



**Transnational Bank Ltd v Byegon & 2 others; Were t/a Sila Munyao & Co. Advocates (Garnishee); Byegon (Interested Party) (Civil Suit 6 of 2018) [2025] KEHC 11484 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL SUIT 6 OF 2018  
JK SERGON, J  
JULY 31, 2025  
PREVIOUSLY ELC CIVIL SUIT NO. 12 OF 2015 (O.S)**

**BETWEEN**

**TRANSNATIONAL BANK LTD ..... PLAINTIFF**

**AND**

**ROBERT KIPKEMOI BYEGON ..... 1<sup>ST</sup> DEFENDANT**

**DIANA CHEMTAI BYEGON ..... 2<sup>ND</sup> DEFENDANT**

**FAITH CHEBET ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**KENNEDY OCHIENG WERE T/A SILA MUNYAO & CO.  
ADVOCATES ..... GARNISHEE**

**AND**

**JOAN CHEROTICH BYEGON ..... INTERESTED PARTY**

**JUDGMENT**

1. The genesis of this suit is as follows: the plaintiff had advanced a loan facility to Linner Chepkoech Chumo in the sum of Kshs. 4,500,000/= on the security of L.R. No. Kericho/kapsoit/620 by a charge which was registered on 1st July, 2011. The chargor died leaving operations and management of the estate to the defendants herein. The plaintiff initially filed this suit as an ELC Case No. 12 of 2015 (O.S) seeking to realize the security in the land parcel number Kericho/Kapsoit/620 which was charged to secure a loan, subsequently the suit was transferred to this court which is seized with the requisite



jurisdiction and subsequently filed as Civil Suit No. 6 of 2018 the instant matter which has been proceeding in this court since then.

2. This matter having originated from the ELC Court before it was transferred to this Court, the applicant (now plaintiff) filed an amended originating summons (O.S) dated 23rd September, 2016 seeking the following orders;
  - (i) That the Trans National Bank Ltd be granted approval to exercise its statutory right of sale. On the following grounds:
    - a. The chargor has since died leaving the operations and management of her estate to the Respondents.
    - b. That the loan granted to the deceased under a charge under L.R No. Kericho/Kapsoit/620 remained unpaid in the sum of Kshs. 7,504,146.00 as at the 28th day of February, 2015.
    - c. That the 1st Respondent having been issued with a grant for special purposes to manage and operate the business of the deceased has failed to service the outstanding loan.
    - d. That the 2nd and 3rd Respondent were issued with a grant of letters of administration intestate on 7th October, 2015 and they too have made no efforts to service the outstanding loan.
    - e. That unless approval is granted to the Applicant to exercise its power of sale, the escalating loan may exceed the value of the charged property.
3. The originating summons (O.S) is supported by the affidavit of Christopher Rono the Branch Manager of Trans National Bank Ltd, Kericho.
4. The 1st Respondent (now Defendant) filed a replying affidavit in response to the originating summons (O.S) and that originating summons (O.S) is fatally defective as it does not disclose any action against him and that he applied for a limited grant for special purpose in Kericho Succession Cause No. 2 of 2012 wherein he was only authorised to operate and manage the affairs and accounts of Grassland Schools - Tabon until further representation is granted.
5. He further deposes that the limited grant does not extend to him being sued and/or representing the estate of the deceased in a suit filed in any court.
6. He further deposes that the administrators of the estate of the deceased have already commenced succession proceedings full grant which will give them power to sue and be sued in respect to the estate of the deceased, he attached a P & A Form 5 for Kericho High Court No. 171 of 2015.
7. It is his deposition that the estate has not received any statutory notice for the default of the alleged loan facility and therefore the instant originating summons (O.S) is premature and therefore should be struck out with costs.
8. The matter proceeded viva voce evidence. Pw. 1 branch manager Access Bank, Kericho testified and stated that executed his witness statement dated 14th November, 2022 and wished to adopt the same as evidence in chief.
9. On cross examination, Pw. 1 confirmed that the bank advanced money to Linner Chepkoech Chumo on 6th June, 2011 and that the loan was secured by a charge over L.R No. Kericho/Kapsoit/620 and that the bank carried out a search in respect to the property and obtained a consent. He confirmed that



