



**Wangari v ABSa Bank Kenya Plc (Environment and Land Case
E453 of 2025) [2026] KEELC 2467 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2467 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E453 OF 2025**

TW MURIGI, J

APRIL 24, 2026

BETWEEN

MONICAH WANGARI PLAINTIFF

AND

ABSA BANK KENYA PLC DEFENDANT

RULING

1. By a Notice of Motion dated 26th February 2026, brought under Section 13(7)(a) of the [Environment and Land Court Act](#), Sections 88(1)(g) and 89 of the [Land Act](#), Section 63(e) of the [Civil Procedure Act](#), and Order 40 of the Civil Procedure Rules, the Plaintiff/Applicant seeks the following orders:
 - a. Spent
 - b. That the Defendant/Respondent be and is hereby ordered to execute the Chargee's Consent annexed to the Agreement for Sale dated 11th November, 2025, relating to the sale and purchase of Villa Number 13, Court B (Edenville Estate), erected on L.R. No. 21103/1, Kiambu County.
 - c. Spent
 - d. That the costs of this Application be provided for.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of Monica Wangari, sworn on even date.

The Applicant's Case

3. The Applicant averred that around November 2015, she obtained a loan of KShs. 22,000,000 from the Defendant, which was secured by a legal charge over Villa Number 13, Court B (Edenville Estate) on L.R. No. 21103/1 in Kiambu County.



4. She further averred that she later decided to sell the charged property and found several willing buyers, but the prospective sale did not proceed due to delays and frustrations caused by the Defendant. She deposed that she has now identified another willing buyer ready to purchase the property at fair market value, but the Defendant has unreasonably refused to give its consent to the proposed private treaty sale. She maintained that the terms of the Sale Agreement adequately protect the Defendant's interests.
5. She further asserted that, despite the proposed sale, the Defendant has continued to impose substantial penalties and interest while withholding consent to the sale, thereby obstructing her right of redemption. She contended that the Defendant's conduct is unreasonable and has caused her considerable loss and prejudice.
6. She argued that unless the Defendant's actions were restrained, she would suffer irreparable loss due to the ongoing frustration of her ability to redeem the charged property through sale. She asserted that the Defendant would not be prejudiced if the orders sought are granted. In conclusion, she urged the Court to intervene to protect her right of redemption and facilitate the completion of the intended sale.

The Defendant's Case

7. The Defendant filed a Replying Affidavit sworn by its Secured Lending Team Leader in charge of Collections, Samuel Njuguna, in opposition to the application.
8. The deponent averred that the Plaintiff obtained a loan facility from the Defendant, secured by a charge on Villa No. 13, Court B, Edenville Estate, which she defaulted in repaying. He further averred that the Defendant issued a ninety-day statutory notice dated 12th June 2025, in accordance with Section 90(1) of the [Land Act](#), requiring the Plaintiff to rectify the default.
9. He asserted that the Defendant has at all material times engaged with the Plaintiff and her advocates, providing details of the outstanding loan balances, the applicable interest rate and other information necessary to facilitate the redemption of the charged property. He stated that the Defendant has consistently maintained that any consent to a private treaty sale or discharge of the charge would only be granted upon full settlement of the outstanding loan amount.
10. He further stated that the sale agreement relied upon by the Plaintiff was not provided to the Defendant for review before the application was filed. He argued that the terms did not adequately secure the payment of the outstanding loan to the Defendant. He clarified that, under the proposed transaction structure, the purchase price was not payable directly to the Defendant, thereby exposing the Defendant to commercial risk.
11. He argued that the Defendant had not unlawfully withheld consent to the proposed sale. He maintained that the Defendant cannot be compelled to discharge the charge or approve the transaction unless the entire outstanding debt secured by the charge is paid in full. He also stated that the Plaintiff had not demonstrated any illegality, fraud, or other vitiating factor that would justify the Court's interference with the contractual terms of the charge. He asserted that the application was premature, misconceived and should be dismissed with costs.

The Response

12. In a Supplementary Affidavit dated 11th March 2026, the Plaintiff averred that the Defendant had unlawfully frustrated her repeated attempts to sell the charged property by deliberately refusing to sign the necessary consent to facilitate the sale, leading to substantial financial loss and prejudice.



