



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muraya v Chief Officer Health Services, Nakuru County & 2 others (Constitutional  
Petition E009 of 2025) [2025] KEHC 11575 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11575 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CONSTITUTIONAL PETITION E009 OF 2025**

**HI ONG'UDI, J**

**JULY 31, 2025**

**BETWEEN**

**MARGARET NJERI MURAYA ..... PETITIONER**

**AND**

**CHIEF OFFICER HEALTH SERVICES, NAKURU COUNTY . 1<sup>ST</sup> RESPONDENT**

**MEDICAL SUPERINTENDENT RIFT VALLEY PROVISIONAL GENERAL  
HOSPITAL ..... 2<sup>ND</sup> RESPONDENT**

**MANAGER NATIONAL BANK LIMITED NAKURU BRANCH .... 3<sup>RD</sup>  
RESPONDENT**

**RULING**

1. In the Chamber Summons dated 5<sup>th</sup> February 2025 the petitioner prays for the following orders;
  - i. Spent.
  - ii. That this honourable court be pleased to issue a mandatory order compelling the 3<sup>rd</sup> respondent to furnish the petitioner herein with the complete accounts of National Bank Account Number XXX held under the name Rift Valley General Hospital with immediate effect.
  - iii. That this honourable court be pleased to issue a mandatory order compelling the 2<sup>nd</sup> respondent to furnish the Petitioner herein with the complete books of accounts for the facility Rift Valley General Hospital for scrutiny with immediate effect.
  - iv. That costs of this application be provided for.
2. The said application is based on the grounds thereof and the affidavit in support of the petition sworn by the petitioner on even date. She deponed that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents were colluding to



- mishandle and mismanage public funds collected from the citizenry of Nakuru County. She stated that the said funds are meant to enhance the quality of medical services provided at the Rift Valley Provincial General Hospital and enhance its infrastructure.
3. She further deponed that the respondents had carte blanche to operate the said accounts without oversight, proper adherence to public procurement policy and proper adherence set accounting standards as a government run institution. Furthermore, that the 3<sup>rd</sup> respondent had control over the disbursement of public funds yet he was not a public servant. In addition, that the respondents had caused so much damage that the staff had gone unpaid for months, hospital infrastructure was crumbling and basic supplies were unavailable. That the same diminished the provision of healthcare to the citizenry of Nakuru County and other neighbouring counties as the facility was a referral hospital.
  4. She stated that unless the orders sought are granted and the illegal acts of the respondents are stopped, the County of Nakuru health sector would continue to suffer from mismanaged and the citizenry's great unjustifiable loss.
  5. In response the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a replying affidavit sworn on 19<sup>th</sup> March 2025 by the 1<sup>st</sup> respondent. He averred that the application and the petition had been brought by an unqualified person. He stated that there had been misapprehension of facts, the law and the orders being sought for a mandatory injunction could only be granted in very special circumstances. He further stated that the orders sought were misconceived and baseless as Article 226(3) constitutional mandates auditing of account in all governments on the office of the Auditor General.
  6. He further averred that the application lacked a proper understanding of *Public Finance Management Act* Chapter 412A Laws of Kenya on revenue and expenditure in Nakuru County Government and County health facilities. He stated that they had provided copies of the audited reports for the year 2021/2022 and 2022/2023 for the Provincial General Hospital in which the Office of the Auditor General issued a qualified opinion. He added that although by and large the financial transactions recorded in the said report were in agreement with the accounting records, there could be cases where the Auditor-General was unsatisfied with the veracity of certain expenditures, but the same was not significant.
  7. He averred that the 3<sup>rd</sup> respondent was not a signatory to any of the accounts of the County Government of Nakuru. Further, that the process of hiring casual workers has always been with the request and approval for authority of the County Public Service Board and in accordance with the relevant laws. He deponed that both the application and the petition had not met the test for grant of a mandatory injunction and public interest litigation.
  8. Equally in response to the petitioner's application, the 3<sup>rd</sup> respondent filed a replying affidavit sworn on 18<sup>th</sup> February 2025. He averred that the petition and application were drawn by an unqualified person according to the advocate's search engine. He stated that the 3<sup>rd</sup> respondent maintained a client-banker relationship with the 2<sup>nd</sup> respondent and there was nothing special beyond the normal customer bank relationship. He stated further that it was embarrassing for the petitioner to state that he was colluding with other parties herein to mishandle and/or mismanage public funds without proof.
  9. He denied being in control of the 2<sup>nd</sup> respondent's account beyond his mandate as a banker. He stated that he was not a signatory to any customer's accounts including the parties herein. He added that the petitioner appeared to have extortionist, hidden and malevolent agenda in suing him on baseless allegations. He urged the court strike out both the petition and application with costs.
  10. The application was canvassed by way of written submissions.



