



REPUBLIC OF KENYA



KENYA LAW
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Wanyoike v Mbogo (Civil Suit 679 of 2017) [2025] KEELC 3251 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3251 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
CIVIL SUIT 679 OF 2017**

JM ONYANGO, J

APRIL 2, 2025

BETWEEN

PETER MAMBO WANYOIKE PLAINTIFF

AND

JOSEPH THUKU MBOGO DEFENDANT

RULING

1. What is before me for consideration is the Notice of Motion dated 21st December 2023 brought under the provisions of Order 22 rule 48 (1) and Order 51 rule 1 of the Civil Procedure Rules seeking the following orders:
 1. Spent
 2. That a prohibition order do issue prohibiting the Defendant/Judgment-Debtor from transferring or charging the property known as LOC.16/Mbugiti/2163 in any way, and all persons from taking any benefit from such purported transfer or charge pending hearing and determination of this application.
 3. That a prohibition order do issue prohibiting the Defendant/ Judgment-Debtor from transferring or charging the property known as LOC.16/Mbugiti/2163 in any way, and all persons from taking any benefit from such purported transfer or charge until the decree herein issued on 14th April 2023 is satisfied in full.
 4. That the costs of the application be awarded to the Applicant.
2. The application is premised on the grounds on the face of it and supported by the affidavit of the Plaintiff/Applicant sworn on 21st December 2023. He avers that this court issued a decree in his favour on 14th April 2023 and awarded him an amount totalling to Kshs 628,630 as at the date of filing this application. He deposes that the said amount continues to attract interest until payment in full.



3. He contends that the Defendant/Respondent is yet to settle the decretal amount and that the only attachable asset of the Defendant/Respondent known to him is the property known as LOC.16/Mbugiti/2163. He is apprehensive that he may lose the only attachable asset from which he could realize the fruits of his judgment unless the reliefs sought in this application are granted.
4. In opposing the application, the Defendant/Respondent filed a Replying Affidavit sworn on 30th January 2024 where he admits that Judgment in this suit was delivered in favour of the Plaintiff/Applicant and that he was also awarded the costs of the suit plus interest. He maintains that he has never been served with a Certificate of Taxation or demand for payment of costs by the Plaintiff/Applicant.
5. He contends that the party who has Judgment in their favour is at liberty to institute execution proceedings. He faults the Plaintiff/Applicant for filing this application instead of following the laid down procedure. He adds that this application seeks to infringe on his proprietary rights hence it ought to be dismissed with costs.

Submissions

6. The application was canvassed by way of written submissions.
7. The Plaintiff/Applicant filed his submissions dated 30th October 2024 while the Defendant/Respondent filed his dated 11th November 2024.

Analysis and Determination

8. Having considered the issues raised in the application, the Defendant/Respondent's Replying Affidavit, and the rival submissions, the main issue for determination is whether the application is merited.
9. Judgment in this suit was delivered on 23rd January 2023, and a decree was issued on 14th April 2023. The Plaintiff/Applicant was also issued with a Certificate of Costs dated 11th October 2023. The Plaintiff/Applicant contends that he does not know any other attachable assets of the Defendant/Respondent that can satisfy the decree, save for land parcel number LOC. 16/Mbugiti/2163.
10. On the other hand, the Defendant/Respondent contends that the Plaintiff/Applicant has neither served him with the Certificate of Costs nor with a demand for payment.
11. Section 38 of the *Civil Procedure Act* provides as follows:

“Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale, or by sale without attachment, of any property;
- (c) by attachment of debts;
- (d) by arrest and detention in prison of any person;
- (e) by appointing a receiver; or
- (f) in such other manner as the nature of the relief granted may require:

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-



debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons to be recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree-
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the court; or
 - (ii) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which, by or under any law, or custom having the force of law, for the time being in force, is exempt from attachment in execution of the decree; or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

12. Order 22 of the Civil Procedure Rules contains the provisions relating to execution of decrees and orders. Order 22 rule 6 provides for the application for execution of a decree. The rule provides as follows:

“Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A:

Provided that, where judgment in default of appearance or defence has been entered against a defendant, no execution by payment, attachment or eviction shall issue unless not less than ten days’ notice of the entry of judgment has been given to him either at his address for service or served on him personally, and a copy of that notice shall be filed with the first application for execution.”

13. Order 22 rule 7 on the other hand provides as follows:

- “(1) Where a decree is for the payment of money the court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant, if he is within the precincts of the court.
- (2) Save as otherwise provided by subrule (1) or by any other enactment or rule, every application for the execution of a decree shall be in writing, signed by the applicant or his advocate or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars—



- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and, if any, what payment or other adjustment of the matter in controversy has been made between the parties subsequent to the decree;
- (f) whether any, and if any, what previous applications have been made for the execution of the decree, the dates of such applications, and their results;
- (g) the amount with interest, if any, due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of the costs, if any, awarded;
- (i) the name of the person against whom execution of the decree is sought; and
- (j) the mode in which the assistance of the court is required, whether —
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment and sale of any immovable property, or by the sale without attachment or by proclamation and sale immovable property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require.

(3) The court to which an application is made under subrule (2) may require the applicant to produce a certified copy of the decree.

14. The procedure for instituting execution proceedings is very clear under the aforementioned provisions of the law. There is no evidence that the Plaintiff/ Applicant has explored any of the execution methods listed in the *Civil Procedure Act* before the filing of this suit. There is also no evidence that the Defendant/Respondent was served with either the Certificate of Costs or a demand of payment of the decretal sum. This court is of the view that this application is premature. I find that the application lacks merit and it is, therefore dismissed. The Plaintiff/Applicant shall bear the costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 2ND DAY OF APRIL 2025.

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J. M ONYANGO



JUDGE

In the presence of:

Mr Maina for Ms Chege for the Defendant

No appearance for the Plaintiff

Court Assistant: Hinga