13. She argued that the Defendant's refusal to grant consent effectively clogged her equity of redemption, while the Defendant continued to impose interest and penalties on the outstanding loan. She stated that between August 2025 and March 2026, the accrued interest and penalties amounted to approximately KES 2,799,460.30/=, which she attributed to the Defendant's refusal to facilitate the sale.
14. She challenged the Defendant's claim that consent could only be given after the full settlement of the loan, asserting that the proposed sale agreement sufficiently protected the Defendant's interests. She argued that the transaction aligned with the standard framework of property transactions in Kenya, where a deposit is paid, and the remaining balance is settled upon completion, with advocates overseeing the process through professional undertakings in accordance with the Law Society of Kenya Conditions of Sale.
15. She argued that the sale price of Kshs 31,500,000/= was sufficient to settle the outstanding loan and that the Defendant would be the primary beneficiary of the sale proceeds upon completion. She therefore contended that the Defendant had not demonstrated any real commercial risk and was merely attempting to block the sale and unlawfully defeat her right of redemption.
16. In conclusion, the Plaintiff urged the Court to intervene and restrain the Defendant from further infringing her constitutional and legal rights by refusing to grant consent for the sale of the charged property.
17. The application was canvassed by way of written submissions.

The Plaintiff's Submissions

18. The Plaintiff filed her submissions dated 12th March 2026.
19. On behalf of the Plaintiff, Counsel submitted that the only issue for determination is whether the Respondent's refusal to grant consent is unlawful for violating the Applicant's equity of redemption.
20. Counsel submitted that the law recognizes the chargor's right of redemption, which is protected from clogging or foreclosure. Counsel argued that any act that hinders redemption is unlawful, as it would violate Sections 89(1) and 88(1)(g) of the *Land Act*. To support this point, Counsel cited *Mbuthia v Jimba Credit Finance Corporation & Another* [1988] KLR 1, *Nancy Kahoya Amadiva v Expert Credit Limited & Another* [2015] eKLR, *Palmy Company Ltd v Consolidated Bank of Kenya Ltd* [2014] eKLR, *David Gitome Kuhiguka v Equity Bank Ltd* [2013] eKLR, and *County Government of Nyeri & another v Ndungu* [2015] KECA 1011 (KLR).
21. Counsel further submitted that the Respondent's actions, as demonstrated in the Supplementary Affidavit sworn on 11th March 2026, were unreasonable and unlawful. Counsel pointed out that the Applicant had identified purchasers who were ready, willing, and able to complete the transaction, but whose efforts were frustrated by the Respondent. Counsel argued that the Respondent's refusal to execute the necessary consent stalled the transaction and thus hindered the Applicant's ability to redeem the charged property.
22. Counsel also contended that the Respondent's position was based on considerations that were neither grounded in the agreement nor supported by evidence. Counsel particularly described the reliance on "commercial risk" as speculative and not clearly connected to the transaction. Counsel pointed out that the Respondent was to receive payment from the proceeds of sale and that the agreed purchase price was sufficient to cover any outstanding sums due.



23. Counsel further submitted that the Respondent had not demonstrated that the proposed purchaser was unsuitable, that the consideration was inadequate, or that the transaction would occasion prejudice. In light of the foregoing, Counsel contended that the refusal to grant consent was unfounded and an arbitrary exercise of power. In conclusion, Counsel urged the court to allow the application as prayed.

