



**Ambwere TS & Co Advocates v Karama (Miscellaneous Application  
23 of 2021) [2023] KEHC 3970 (KLR) (Family) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3970 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION 23 OF 2021  
G MUTAI, J  
APRIL 28, 2023**

**BETWEEN**

**AMBWERE TS & CO ADVOCATES ..... APPLICANT**

**AND**

**MOHAMED SWALEH KARAMA ..... RESPONDENT**

**RULING**

1. The application before me is dated 24<sup>th</sup> January, 2023. The same was filed by the Applicant under a Certificate of Urgency. The application seeks the following orders: -
  - i. The Honourable Court be pleased to set aside and or vacate the orders made by Hon. Orora on 4<sup>th</sup> January 2023 and extended on 12<sup>th</sup> January 2023 pending the hearing and determination of the application;
  - ii. The costs of the application be borne by the Respondent.
2. The Applicant argues that the Respondent filed a Notice of Motion application on 16<sup>th</sup> December 2022 vide which he sought to stay the execution of the decree issued by this Honourable Court. He argues that the said application was placed before the Hon. Orora, Deputy Registrar, in Chambers on 4<sup>th</sup> January 2023. The Applicant contests the jurisdiction of the said Registrar to issue orders applied for in a substantive motion. He avers that Registrar's powers are limited to administrative and case management matters. The Applicant is aggrieved that despite pointing out the error on the part of the learned Deputy Registrar, when the matter came up for inter parties hearing on 12<sup>th</sup> January 2023, she ignored his learned exhortations and proceeded to extend the impugned orders. It is averred that the Deputy Registrar refused to place the matter before the Judge despite fundamental issues of jurisdiction being raised.



3. The Applicant states that his lawful attempt to execute the valid decree of the court has been impeded by the orders which were irregularly obtained.
4. Naturally the Respondent opposed to the Applicant's application. He terms the application as frivolous, scandalous, vexatious and flagrant abuse of the due process of the court. He avers that it was the then Judge in charge of the Family Division of the High Court, the Hon. Mr. Justice Onyiego, who on 16<sup>th</sup> December 2022 ordered that the matter be placed before Deputy Registrar for further orders.
5. The Respondent gave a chronology of the events before the Deputy Registrar in his Replying Affidavit and attached thereto documents in support thereof. It is argued therein that this court has no jurisdiction to hear the instant application unless the preliminary objection before the Deputy Registrar is heard and determined first. The Respondent avers that the Applicant hasn't come to Court with clean hands.
6. The matter came before for hearing on 14<sup>th</sup> February 2023. I gave direction to the effect that the application before court be conversed by way of Written Submission. In compliance with court orders the Applicant files his submissions on 22<sup>nd</sup> February 2023. The Respondent filed his 16<sup>th</sup> March 2023. On 20<sup>th</sup> March 2023 upon confirming compliance with my directions I reserved my ruling for 28<sup>th</sup> April 2023.
7. Despite the very loud protestations of the parties herein this matter turns on the letter and spirit of Order 49 of the *Civil Procedure Rules*, 2010. What power does the Registrar of a High Court have? Can they hear Applications? If so, what kind? Is the application that was before the Registrar one that can be handled by a Registrar or should it have been handled by the judge instead?
8. To Answer the foregoing questions, we must look at the Notice of the Motion application dated 16<sup>th</sup> December 2022 filed by the firm of Bunde Mangaro & Co. Advocates for the Respondent. The same is expressed to be brought under provisions of Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 9 Rule 9 & 10 and Order 22 Rule 22 and 25 of the *Civil Procedure Rules*, 2010. Whereas Order 9 is cited, determination of this matter does not depend on it. The Applicant does not contest the appointment of Bunde Mangaro & Co. Advocates. He is aggrieved by the decision of the Deputy Registrar to grant stay orders in terms of prayer 3 of the said application. Stay of execution under the Rules may be issued pursuant to Order 22 Rules 22 and 25 of the *Civil Procedures Rules*, 2010. The question I must ask myself is if the Deputy Registrar has powers under the rules to issue stay orders. The answer to that is found in Order 49 of the *Civil Procedure Rules*, 2010.
  9. Order 49 Rule 7 (1) (b) of the *Civil Procedure Rules*, 2010 Provides that the "The Registrar may ... (b) hear and determine an application made under the following Orders and Rules ... (x) Order 22 other than under Rules 28 and 75".
10. The above provision is clear in my view and ought not to attract contestation. Since the Applicant has stated in his application that "It is university known that the Deputy Registrar has no powers to issue substantive orders on any motion, with the powers being limited to administrative and case management issues", I must discuss this issue further to clear this obvious misconception.
11. The Power of the Registrar to hear and determine application was discussed by Odunga, J (as he then was) in *Peter O Ngoge t/a O.P. Ngugi & Associates v ANMU Investments Company limited* [2012]eKLR. The learned Judge wrote that "since the Applicant has taken issue with the powers of the Registrar to entertain the present application it is important to explore the provision under which the present Application is brought"



