



**Owalo v Mwananchi Credit Limited & another (Civil Appeal
E028 of 2025) [2025] KEHC 11723 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E028 OF 2025
WM MUSYOKA, J
JULY 31, 2025**

BETWEEN

CHRISPINE OCHIENG OWALO APPELLANT

AND

MWANANCHI CREDIT LIMITED 1ST RESPONDENT

GARAM INVESTMENT AUCTIONEERS 2ND RESPONDENT

*(Appeal from orders made by Hon. R Odenyo, Senior Principal Magistrate,
SPM, of 26th March 2025, in Busia CMCCC No. E151 of 2024)*

RULING

1. The application that I am called upon to determine is the Motion dated 13th May 2025. It seeks injunctions, with relation to sale of Bukhayo/Mundika/8878, the setting aside of warrants of attachment and sale, and stay of orders made in a ruling delivered by the trial court on 26th March 2025.
2. The said application is interlocutory, filed in the appeal herein. The appeal itself arises from an order that was made on 26th March 2025, by Hon. R. Odenyo, Senior Principal Magistrate, in Busia CMCCC No. E151 of 2024 from the grounds of appeal, in the memorandum of appeal, it would appear that the trial court dismissed the suit.
3. The background given, in the affidavit in support of the application, sworn on 13th May 2025, is that the appellant is the registered proprietor of Bukhayo/Mundia /8878, which, it would appear, he offered as security for a loan, which he claims to have paid in full. He avers that it has been re-advertised for sale, and argues that if that happens, his appeal will be rendered nugatory, yet the same raised triable issues. He has attached a copy of the re-advertisement and the formal order extracted from the order of 26th March 2025, dated 7th April 2025.



4. The respondent has reacted to the application, vide an affidavit, sworn on 23rd May 2025, by Cedella Akech. The affidavit discusses how the loan in question was granted, and how the appellant defaulted, and how processes for realisation of the security were initiated, among others. A copy of the ruling, in which the impugned orders were made, the loan and charge documents, the statutory notices and the advertisements are attached.
5. Directions were given, on 27th May 2025, for canvassing of the application by way of written submissions. Both sides have filed written submissions, which I have read and noted the arguments made.
6. I find it curious that the appellant comes to the High Court to challenge orders made by the trial court, and only attaches a copy of the order extracted, which merely shows that an application was dismissed, and the suit was struck out. He then goes on to argue that the trial court was wrong in making those orders, and that he has an arguable appeal on the merits.
7. A party who moves the High Court, to challenge a process that was undertaken at the trial court, should avail all the material that the trial court was working with, when it made the impugned order. This is critical at this interlocutory stage, for the appellate court does not have the benefit of the original triable court records, and, therefore, it has no access to the pleadings, the application, the responses, and the ruling where those orders were made. At this stage, no record of appeal would be in place, and, therefore, it behoves the applicant, in his affidavit in support of his application, to avail all that materials to help the court understand what the suit at the trial court was about, what issues arose in the application, and how the trial court dealt with them. Whether the grounds of appeal in the memorandum of appeal raises triable issues can only be evaluated from the material that was before the trial court.
8. In this case, only the extracted order was annexed, which is a bare document, mere evidence that the order was in fact made, but without a background as to how and why it was made. That is not adequate. The orders sought cannot be made on the basis that an appeal has been filed, and the auctioneer has advertised the property for sale. There should be more. What is the background? How did we get to where we are?
9. I note that the respondents have done a better job, in terms of giving a background, and attaching the relevant documentation, including the impugned ruling itself. However, without a copy of the pleadings, I would not be able to get the context of the ruling. What was the suit about? The application, which gave rise to impugned orders, is also not exhibited. What was the appellant asking for? What material was displayed in the supporting affidavit? What was the response by the other parties? This would be crucial in giving background, from which I can evaluate whether to grant the orders sought or not.
10. I am not persuaded that adequate material is before me, to enable me to determine whether the prerequisites for grant of injunctive relief have been met, principally whether a prima facie case has been made out, which would have probability of success.
11. Consequently, the application, dated 13th May 2025, is hereby dismissed, with costs. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 31ST DAY OF JULY 2025.

WM MUSYOKA

JUDGE



Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Owiti, instructed by Nancy Apondi & Company, Advocates for the appellant.

Mr. Isoe, instructed by Isoe Joel Law Advocates, Advocates for the respondents.