- Linner Chepkoech Chumo had passed on and that they were supplied with a grant of representation. He confirmed that he was aware that there was a court order cancelling the title, however, he was not privy to the proceedings in the Environment and Land Court. He asserted that the bank conducted due diligence before charging the property.
10. On re-examination, he reiterated that at the time the loan was approved and advanced the official search indicated that the subject parcel to wit L.R No. Kericho/Kapsoit/620 was in the name of Linner Chepkoech Chumo.
  11. At the close of the plaintiff's case the defendant testified in support of his case.
  12. Dw. 1 the 1st defendant in this suit testified and stated that he executed his witness statement dated 6th October, 2022 and wished to adopt the same as evidence in chief. He stated that he is not the administrator of the estate of the late Linner Chepkoech Chumo and that he had obtained limited letters of administration to manage the school known as Grassland School which ran its course until the school was closed. He stated that he was not aware that further letters of administration in respect of the estate of Linner Chepkoech Chumo were issued. He produced a green card in respect to L.R No. Kericho/Kapsoit/620 and produced it as DExh. 1 which indicated that the property was registered in the name of Kipyegon Arap Cheres his late father now deceased and that the property was subsequently transferred to Linner Chepkoech Chumo on 8.8.2006 (entry no. 5).
  13. He stated that a charge over the property was created on 1.9.2006 (entry no. 7) and cancellation of title and the same reverted in the names of Kipyegon Arap Cheres vide Kericho ELC Suit No. 13 of 2018 (entry no. 9).
  14. He stated that the subject parcel was ancestral land held by the late Kipyegon Arap Cheres in trust of the entire family. He stated that Linner Chepkoech Chumo was his wife, she did not own the subject parcel and that she passed away in a road traffic accident, a compensatory suit vide Kericho High Court Civil Suit No. 6 of 2013 and that the firm of M/s Sila Munyao & Company Advocates is still holding the money pursuant to a garnishee order. He therefore urged this court to have the instant suit dismissed and that the garnishee order be lifted.
  15. On cross examination, Dw. 1 confirmed the late Linner Chepkoech Chumo was his wife and that the 2nd and 3rd defendants are his daughters. He confirmed that he was aware that there was a bank loan to be serviced, he had made attempts to repay the loan and approached the bank to reschedule the loan repayments. He confirmed that he was not privy to the security used to secure the loan.
  16. The court directed the parties to file written submissions.
  17. The plaintiff filed their submissions and contended that the issue that has arisen is the subsequent cancellation of the title to the suit property in Kericho ELC Case No. 13 of 2019 and that the cancellation was post-facto, occurring years after the charge was registered and after the loan had already been disbursed.
  18. The legal and equitable rights created in favour of the Plaintiff under the charge cannot be extinguished simply by an administrative or court-directed cancellation of title without addressing the existing proprietary and financial interests held by the chargee.
  19. They cited the case of *Kenya Women Microfinance Ltd v Martha Wangari Kamau & another* [2021] eKLR, the Court held that: "A chargee has a recognized legal interest in charged property, and such interest cannot be disregarded in the event of title revocation or rectification. Due process must protect the chargee's right to recover funds advanced in good faith."