12. The learned judge went on to observe that

“The body entrusted by the task of making rules of procedure is the Rules Committee in the exercise of powers donated under Section 81 of the *Civil Procedure Act*. In its wisdom the said Committee provided for execution under Order 22 of the *Civil Procedure Rules*. By virtue of Order 49 of the same *Rules*, the said Committee donated special powers to the Registrars and under rule 7(1)(a)(x) all applications under Order 22 other than rules 28 (detention of the judgement debtor or attachment of his property in execution of a decree for specific performance or for an injunction) and 75 (application for setting aside sale on grounds of irregularity) may be dealt with by the Registrar. Applications for notice to show cause under Order 22 rule 31 are therefore part of the applications that may be dealt with by the Registrar. Similarly, an application calling upon the judgement debtor or an officer of a corporation or any other person to be orally examined as to his property may be dealt with by the Registrar. Since the word employed under Order 49 rule 7 aforesaid is “may”, a Judge of the High Court is not necessarily deprived of jurisdiction to entertain any of the applications which the Registrar is empowered to entertain. It must however be noted that the decision of a Registrar under Order 49 rule 7 may be appealed to a Judge in chambers pursuant to Order 49 rule 7(2) thereof. Where a Judge therefore decides to undertake the duties for which a Registrar is empowered under Order 49 rule 7(1) it means that the parties are thereby denied an opportunity of appeal to the Judge and any appeal can only be to the Court of Appeal where the rules permit. In my view, it would not be proper unless it is absolutely necessary for a Court to take a deliberate step of denying a party a necessary stage in legal litigation for which a party would have been entitled but for the action of the Court even if the Court has jurisdiction to deal with a matter. There are good policy reasons underpinning the requirement that actions be taken at the lowest tier of the judicial hierarchy so as to afford a party as many opportunities as possible of testing the correctness of a decision”.

I wholeheartedly agree with the above holding.

13. Mwita, J made a similar holding in *Ndung'u Gitbuka and Co. Advocates v Geoffrey Moriaso Ole Mailoy* [2019] eKLR. In Paragraph 15 of his judgment, he stated that “the applications listed above are routine, are mainly administrative in nature and are not substantive in effect and therefore, Deputy Registrar has jurisdiction to hear them and to give direction as the case may be”.
14. It is therefore abundantly clear why Onyiego J demurred when the application date 16<sup>th</sup> December, 2022 was placed before him. Hearing the said application would have denied the Applicant a chance to appeal the decision thereby made to the High Court, and thus taken away one level of safeguard in our justice system, that is ordinarily available in such matters.
15. A cursory look at the Notice of Motion 16<sup>th</sup> December 2022 reveals its true purport. It is not substantive application in any way. The application seeks to preserve the disputed property “pending the hearing and determination of all cases involving the attached property”. As earlier indicated the application is predicated on Order 22 Rules 22 and 25 of the *Civil Procedure Rules*, 2010. Determination of applications under the said Order, save for those pursuant Rules 28 and 75, can be heard by the Registrar, or the Deputy Registrar.
16. From the foregoing it is clear that I see no merit in this application. Before I give my orders I must comment on some of the unfortunate remarks that were made about a Judicial Officer who was doing her work under the directions of the Judge. Calling her names, casting aspersions and doubting her



understanding of the law, merely because she made a ruling that wasn't to the liking of the advocate, and doing so without providing evidence, was uncalled. I am also unhappy with comments such as "what ails Africans, we engage in useless and unproductive activities and blame the system for backlog of cases and a lot of work ... Our firm shall not engage in this unproductive and unprocedural dispute before your court".

17. It need not be this way. It must not be this way. Disagreements or difference in opinions ought to be civil and respectful.
18. For the foregoing reasons I dismiss the Notice of Motion application dated 24<sup>th</sup> January 2023. The same has no merit. It is grounded on misapprehension or non-apprehension of the provisions of Order 49 Rule 7 of the *Civil Procedure Rules*, 2010. It has no legs to stand on and must be mercifully put to sleep.
19. I therefore dismiss the said application and award the Respondent costs.
20. Having dismissed this application, I must then decide the fate of the application dated 16<sup>th</sup> December 2022. Although it would have been preferable to have the same heard by the Registrar I find it prudent to hear the application myself. I therefore order that the said application be listed for hearing before me on 16<sup>th</sup> May 2023.
21. It is ordered

**DATED, SIGNED, AND DELIVERED AT MOMBASA THIS 28TH DAY OF APRIL, 2023**

**GREGORY MUTAI**

**JUDGE**

**In the presence of**

**Winnie Migot - Court Assistant**

**No appearance for the Applicant**

**Mr. Mangaro for the Respondent**

