



**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT MERU**  
**CIVIL SUIT NO. 53 OF 2001**

**PATRICK MUTURI.....PLAINTIFF**  
**VERSUS**  
**KENYA COMMERCIAL BANK LTD.....DEFEDANT**

**RULING**

1. For determination is the Notice of Motion dated 22/5/2025 pursuant to Section 80 (1) of the Land Registration Act and Order 51 Rule 1 of the Civil Procedure Rules, seeking that:
  1. The honourable court be pleased to issue an order directing the Land Registrar MERU to cancel all the entries made in respect to title deeds no. NYAKI/KITHOKA/284 and NTIMA/IGOKI/3442 and to revert them back to the original owner.
  2. Costs of the application be in the cause.
2. The application is predicated on the grounds that the plaintiff sued the defendant seeking for a declaration that he is not indebted to the latter in respect of any loan and other prayers, but when the case was heard and determined on 19/10/2005, the issue of cancellation of title deed Nos. Nyaki/Kithoka/284 and Ntima/Igoki/3442 was never addressed.
3. The defendant opposed the application vide a replying affidavit sworn by Lilian Sogo, its head litigation counsel on 17/7/2025. She averred that the application was an abuse of the court process, having been conclusively heard and determined by 3 competent courts. The plaintiff

therefore has no legal claim over the subject properties legally sold by the defendant to the 3<sup>rd</sup> party.

4. The application was canvassed by way of written submissions, which were duly filed by counsel.

#### **DETERMINATION**

5. Having considered the application, the response and the submissions, I find the issue for determination to be whether the orders sought ought to be issued.
6. In its judgment dated 19/10/2005, this court (*Ruth Sitati J*) held that, ***“I am satisfied that the plaintiff failed and/or refused to comply with the notices issued to him by the defendant. I do find therefore that having duly executed the charges over NTIMA/IGOKI/3442 and NYARI/KITHOKA/284 the plaintiff was duty bound to comply with the terms of the charges which included realization of the charged securities by public auction in case of default. From the bundle of documents relied upon by the defendant the sale by public auction was advertised in the Standard newspaper. Further the notification of sale was served upon the plaintiff Patrick Muturi on 18.1.2001 and Patrick Muturi signed for the same. The notification of sale gave details of the charged properties and their respective values. The notification also gave the date when the public auction would be held namely 22.3.2001. I therefore have no doubt in my mind that all that was required of the defendant before carrying out the public auction was done. The plaintiff has***

***therefore no reason to complain that the sale was conducted in an irregular and or wrongful manner.”***

7. That decision was neither reviewed nor set aside as the appeal to the Court of Appeal was subsequently withdrawn on 12/5/2004.
8. Consequently, I find that, having determined that the sale of Nyaki/Kithoka/284 and Ntima/Igoki/3442 by public auction was regular, the grant of orders for cancellation of the titles as sought by the Plaintiff would be tantamount to this court sitting on appeal on its own decision.
9. The upshot from the foregoing is that the application dated 22/5/2025 is in want of merit and is hereby dismissed with costs to the Respondent.

**DATED AND DELIVERED AT MERU THIS 9<sup>TH</sup> DAY OF APRIL 2026.**

**S.M. GITHINJI**  
**JUDGE**

**APPEARANCES:**

Plaintiff – Patrick Muturi.

Mr. Omari holding brief for Mr. Mugo for the Defendant.