The Defendant's Submissions

24. The Defendant filed its submissions dated 17th March 2026.
25. On behalf of the Defendant, Counsel submitted that the only issue for determination is whether the Defendant has violated the Plaintiff's equity of redemption by failing to execute the chargee's consent.
26. Counsel submitted that the Defendant had not taken any steps to clog, fetter, or otherwise violate the Plaintiff's right of redemption. Counsel further submitted that Section 89 of the Land Act specifies that a chargor's equity of redemption can only be extinguished if it is exercised strictly in accordance with the provisions of the Act. Counsel contended that the equity of redemption remains a statutorily protected equitable right of the chargor.
27. Counsel contended that the Plaintiff's right of redemption was not violated since the Plaintiff had not settled the outstanding debt owed to the Defendant. To support this argument, Counsel cited Paul Odhiambo Edward Gondi v National Bank of Kenya Ltd [2015] KECA 146 (KLR), where the Court of Appeal held that the title to charged property could not be discharged even based on an undertaking by a chargor's Counsel.
28. Counsel submitted that the Plaintiff had admitted that the agreement governing the proposed transaction stipulated payment terms requiring the purchase price of the charged property to be paid into a stakeholder account, with monies to be disbursed to the Defendant based on a professional undertaking by the Plaintiff's advocate.
29. Counsel explained that the payment arrangement required the Defendant's consent to the transaction and acceptance of the purchase price of Kshs 31,500,000/-. It was specified that Kshs 16,500,000/- would be held by the Plaintiff's advocate in a third-party bank account until the transfer was completed and registered; that the transfer of the title from the Plaintiff to the purchaser would be subject to the discharge of the charge by the Defendant; and that Kshs 15,000,000/- would be paid to the Defendant by the purchaser's third-party bank.
30. Counsel submitted that the orders sought by the Plaintiff would effectively compel the Defendant to accept payment terms designed for the benefit of a third party without its participation or consent. Counsel further submitted that the Plaintiff owed the Defendant Kshs 27,280,183.90/-, exclusive of accruing interest and penalties. It was therefore argued that accepting Kshs 15,000,000 would only be a partial payment of the debt, leaving the outstanding balance unsecured.
31. Counsel further contended that the right to discharge a charge can only be exercised by a chargor once all monies secured by the charge have been fully paid and all other conditions and obligations specified therein have been met. To support this argument, Counsel cited the case of Kiore v Chief Registrar of Titles [2024] KEELC 564 (KLR).
32. Counsel argued that the agreement relied upon by the Plaintiff purported to require the Defendant to discharge the charge upon payment of Kshs 15,000,000, which did not constitute a full and final settlement of the Plaintiff's debt. Counsel submitted that the Defendant's refusal to execute the consent was consistent with both the provisions of the Land Act and the express terms of the charge.



- Counsel further submitted that the Defendant had consistently expressed its willingness to release a duly executed discharge of charge and the original lease once the outstanding loan was fully settled.
33. Counsel also referenced clause 43 of the charge, which states that once the amount secured by the charge, including all interest, is paid in full, along with any costs, charges, and expenses incurred by the bank relating to the premises, the bank will, at the request and expense of the chargor, discharge the charge.
 34. Counsel further submitted that it is well established that Courts cannot rewrite contracts between parties. To support this point, Counsel relied on *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] KECA 362 (KLR). Counsel argued that the Plaintiff was effectively seeking to rewrite the terms of the charge to her advantage and to the Defendant's detriment by compelling the Defendant to accept a sum substantially less than what was lawfully owed and to discharge the charge without full satisfaction of the secured obligations.
 35. Counsel further cited *Mwaringa v Waashe* [2025] KECA 297 (KLR) to submit that parties enter into contracts to ensure mutual compliance, and that any modifications to a contract must be mutually agreed upon. Counsel maintained that the payment terms proposed in the agreement sought to alter the explicit terms of the charge without the Defendant's consent.
 36. Counsel further cited *Husamuddin Gulamhussein Pothiwalla, Administrator, Trustee and Executor of The Estate of Gulamhussein Ebrahimji Pothiwalla v Kidogo Basi Housing Cooperative Society Limited & 31 others* [2009] KECA 400 (KLR) to submit that Courts do not rewrite contracts for parties who later realize they have entered into unfavourable agreements. Counsel contended that the Plaintiff had entered into the charge with full knowledge of her obligations and is now seeking to circumvent those obligations through the present application and the suit as a whole.

Analysis And Determination

37. Having considered the application, the respective affidavits, and the rival submissions, the issue for determination is whether the Plaintiff is entitled to the orders sought.
38. The Plaintiff seeks an order directing the Defendant to execute the Chargee's Consent attached to the Sale Agreement dated 11th November 2025 regarding the proposed sale of the suit property.
39. In the Plaint dated 10th September 2025, the Plaintiff states that she obtained a loan of Kshs. 22,000,000/= from the Defendant, secured by the suit property. The Plaintiff claims that she has diligently serviced the loan and has paid a total of Kshs. 26,485,798.55/=, which the Defendant has acknowledged receiving. The Defendant, however, asserts that the Plaintiff still owes the sum of Kshs. 23,939,089.35/=. The Plaintiff further contends that the Defendant is in breach of various provisions of the *Land Act*, has violated the duplum rule, and has unlawfully blocked the Plaintiff's right of redemption.
40. Consequently, the Plaintiff seeks, among other reliefs, a declaration that the amount claimed by the Defendant is unlawful and exaggerated, a declaration that the variation of interest rates without notice was unlawful, an order compelling the Defendant to grant consent to the Plaintiff's proposed private treaty sale of the suit property, an order directing the refund of any sums found to have been overpaid, and a permanent injunction restraining the Defendant from exercising its statutory power of sale over the suit property.
41. Section 87 of the *Land Act* states that if a charge contains any condition, whether expressed or implied, that prevents the chargor from transferring, assigning, leasing, or subleasing the charged land without



