



Muchena t/a Arimi Kimathi & Co Advocates v Kamau & 3 others (Sued as the legal representatives of the Estate of Kamau Thiong'o - Deceased) (Environment and Land Miscellaneous Application E072 of 2022) [2025] KEELC 1166 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1166 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E072 OF 2022
YM ANGIMA, J
MARCH 13, 2025

BETWEEN

PATRICK KIMANI MUCHENA T/A ARIMI KIMATHI & CO.
ADVOCATES APPLICANT

AND

MONICA WAMBUI KAMAU 1ST RESPONDENT
JANE NJERI 2ND RESPONDENT
JOSEPH NYINGI KAMAU 3RD RESPONDENT
ZACHARIA NJENGA KAMAU 4TH RESPONDENT
SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF KAMAU
THIONG'O - DECEASED

RULING

A. Respondents' Applications

1. The respondents filed three similar applications dated 04.09.2024, 07.10.2024 and 15.10.2024. The first application is dated 04.09.2024 brought under Sections 63 (e) and 3A of the [Civil Procedure Act](#) whereby the 3rd respondent sought, inter alia, orders that;
 - a. That the warrants of attachment and sale of property issued against the applicant/respondent on 20.08.2024 be cancelled and set aside.
 - b. That the attachment of the applicant's properties pursuant to the proclamation of attachment dated 29.08.2024 be set aside ex debito justitiae.



- c. That a declaration that the 3rd respondent is not personally liable for the debts of the estate of Kamau Thiong'o including the decree herein.
2. The second application is dated 07.10.2024 brought under Rule 22 Order 22 of the Civil Procedure Rules whereby all the respondents sought, inter alia, orders that;
 - a. That the signed but undated warrants of attachment and sale of property issued against the applicants/respondents herein be cancelled and set aside.
 - b. That a declaration that the respondents are not personally liable for the debts of the estate of Kamau Thiong'o including the decree herein.
3. The third application dated 15.10.2024 objected to execution proceedings and was brought under Article 159 of *the Constitution*, Sections 3A, 80 and 100 of the *Civil Procedure Act*, Sections 93, 83 and 45 of the *Law of Succession Act* (Cap. 160) and all enabling provisions of the law whereby the 3rd respondent sought, inter alia, the following orders;
 - a. That this honourable court be pleased to make a finding that all the attached and proclaimed moveable properties listed by Icon Auctioneers in the proclamation of attachment of moveable properties dated 14.10.2024 namely motor vehicle registration number KDC 254Q harrier and assorted household items are all solely owned by the objector Joseph Nyingi Kamau and not the Estate of Kamau Thiong'o.
4. The application was based upon the grounds set on the face of the motion and the contents of the supporting affidavit sworn on 05.09.2024 and the annexures thereto. The 3rd respondent argued that as a legal representative of the estate of Kamau Thiong'o, he was not personally liable for the estate's debts and that the applicant ought to execute the money decree of Kshs 438,045/= against the estate directly.

B. Applicant's Response

5. The applicant filed 2 replying affidavits, one sworn on 23.10.2024 in response to the application dated 15.10.2024 and another sworn on 23.10.2024 in response to the application dated 7.10.2024. It was deposed that his firm represented the respondents in ELC No. 3 of 2016 - The Estate of Kamau Thiong'o v National Land Commission after which he filed a bill of costs which was taxed and allowed in the sum of Kshs 438,045/=. It was contended that the respondents were merely delaying the execution of the decree emanating from the certificate of taxation and the court was urged to find them liable to settle the decree.

C. Directions on Submissions

6. When the applications were listed for inter parties hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The only submissions on record were the respondents' submissions dated 22.1.2025 in support of their objection.

D. Issues for Determination

7. The court has perused the three applications as well as the Notice of Objection, the responses thereto and the material on record. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the court should set aside the warrants of attachment issued against the respondents.



- b. Whether there is merit in the 3rd respondent's objection to execution.
- c. Who shall bear the costs of the applications.