20. It is further Plaintiff's case that it advanced funds in good faith, relying on a valid title, and registered its interest accordingly.
21. If the subsequent cancellation of title is allowed to defeat the bank's interest, it will result in substantial injustice and irreparable harm to the bank. The bank will have no collateral against which to recover the outstanding loan and the result will be an unjust enrichment of the Defendants or beneficiaries of the estate at the bank's expense.
22. The Plaintiff was adamant that the principles of indefeasibility of title and priority of registered interests must apply. The Plaintiff's charge was registered first in time, and therefore its rights must prevail, even in the face of later questions surrounding the validity of the underlying title.
23. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] eKLR, the Court of Appeal affirmed that: "Where a chargee exercises due diligence and advances money on the strength of a title, the courts should not permit that charge to be defeated without adequate compensation or remedy."
24. It is further the Plaintiff's case that the Defendants, being administrators of the estate of late Linner Chepkoech Chumo from 7th October 2015, inherited the obligation to manage and settle debts owed by the estate. The *Law of Succession Act*, under Section 82(b)(ii), mandates administrators to pay debts of the deceased. In *Kariuki & Gathecha Resources Ltd v Wanjiku Kariuki & 3 others* [2015] eKLR, it was held that administrators are under legal duty to pay the deceased's lawful debts from the estate assets. Thus, the failure by all three Defendants to act in settling the known debt amounts to dereliction of duty. They cited the case of *Kimei v Housing Finance Company of Kenya Ltd* [2014] eKLR, in which it was emphasized that the power of sale is not just a contractual right but a statutory entitlement available to the lender upon breach by the borrower. The courts have reiterated that this right is central to the functioning of the credit system, and should not be lightly interfered with.
25. The defendants filed their submissions and maintained that the plaintiff had not laid basis for enjoining them in the instant suit as the plaintiff had not demonstrated that they were administrators of the estate of the late Linner Chepkoech Chumo.
26. The defendants maintained that Kericho/Kapsoit/620 is ancestral land and that they produced the latest official search showing that the ELC Court vide ELC Cause No. 13 of 2019 reverted the registration of the land bank to Kibiegon Arap Cheres and therefore the charge created under the subject parcel was unlawful as the same was created over an illegal entry to the title and therefore the Bank had failed to conduct due diligence before creating the charge as required by the law.
27. This court has considered the pleadings and viva voce evidence and submissions by the parties and finds that the following issue (s) is ripe for determination; whether the originating summons (O.S) is merited and the applicant now plaintiff is deserving of the relief sought.
28. This court finds that it is not in dispute that the Linner Chepkoech Chumo (now deceased) obtained a loan facility and that the loan was secured by a charge over L.R No. Kericho/Kapsoit/620 and that at the time the loan was approved and advanced the official search indicated that the subject parcel to wit L.R No. Kericho/Kapsoit/620 was in the name of late Linner Chepkoech Chumo. However, following proceedings in Kericho ELC Case No. 13 of 2019, the said entry was cancelled and the land reverted to Kipyegon Arap Cheres.
29. It is also not in dispute that in the intervening period the late Linner Chepkoech Chumo (the debtor) passed away before she could complete the loan repayment and therefore the Plaintiff Bank is desirous of recovering the monies advanced and/or exercising the statutory power of sale.



30. What is in contention is that Defendants are adamant that they do not have the requisite capacity to sue and/or be sued in respect of the estate of the late Linner Chepkoech Chumo, however, this court finds that the defendants in their capacity as successors and/or personal representatives of the deceased are liable to settle the debts owed by the estate of the late Linner Chepkoech Chumo.
31. It is therefore the finding of this court that the Plaintiff has proven existence of the charge, the default, the quantum of the outstanding loan, and the Defendants' inaction (as administrators of the estate of the late Linner Chepkoech Chumo) and that the subsequent post facto cancellation of title cannot prejudice the bank's right to recover the sum owed.
32. The Plaintiff is therefore granted the following reliefs;
- (i) The estate of the late Linner Chepkoech Chumo through the defendants is hereby declared liable to settle the total outstanding balance in the sum of Kshs. 7,504,146.00 as of the 28th day of February, 2015 plus interests thereon at court rates until payment in full.
  - (ii) The defendants shall bear the costs and interests of the suit.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 31ST DAY OF JULY, 2025**

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**J.K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh

Miss Cherono holding brief for Langat for the Defendant

Keter for the Plaintiff

