



**Kenya Electricity Transmission Company Limited (KETRACO) v Kibotu Limited
(Environment & Land Case 118 of 2021) [2025] KEELC 4259 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4259 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 118 OF 2021
GMA ONGONDO, J
JUNE 4, 2025**

BETWEEN

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED
(KETRACO) PLAINTIFF**

AND

KIBOTU LIMITED DEFENDANT

RULING

1. This ruling is in respect of an application by way of Notice of Motion dated 31st January 2025 and lodged herein on even date by the plaintiff/applicant through Ochieng Opiyo & Company Advocates seeking the orders infra:
 - a. Spent
 - b. Spent
 - c. That upon hearing of this application this Honourable Court be pleased to vary or set aside the decree and the warrants of attachment and proclamation dated 23rd January 2025 and any other consequential orders.
 - d. That upon hearing of this application this Honourable Court be pleased to order that the Deputy Registrar takes audit or account for the monies paid to the defendant and render an account to the court.
 - e. That the court be pleased to grant any other order it deems fit in the interest of justice.
 - f. That costs be provided for.
2. The application is based on eleven grounds which include:



- a. That the defendant/respondent has obtained warrants of attachment and proclamation and has equally proceeded to serve the proclamation upon the plaintiff/applicant.
 - b. That the plaintiff/applicant is apprehensive that there is the imminent threat of execution following the service of the Warrants of Attachment and proclamation for sums already paid to the defendant on settlement of the decretal award but not accounted for by the defendant.
 - c. That the plaintiff/applicant is equally apprehensive of the fact that the decretal award and the interest awarded to the respondent was fully settled and any acts as such by the defendant/respondent are meant to mislead and abuse the court process and aimed at unjustly enriching the defendant/respondent and which will make the process of execution irregular/unlawful and/or illegal.
 - d. That there have been ongoing negotiations between parties to amicably settle any outstanding issues and that the steps taken by the defendant/respondent towards execution and attachment of the plaintiff/applicant's property at the backdrop of these negotiations is in bad faith. That the defendant/respondent has refused to give account for monies paid.
 - e. That it is in the interest of justice that the said warrants of attachment and proclamation be stayed and subsequently set aside as the same are irregular and unlawful.
3. Further, the application is anchored on the applicant's supporting affidavit of twenty-seven paragraphs sworn on even date by Florence Mitey, the Company Secretary of the plaintiff/applicant, alongside the annexed documents namely: a copy of the Statement of the joint interest earning account held in the parties' advocates names, a copy of the correspondence exchanged between the parties and a copy of the warrants of attachment and proclamation.
 4. The applicant laments that judgment was entered in this suit on 16th March 2022 in favour of the defendant/respondent. That in the said judgment, the Court directed the applicant to settle the decretal sum of Kshs. 14,263,000/- plus the costs of the suit. That further, the court granted a 30-days stay of execution, within which time was not running hence, no accumulation of interest. That aggrieved by the court's decision, the applicant filed a Notice of Appeal together with an application seeking stay of execution pending appeal, which was allowed by the Court on 7th July 2022. That however, the applicant decided not to pursue the appeal and initially paid the respondent a sum of Kshs. 6,002,253/- and later settled the balance of Kshs. 8,433,802 in full and final settlement of the award on 2nd September 2022.
 5. Furthermore, the applicant stated that whereas interest was not payable and the matter being fully settled by payment of the balance of the award, any interest to be charged on the amount should give account for the sum of Kshs. 171,055/- which was paid in excess of the decretal award and interest, if any, should be tabulated by the court. That the applicant has not been served with a decree. That the respondent's failure to draw a decree and to acknowledge monies paid together with the irregular charging of interest renders the execution process irregular, illegal and unlawful ab initio thus, warrants the setting aside of the warrants of attachment and proclamation.
 6. The respondent through Manani Lilan Mwetich and Company Advocates, opposed the application by way of a Replying Affidavit sworn by R. R. Mwetich, Advocate on 6th February 2025. He deposed that the applicant has settled the principal sum and costs, save for interest on judgment sum of Kshs. 14,263,000/- which accrued from date of judgment, that is 16th March 2022 until 5th August 2022, when the sum of Kshs. 6,002,253/- was paid and thereafter, interest on the balance of Kshs.8,433,802/-



