Issues being raised by the defendant are not part of the partial agreement, but may be canvassed subsequently and independent of the partial agreement herein. Such consensual processes are intended to be expeditiously and should never be tied down by veto-posture of one of the parties. Art. 159(2)(c) of the *Constitution*. The defendant and the interested parties cannot seek to invoke or derive benefit and protection from the partial agreement where it suits them and shun it where it protects the plaintiff's rights. The conduct is inconsistent with the civic obligation upon 'Every person...to respect, uphold and defend this Constitution'. Art.3(1) of the *Constitution*.
55. The various outstanding issues between the parties sets the stage for the hearing of its application for conversion of the originating summons to a plaint to provide appropriate space for their resolution.

Disposal

56. In conclusion, the plaintiff's application dated 13.5.2025 is allowed in the specific orders below: -
 - a. The defendant is hereby compelled to execute the replacement charge in favour of the plaintiff over the 3 unregistered apartments (numbers 6, 7 and 8 erected) on the property comprised in the Certificate of Lease Title Number Kiambaa/ Ruaka/ 3238 (formerly Kiambaa/ Ruaka/2818) and to execute and/ or furnish the plaintiff with any or all other document necessary for the successful registration of the replacement charge over the three apartment units by the Kiambu Land Registry within 14 days of the date of this order.
 - b. In default thereof, an order is hereby issued directing the Land Registrar, Kiambu District Land Registry to forthwith execute and register the replacement charge in favour of the plaintiff over 3 unregistered apartments (numbers 6, 7 and 8 erected) on the property comprised in the Certificate of Lease Title Number Kiambaa/ Ruaka/ 3238 (formerly Kiambaa/ Ruaka/2818) and to execute and/ or carry out any other document/ process necessary for the registration of the replacement charge as ordered in (a) above.
57. The defendant's application dated 20.1.2025 to be set down for hearing on priority basis.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 5TH DAY OF FEBRUARY, 2026

F. GIKONYO M

JUDGE

In the presence of: -

Kimathi/Agwara for plaintiff

Kimani for defendant

Ms Wanjiku for interested party



