



**Munene v Tarus (Environment & Land Case 94 of 2014)
[2025] KEELC 4401 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 94 OF 2014**

**CK NZILI, J
JUNE 10, 2025**

BETWEEN

ANTHONY KIBETU MUNENE DECREE HOLDER

AND

RICHARD KIPRONO TARUS JUDGMENT DEBTOR

RULING

1. By an application dated 12/11/2024, the court is asked to authorize or direct the Deputy Registrar/ Executive Officer of the court to execute all the transfer instruments or documents in respect of 3 acres of L.R. No. Kitale Municipality Block 1/Lessos/1019 in favor of the decree-holder, under a judgment delivered on 14/11/2018 and the resulting decree dated 21/5/2019.
2. The reasons are set on the face of the application and in a supporting affidavit of Anthony Munene, sworn on 12/11/2024. The applicant deposes that he filed an appeal which the Court of Appeal dismissed on 22/3/2024, confirming the judgment of this court as per the annexed copy marked AKM'3'. The applicant deposes that he wrote to the respondent as per annexures AKM'4' and '5', that he was willing to pay the balance of Kshs. 2,200,000/= as decreed by the court, but the respondent has declined to execute and avail all the necessary documents to effect the transfer in his favor.
3. The applicant deposes that he is apprehensive that the 3 acres he continues to occupy, which are registered in the name of the respondent, may be dealt with against the decree of the court, causing him irreparable loss and damage, considering the enormous sum utilized in developing or upgrading the land.
4. The application is opposed through a replying affidavit of Richard Kiprono Tarus sworn on 4/12/2024. It is deposed that though he received information of the applicant's desire to comply with the decree, no money has been paid to date, which has accumulated with an interest of Kshs. 1,848,000/= from the date of the judgment, by the time the applicant rushed to court with this application. The



respondent deposes that he now demands that the applicant pay the balance of Kshs. 2,200,000/= plus interest of Kshs. 1,848,000/=, the total being Kshs. 4,084,000/=, to enable him to move and implement the decree. The respondent terms the application as premature.

5. Section 98 of the *Civil Procedure Act* provides that where any person neglects or refuses to comply with a decree order directing to execute, a conveyance contract or other document, or to endorse any negotiable instrument, the court may, on such terms or conditions, if any, as it may determine, order that the conveyance contract or negotiable instrument shall be executed or endorsed by such person as the court may nominate for that purpose and the documents executed shall operate and for all purpose available as if it had been executed or endorsed by the person originally directed to execute or endorse it.
6. Orders 21 and 22 of the Civil Procedure Rules relate to the procedure of executing decrees. Order 21 Rule 10 thereof relates to the execution of decrees for immovable property. Order 22 Rule 10 of the Civil Procedure Rules requires a certified copy of the register extract for such land. Order 22 Rule 12 requires an application for the execution of a decree to be made. Order 22 Rules 28, 29, and 30 thereof are specific on a decree for specific performance and if an opportunity has been availed to the judgment debtor to obey the decree. Order 22 Rule 48, thereof, requests the issuance of a prohibition order against the title register and service of the decree in a conspicuous place.
7. The above-cited provisions of the law are the elementary steps which a decree holder has to adhere to. The decree relied upon is already over one year old. The law is that a decree that is one year old cannot be executed after a notice to show cause has been issued to the judgment debtor. Other than the letter, it is not clear if the judgment debtor was served with the decree, a cheque forwarded together with the transfer form, and a land control board application form for execution. A party must demonstrate before the court how and when the judgment debtor refused or neglected to comply with the decree, with a view of defeating it. Therefore, the decree-holder is under a duty in law to play its role and exhaust all available avenues before saying that the only option available is to invoke Section 98 of the *Civil Procedure Act*. See Charles Mukoma Kimaru vs Johnstone Muchomba Kaguyu [2020] eKLR.
8. Execution of a decree is a matter of procedure and is subject to the rules from time to time in force. Orders 21 and 22 of the Civil Procedure Rules are in place to enforce judgment. Section 34 of the *Civil Procedure Act* provides that all questions arising out of the parties on execution, discharge, and or satisfaction of the decree have to be settled by the executing court. The hardship suffered by the decree-holder in any case is self-made for not following the law.
9. I find no basis laid why I should allow the application, especially when the applicant has not forwarded any transfer documents, accompanied by a cheque for the amount and its interest to the judgment debtor in compliance with the decree and for execution. The application is dismissed with costs.
10. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 10TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Nyachoti for the plaintiff present

Kiboi for the defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