- for a period of 30 days from 5th August 2022 to 5th September 2022 when the said balance was paid. That the decree has been substantially satisfied.
7. The application was heard by way of written submissions pursuant to this court's directions of 19th February 2025.
 8. Accordingly, Learned Counsel for the applicant filed submissions dated 18th March 2025 and identified the issues for determination thus:
 - a. Whether the decretal award and the interest thereto was paid.
 - b. Whether accounts can be taken to establish the outstanding balance.
 - c. Whether an order of stay of execution should be granted and the decree and the Warrants of Attachment and the Proclamation set aside unconditionally.
 - d. Whether the decree issued to the plaintiff should and/or should not stand.
 9. Learned Counsel submitted that the applicant has fully settled the decretal award and the interest thereto and that the respondent's calculation of the interest is erroneous since it does not factor in the amount that had already been paid to the respondent as well as the existence of an order for stay of execution of the judgment. That the respondent is being dishonest with the amount that they received from the applicant in settlement of the claim. That the applicant has had their goods proclaimed and the same are at the risk of being sold hence, it shall suffer substantial loss if the stay orders sought herein are not granted. That the decree, the warrants of attachment and the proclamation ought to be set aside since there is no outstanding balance owed to the respondent. Thus, Counsel urged the court to allow the application as prayed. To buttress the submissions, reliance was placed on the case of Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR) and Shariff Salim & another v Malundu Kikava [1989] eKLR, among other authoritative pronouncements.
 10. By the submissions dated 22nd May 2025, the respondent's counsel identified a single issue for determination thus: Whether the interest decreed in the judgment has been fully paid on the principal sum of Kshs.14,263,000/- taking into account the staggered payments made on 5th August 2022 and the balance of Kshs.8,433,802/- on 2nd September 2022. Learned Counsel submitted that although the principal sum has been fully paid by the applicant, no interest was paid. That the stay of execution order issued by the court simply postponed the enforcement of the decree but did not suspend the accrual of interest on the adjudged sum, since the Court did not explicitly direct so. That therefore, interest continued to accrue during the 30 day stay period and throughout the pendency of the conditional stay of execution order.
 11. Also, Counsel submitted that the applicant's attempt to characterize the security deposit as a payment that should have mitigated the accrual of interest is legally untenable. That such deposit was offered unilaterally at ex parte stage of proceedings when the applicant sought injunctive orders and was not a decretal sum. That the total interest payable is Kshs.755,681/-. Consequently, counsel urged the court to dismiss the instant application with costs, vacate any interim stay orders that may have been granted, order the applicant to pay the outstanding interest of Kshs.755,681/- within 14 days of this court's ruling, award the respondent costs of this application at Kshs. 30,000/- and grant such further relief as the Honourable Court deems just and expedient. To fortify the submissions, Counsel relied on the case of William Kinyanyi Onyango v Independent Electoral and Boundaries Commission (IEBC) & 2 others [2013] eKLR.



12. I have considered the instant application, the response thereto and the parties' rival submissions. Therefore, the issues that arise for determination are:
 - a. Whether the application is merited for granting the orders sought therein.
 - b. Just orders to issue herein.
13. In respect of the first issue, it is common ground that the decretal sum of Kshs. 14,263,000 has been fully settled by the applicant. The crux of the matter is whether the interest accruing therefrom has been paid. Whereas the applicant contends that no interest is payable since there was an order for stay of execution of judgment in place, the respondent avers that the stay of execution order issued by the court simply postponed the enforcement of the decree but did not suspend the accrual of interest on the adjudged sum, as the Court did not explicitly direct so. That therefore, interest continued to accrue during the 30 day stay period and throughout the pendency of the conditional stay of execution order.
14. Clearly, the dispute herein is one of accounts. It does not relate to the use of land.
15. So, does this court have jurisdiction to hear and determine the instant application?
16. In Halsbury's Laws of England 4th Edition Volume 9 at page 350, the term "Jurisdiction" is defined as;

"...the authority which the court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for decision..."
17. In the case of Samuel Kamau Macharia and another-vs-Kenya Commercial Bank Ltd & others (2012) eKLR, the Supreme Court of the Republic of Kenya observed that;

"...A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law..."
18. Indeed, it is trite law that jurisdiction is everything, without which the court can do nothing else and must down its tools; see Owners of the Motor Vessel M.V Lillian S. v. Caltex Oil (K) Limited [1989] KLR 1.
19. It is noteworthy that in Republic-vs-Karisa Chengo & 2 others (2017) eKLR, the Supreme Court of the Republic of Kenya held;

"...Lack of jurisdiction renders a court's decision void as opposed to it being merely voidable..."
20. I therefore, subscribe to the decision in Co-operative Bank of Kenya Limited vs Patrick Kangethe Njuguna & 5 others [2017] eKLR, where the Court of Appeal stated thus:

"...the jurisdiction of the ELC is limited to the areas specified under Article 162 of *the Constitution*, Section 13 of the ELC Act and Section 150 of the *Land Act*; none of which concern the determination of accounting questions..."
21. In the foregone, it is the finding of this court that the issues for determination herein do not constitute use of land within the meaning of Article 162(2) (b) of *the Constitution* of Kenya 2010. Therefore, this court is devoid of jurisdiction to hear and determine the same.



22. In the result, the instant application originated by way of a Notice of Motion dated 31st January 2025 and lodged herein on 31st January 2025 is hereby struck out.
23. Costs of the application be borne by the plaintiff/applicant.
24. Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAPSABET THIS 4TH DAY OF JUNE 2025.

G. M. A ONGONDO

JUDGE

Present

Mr. Ndumo holding brief for Mr. Ochieng', Learned Counsel for the plaintiff/applicant.

Ms. Jeruto holding brief for Mr. Mwetich, Learned Counsel for the defendant/respondent.

Walter, Court Assistant