E. Analysis and Determination

a. Whether the court should set aside the warrants of attachment issued against the respondents

8. From the material on record, it is clear that on 28.2.2020 the respondents instructed the applicant to represent them in ELC No. 3 of 2016 *The Estate of Kamau Thiong'o v National Land Commission*. The suit was withdrawn on 7.11.2024 which led the applicant to file an advocate/client bill of costs dated 7.10.2022. The same was taxed at Kshs 438,045/= on 27.9.2023, prompting the advocate to file an application dated 17.11.2023 seeking to execute the said amount against the respondents. The application was allowed and on 7.8.2024 the advocate extracted a decree against the respondents. The applicant then proceeded to proclaim the 3rd respondent's goods to which the latter has objected.
9. It is not disputed that the Joseph Nyingi Kamau alongside Monica Wambui Kamau, Jane Njeri and Zacharia Njenga are the administrators of the estate of James Kamau Thiong'o as seen from the Rectified Grant dated 20.1.2014. Section 83 of the *Law of Succession Act* obligates the respondents as the personal representatives, to pay out of the estate of the deceased all debts such as legal fees which are incidental to the administration of the estate. The 3rd respondent has admitted that since the grant was confirmed on 22.09.2010 the estate has not been distributed. Section 83 (g) of the Act requires the administrators within 6 months from the date of confirmation of the grant, or where the court extends the period to complete administration of the estate and report to the court. The grant was rectified back in 2014, a decade ago and there is no confirmation from the respondents that the estate has been distributed.
10. Where the estate has not been distributed and a debt is accruing, the creditors to the estate can only demand payment from the personal representatives of the estate. The advocate had no other remedy other than demanding the money from the respondents since they are the ones charged with the responsibility of settling the debts. It is evident from the material on record that in his application for judgment dated 17.01.2023, the applicant specifically prayed to be allowed to execute the resultant decree against the respondents. It is also evident that by its ruling dated 23.07.2024 the court allowed the prayer. As a result, the decree as extracted reads as follows:
 1. That judgement be and is hereby entered in favour of the applicant herein for Kenya Shillings Four Hundred and Thirty-Eight Thousand and Forty-Five Only (Kshs. 438,045) with interest at fourteen per cent (14%) per annum from the date of taxation until full settlement.
 2. That the applicant be allowed to execute the judgement herein against the respondents.
 3. That the respondents do pay the applicant the costs of the application.
11. There is no indication on record to show that the order made on 23.07.2024 allowing the applicant to execute the decree against the respondents was ever challenged on review or appeal. There is no indication to show that it was ever varied or set aside hence it is binding upon the respondents. The court is thus of the opinion that the respondents cannot evade the natural consequence of the orders granted on 23.07.2024 if they never challenged or successfully challenged those orders on review or appeal.



(b) Whether there is merit in the 3rd respondent's objection to execution

12. In view of the court order made on 23.07.2024 by Hon. Justice N. A Matheka and the reasons given in paragraphs 10 and 11 thereof, the court is not satisfied that the 3rd respondent has a valid objection to the process of execution and the proclamation of his chattels. The attachment of his personal goods and assets was specifically permitted by the order of 23.07.2024 which has never been varied or set aside. As a consequence, the court finds no merit in the 3rd respondent's objection proceedings.

(c) Who shall bear the costs of the application

13. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the applicant shall be awarded the costs of the application.

F. Conclusion and Disposal Order

14. The upshot of the foregoing is that the court finds and holds that the respondents' applications dated 04.09.2024, 07.10.2024 and 15.10.2024 are devoid of merit. As a consequence, the court makes the following orders for disposal of the applications;

- a. The 3rd respondent notice of motion dated 04.09.2024 be and is hereby dismissed with costs.
- b. The respondent notice of motion dated 7.10.2024 be and is hereby dismissed with costs.
- c. The 3rd respondent notice of motion dated 15.10.2024 be and is hereby dismissed with costs.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 13TH DAY OF MARCH 2025.

In the presence of:

Mr. Kirika for the Applicant

Mr. Wameyo for the respondents

Court assistant Gillian

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Y. M. ANGIMA

JUDGE