## **Petitioner’s submissions**

11. These were filed by Ngware Ngaru & Company Advocates and are dated 28<sup>th</sup> April, 2025. Counsel gave brief facts of the case and identified two (2) issues for determination.
12. On the first issue on whether the applicants have fulfilled the conditions for grant of the orders sought, counsel submitted that whereas access to information is a right under Article 35 of the Constitution, the same was not among the rights enumerated under Article 25 of the Constitution which could be limited in anyway whatsoever. He stated that any limitation to the said right ought to comply with the requirements set out in Article 25 of the Constitution.
13. He placed reliance on the Supreme Court’s decision in Presidential Election Petition No. 4 of 2017, Njonjo Mue & Another v Chairperson of Independent and Bounderies Commission & 3 others [2017] eKLR where it was observed as follows: -

“..... We also recognize that information held by the state or state organs, unless for very exceptional circumstances, ought to be freely shared with the public. However, such information should flow from the custodian of such information to the recipients in a manner recognized under the law without undue restriction to access of any such information.
14. On the second issue, whether the application is uncontroverted, counsel submitted that the respondents were yet to file responses to the application. Thus, her application stood uncontroverted. He placed reliance on several decisions among them Drappery Empire vs. The Attorney General Nairobi HCCC No. 2666 of 1996 where Rawal, J (as she then was) held that where the circumstances leading to the deliveries of goods are not challenged and stand uncontroverted due to the failure by the respondent to adduce evidence, the standard of proof in civil cases (on the balance of probabilities) has been attained by the claimant.
15. Lastly, on costs counsel placed reliance on the decision in Joseph Oduor Anode v Kenya Red Cross Society Nairobi High Court Civil Suit No. 66 Of 2009; [2012] eKLR where Odunga, J (as he then was) observed as follows;

“In matters of costs, the general rule as adumbrated in the aforesaid statute [the Civil Procedure Act] is that costs follow the event unless the court is satisfied otherwise. That” satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so....”
16. He urged the court to allow the applications with costs.

## **1<sup>st</sup> and 2<sup>nd</sup> Respondent’s submissions**

17. These were filed by the County Attorney and are dated 19<sup>th</sup> March, 2025. Counsel submitted that the orders sought for complete accounts statements and books of accounts could not be granted at an interlocutory stage. He stated that mandatory injunctions could only be granted under special circumstances as was held by the Court of Appeal in Kenya Breweries Ltd & Another v Washington Okeyo [2002] eKLR as follows;

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple



and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

18. Counsel further submitted that the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> respondents and the bank was one of a bank-client relationship founded on contracts. That the same was bound by the principles of confidentiality and privacy where a customer's financial records were not to be unnecessarily disclosed. He asserted that despite the petitioner alleging that the application and the petition were brought under the provisions of the *Access to information Act*, he failed to demonstrate that he requested for the information as provided for under the said Act and the same was denied.
19. The court's attention was drawn to the decision in *Farah Abdinor Ahmed v National Land Commission & 2 others* [2014] KEELRC 1144 (KLR) the court held at paragraph 27 of the judgment as follows:

“Even where the case relates to records of insolvency, the standards that apply are best replicated in any case where records in the possession of a state body or a private entity or person is required. There must be a written notice of request and where this request is declined, or the person to furnish wilfully neglects to so furnish or knowingly makes any false statement, under the law, such a person commits an offence and has a sanction. These provisions affirm the provisions of Article 35 of the *Constitution*. I therefore find the petitioner failed to request or apply to have the information sought before filing his application. The information is now sought through coercive orders of the court as set out in the application herein. There is no proof that the respondents have refused, rejected or neglected to offer the information or record required by the Petitioner. The application for the provision of such records and information through the court is premature and must fail and the application dated 7th May 2014 is hereby declined and dismissed.

See also;

*Kazuri 2000 Limited v Kenya Commercial Bank* [2024] KEHC 6971 (KLR).

