



REPUBLIC OF KENYA



KENYA LAW
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**Mutiso v Nzibu & another (Civil Case 30 of 2018)
[2025] KEHC 5593 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL CASE 30 OF 2018
EN MAINA, J
APRIL 30, 2025**

BETWEEN

JOSHUA MUSAU MUTISO PLAINTIFF

AND

CYRUS ROBERT SALA NZIBU 1ST DEFENDANT

FAULU MICROFINANCE BANK LIMITED 2ND DEFENDANT

RULING

1. I have considered the 2nd Defendant's application dated 6th December, which seeks an order for review of the judgment of Muigai J rendered on 7th March, 2024 in which the court issued a temporary injunction prohibiting the sale transfer and/or subdivision of the suit properties belonging to the Plaintiff/Respondent, pending conclusion of the matter of fraud/forgery by the 1st Defendant.
2. The Judge also issued a warrant of arrest against the 1st Defendant.
3. Learned Counsel for the parties to the application, have filed their submissions which I have now had opportunity to consider and having done so it is my finding that this application has no merit. There is no error apparent of the face of the record, or discovery of new evidence or any other sufficient reason demonstrated as to warrant a review of the judgment/orders granted by Muigai J.
4. In her judgment, Muigai J came to the conclusion that the 1st Defendant fraudulently offered the properties of the Plaintiff as security/collateral for a loan from the 2nd Defendant/Applicant. The court found that it was therefore unjust to allow the 2nd Defendant to foreclose the properties in light of the fraud and gave orders for the arrest of the 1st Defendant who had deliberately evaded to take part in the proceedings. To review the judgment as sought, would mean that the 2nd Defendant is at liberty to foreclose on the Plaintiff's properties. This would result in an injustice in that there is nothing to warrant the review of the orders which were very clear when no error, new evidence or other sufficient



reason has been demonstrated. In the premises the application is declined and this court shall stand by the orders of Muigai J.

5. The warrant of arrest issued against the 1st Defendant is extended and the case shall be mentioned on 21/07/2025 to confirm the progress. The Deputy Registrar to issue a fresh warrant of arrest to be executed by the Officer Commanding Station, Machakos Police Station.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL, 2025.

E. N. MAINA

JUDGE

In the presence of:

Ms Mwikali for 1st Defendant

Ms Waweru for Mr. Ngwili for the Plaintiff/Respondent

Ms Swaka for 2nd Defendant/Respondent

Miriam – Court Assistant

