



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Nyambura & 2 others (Environment & Land Case
3 of 2017) [2023] KEELC 22327 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 3 OF 2017
MN GICHERU, J
DECEMBER 20, 2023**

BETWEEN

PHILIP WANJOHI KARIUKI PLAINTIFF

AND

KENNEDY NJENGA NYAMBURA 1ST DEFENDANT

STEPHEANIE NJERI NJOGU 2ND DEFENDANT

LEORNARD N. NJAU T/A KINYANJUI & NJAU

ADVOCATES 3RD DEFENDANT

RULING

1. This Ruling is on the notice of motion dated 9/1/2023. The motion which is brought under Orders 51 Rule 1, 22 rules 22 and 34, 9 rule 9 *Civil Procedure Rules* and Sections 3 and 3A of the *Civil Procedure Act* and all enabling provisions of Law seeks the following orders,
2. That the firm of Otieno and company Advocates be granted leave to come on record for the applicant in the place of Ondabu and Company Advocates.
3. That there be an order of stay of execution of the warrant of arrest against the applicant issued on 7/12/2022 pending the hearing of this application.
4. That this court be pleased to set aside the warrant of arrest issued against the applicant.
2. The Motion is based on seven grounds and is supported by an affidavit sworn by the applicant dated 9/1/2023 which has three annexures.
3. The gist of the material by the applicant is that the applicant needs leave to have the new counsel come on record and he is unable to pay the decretal sum owing to economic hardships but he is willing to sell some property to enable him satisfy the decree and he prays for time.



4. The motion is opposed by the respondent who has sworn a replying affidavit dated 19/1/2023 in which he deposes as follows:

Firstly, the application is defective since it seeks to have the firm of Otieno and Company Advocates come on record yet it has been drawn and filed by a different firm of Geoffrey Otieno and Company Advocates.

Secondly, the applicant is dishonest in denying that he was served with the notice to show cause since there is evidence of physical service on 15/9/2022 as well as through phones numbers 0720220119, 0722720965 and 0726854272 which were delivered .

Thirdly, stay of the warrants is an equitable remedy available to a deserving party at the discretion of the court.

Fourthly, this application is not made in good faith and its aim is to prevent the decree holder from enjoying the fruits of his judgment.

Fifthly, the applicant has not proved that he will suffer substantial loss and he is abusing the court process by filing a plethora of applications through various law firms yet he has n good cause to show why he should not satisfy the decree.

5. The applicant has sworn a supplementary affidavit dated 31/1/2023 in which he disputes service on the three mobile phone numbers. He also adds that his mother E. J. Njeri has donated L.R. Limuru/ Bihinoni/3029 for sale in order to satisfy the decree herein.

6. Counsel for the parties filed written submissions dated 31/1/2023 and 3/2/2023 respectively. The main issue raised in the submissions is whether it is a contravention of Article 11 of the [International Covenant on Civil and Political Rights](#) to commit a civil debtor to civil jail for his inability to settle a civil debt.

7. I have carefully considered the motion in its entirety including the grounds, the three affidavits, the annexures, the submissions and the Law cited therein. I will allow prayer 2 of the motion because I have seen a letter from Ondabu and Co. Advocates saying that they have no objection to the incoming counsel coming on record for the judgment debtor.

8. I find no merit in the other prayers for the following reasons:

Firstly, a warrant of arrest against a civil debtor is provided for in Order 22 rule 32 of the [Civil Procedure Rules](#).

Secondly, the issuing of a warrant of arrest in execution is not the same thing as committal to civil jail. No order of committal to civil jail has been made in this case.

Thirdly, the applicant has not made any effort since the warrant of arrest was issued, more than a year ago, to appear before the court before arrest to explain his predicament. He has also not approached the decree holder to prove his willingness to settle his decree.

Fourthly, under order 22 Rule 34 [Civil Procedure Rules](#), he will be given ample opportunity of explaining why he has not settled the decree almost four years since the judgment was delivered.

Fifthly, the decree holder has not provided his correct address or phone number for service in any of the two affidavits that he has filed.



All the above-mentioned circumstances do not show good faith on the part of the judgment debtor. For the above stated reasons, I dismiss the motion dated 9/1/2023 except for prayer 2. Costs to the decree holder.

DELIVERED, SIGNED AND DATED VIRTUALLY AT KAJIADO THIS 20TH DAY OF DECEMBER 2023

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M. N. GICHERU

JUDGE