20. Counsel concluded by submitting that there are laws in place which ensure existence of internal and external control mechanisms on management of revenue. Further, that the accounts are subjected to audit by the Auditor General. He urged the court to dismiss the application with costs.

### **3<sup>rd</sup> Respondent's submissions**

21. These were filed by Kamonjo Kiburi & Company Advocates and are dated 25<sup>th</sup> April 2024. Counsel submitted that the mandatory injunction orders being sought by the petitioner could not be issued at an interlocutory stage unless there are special or exceptional circumstances demands. He placed reliance on the decision in *Machiri Limited v Mayfair Insurance Company Limited & Others*; Civil Case No. E502 of 2022 [2023] KEHC 20218 (KLR) where the court held that an order compelling the issuance of bank statements and/or record could not be issued at an interlocutory stage. He asserted that the petitioner had to prove a special case for the court to order the 3<sup>rd</sup> respondent to disclose confidential banking records. He placed reliance on section 140 (2) of the *Evidence Act*, section 31 (1) and (2) of



the [Banking Act](#) and the decision in *Kim Jon Kyu v Housing Finance Company of Kenya & 2 Others* [2015] eKLR where the court held as follows;

“The 1<sup>st</sup> Respondent is protected, indeed prohibited by section 31(2) of the [Banking Act](#) from disclosing or publishing any information in its possession except as provided by the Act”

See also;

*Standard Chartered Bank Kenya Limited v Intercom Services Limited & 4 others* [2004] eKLR.

22. Counsel further submitted that the petitioner’s claim could only be accessed through an application under the [Access to Information Act](#) and in particular section 4 and 8 (1). He stated that the High court only dealt with issues brought under the said Act as an appellate court. Thus, this court to the extent that this is not an appeal, lacked original jurisdiction. He placed reliance on section 6(1) of the [Access to Information Act](#) 2016 and the decision in *Kazuri 2000 Limited v Kenya Commercial Bank Limited* (supra).
23. Counsel argued that there was no evidence showing that the 3<sup>rd</sup> respondent was in control of the 1<sup>st</sup> and 2<sup>nd</sup> respondents’ bank accounts except as bankers in a bank-customer relationship. He urged the court to dismiss the petitioner’s application with costs.
24. The 3<sup>rd</sup> respondent filed supplementary submissions dated 5<sup>th</sup> May 2025, where counsel submitted that the petitioner should not be awarded costs since her advocate did not have a valid practicing certificate when she took up instructions. He placed reliance on the decision in *JB Shilanje & Company Advocates v Kenindia Assurance Company Limited* [2021] eKLR, where the court held that an advocate who filed a matter without a current practicing certificate could not be awarded costs.

### **Analysis and determination**

25. I have considered the application, affidavits and the submissions by the parties, and find the issue arising for determination to be whether the petitioner should be granted orders of mandatory injunction at the interlocutory stage.
26. The circumstances under which the Court would grant a mandatory injunction at an interlocutory stage were well articulated by the Court of Appeal, in *Kenya Breweries Limited & Another vs. Washington O. Okeyo* (supra) also relied on by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
27. Further, in *Shariff Abdi Hassan v Nadhif Jama Adan* [2006] eKLR the court stated as follows:

“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”
28. The order sought is a mandatory injunction to compel the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to furnish the petitioner with the books of accounts and complete bank accounts for Rift Valley General Hospital. In light of the above cited authorities, it is my humble view that no special circumstances have been set forth warranting the grant of a mandatory injunction at this interlocutory stage. It is nowhere shown that the petitioner/applicant ever sought for the said records in an official and provided manner and the same was declined. The issues raised by the petitioner clearly need further interrogation and it will be a miscarriage of justice to issue such orders as of now. Additionally, the petitioner has not established



what prejudices she will suffer if the said orders are not granted at this stage. I therefore decline to grant orders of mandatory injunction, as prayed.

29. Consequently, the petitioner's chamber summons dated 5<sup>th</sup> February 2025 is hereby dismissed with no orders as to costs.
30. Parties are hereby directed to file and exchange all the necessary documents within 60 days in preparation for the hearing.
31. Orders accordingly.

**DELIVERED, VIRTUALLY DATED AND SIGNED THIS 31<sup>ST</sup> DAY OF JULY, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