the chargee's consent, then such transfer, assignment, lease, or sublease cannot be registered unless the written consent of the chargee has first been presented to the Registrar.

42. It is therefore clear that when land is encumbered by a charge, the law recognises the chargee's interest in the charged property and requires that any disposal of such property be made with the chargee's consent, provided that this consent is specified in the charge instrument. The need to obtain consent aims to protect the chargee's security interest and prevent dealings with the charged property that could undermine the chargee's ability to recover the secured debt.
43. In the present case, it is not disputed that the suit property is charged in favour of the Defendant. It is also not disputed that the Plaintiff intends to dispose of the property through a private treaty sale and requires the Defendant's consent to facilitate the transfer registration. The central question that therefore arises is whether, under these circumstances, the Defendant can be compelled to execute the chargee's consent regarding the proposed transaction.
44. The Plaintiff asserts that the Defendant has unreasonably withheld consent, thereby impeding her right of redemption. Conversely, the Defendant maintains that the Plaintiff continues to owe a substantial amount and that the proposed transaction does not guarantee full repayment of the outstanding loan. The Defendant further argues that consent to the sale or release of the charge can be granted only after the secured sums have been fully paid.
45. Based on the material presented before this Court, it is evident that the parties strongly dispute the outstanding amount under the loan facility. While the Plaintiff claims to have substantially serviced the loan and questions the legality of the sums claimed by the Defendant, the Defendant maintains that a substantial balance remains due, along with accrued interest and charges. This dispute is the central issue in the main suit before this court.
46. The right of a chargor to redeem charged property is well recognised both in equity and under the statute. Section 89 of the *Land Act* safeguards the chargor's right of redemption and prevents it from being clogged or restricted. However, this right is not absolute. It can only be exercised after all monies secured by the charge, including any interest and other contractual obligations arising from it, have been paid. Until such payment is made, the chargee is entitled to retain the security. This aligns with Section 85 of the *Land Act*, which states that a chargor may only discharge the charge upon settling all secured monies and fulfilling all conditions and obligations specified in the charge instrument.
47. In the matter at hand, the Plaintiff seeks an order compelling the Defendant to execute the chargee's consent to a transaction negotiated between the Plaintiff and a third-party purchaser. Under the proposed arrangement, only part of the purchase price will be paid directly to the Defendant, with the remaining balance held by advocates until completion and discharge of the charge.
48. Based on the evidence presented by the parties, compelling the Defendant to execute the consent would effectively force the Defendant to accept payment terms it has not agreed to, which may expose it to the risk of the outstanding loan remaining unpaid. Such an order would also conflict with the contractual terms governing the parties' relationship under the charge instrument.
49. Courts have consistently held that they cannot rewrite contracts between parties. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] KECA 362 (KLR), the Court of Appeal confirmed that a Court of law cannot rewrite a contract between parties and that parties are bound by the terms of the contracts they voluntarily agree upon.
50. Furthermore, if a debt secured by a charge remains disputed, it would be premature for the Court to issue orders that might effectively extinguish or compromise the chargee's security before the dispute



is resolved. The proper approach is for the parties to address the issues related to the outstanding loan balance and the legality of the sums claimed within the substantive suit.

51. This Court is therefore not persuaded that the Defendant's refusal to execute the chargee's consent, in the circumstances presented, constitutes a clog or fetter on the Plaintiff's equity of redemption.
52. The upshot of the foregoing is that the application dated 26th February 2026 is hereby dismissed. Costs of the application shall abide by the outcome of the main suit.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF APRIL 2026.

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HON. T. MURIGI

JUDGE

In The Presence Of:

Ndungo for the Plaintiff/Applicant

Ms Wameyo holding brief for Deya for the Respondent

Ahmed- Court assistant

