



Cove Investments Limited v Johana Kiprotich Rono & Joseph Rono Langat as the Representatives of the Estate of Mathias Kimnyole Langat & 5 others (Constitutional Petition 360 of 2017) [2024] KEELC 6730 (KLR) (15 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6730 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
CONSTITUTIONAL PETITION 360 OF 2017**

MAO ODENY, J

OCTOBER 15, 2024

IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 2, 3, 10, 19, 22, 24, 27, 40 AND 159 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE LAND CONTROL ACT

AND

IN THE MATTER OF L.R. NO. NAKURU/OL'ONGAI PHASE 11/34 AND IN THE MATTER OF AN APPLICATION BY COVE INVESTMENTS LIMITED FOR THE EXTENSION OF TIME WITHIN WHICH TO LODGE AN APPLICATION FOR CONSENT UNDER SECTION 8 (1) OF THE LAND CONTROL ACT.

BETWEEN

COVE INVESTMENTS LIMITED PETITIONER

AND

JOHANA KIPROTICH RONO & JOSEPH RONO LANGAT AS THE REPRESENTATIVES OF THE ESTATE OF MATHIAS KIMNYOLE LANGAT 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

THE LAND REGISTRAR, NAKURU COUNTY 1ST INTENDED RESPONDENT

ROYAL SIAN LIMITED 2ND INTENDED RESPONDENT

JOSHUA CHELELGO KULEI 3RD INTENDED RESPONDENT

KENNEDY KIPRUTO KULEI 4TH INTENDED RESPONDENT



RULING

1. This ruling is in respect of a Notice of Motion dated 5th October, 2023 by the Petitioner/Applicant seeking the following orders:
 1. Spent
 2. An Order That this Honourable Court be pleased to order the execution and satisfaction of the decree herein as follows:
 - a. The proceedings herein be treated as a suit and the 3rd, 4th, 5th and 6th Respondents be joined in the suit herein.
 - b. The Certificate of Lease issued in the 4th Respondent's name purporting it to be the registered proprietor of all that parcel of land known as Nakuru/Olongai/Phase 11/34 be cancelled and the 4th Respondent ordered to surrender the original thereof to the Land Registrar Nakuru forthwith.
 - c. All entries identified as entries Nos 6, 7, 8 and 9 in the register purporting to transfer the lease from the estate of the Late Mathias Kimnyole Langat to Royal Sian Limited and issuance of a certificate of lease over Nakuru/Olongai/Phase 11/34 to Royal Sian Limited be forthwith cancelled.
 - d. The Land Registrar Nakuru be ordered to forthwith issue a fresh certificate of lease in the name of Cove Investments Limited.
 3. That an order of conviction and committal of the 1st, 3rd, 5th and 6th Respondents and/or their principal officers and directors to serve civil jail terms of SIX (6) Months each for contempt of court on account of the blatant disobedience of the orders of the Hon. Mr. Justice Sila Munyao dated 28th September 2017 and 10th October, 2017, the Orders of Hon Mr. Justice D.O. Ohungo of 27th July, 2018 and the decree and order of Mr. Justice D.O. Ohungo dated 18th May, 2021.
 4. That the Respondents be condemned to pay punitive and exemplary damages for fraud, forgery, corruption, and perversion of the course of justice.
 5. A Temporary at first instance, and later to be confirmed Permanent Injunction, do issue against the 1st, 4th, 5th and 6th Respondents preventing them, their servants and/or agents from interfering with the Petitioner's quiet enjoyment of the suit property.
 6. That the costs of this application be provided for.
2. The application was supported by the affidavit of Sarah Jerotich Kipsaita, the director of the Petitioner, sworn on 5th October, 2023 where she deponed that vide a judgment dated 18th May, 2021 delivered by the Hon. Mr. Justice D.O. Ohungo, the 1st Respondents were ordered to transfer the suit property to the Petitioner.
3. The Petitioner/Applicant further deponed that she deputed Kenneth Kiplagat, the current Asset Manager of the Petitioner to attend the Rongai Land Control Board meeting on its behalf at the scheduled Land Control Board hearing on 14th September, 2022 and served them with the relevant documents.



4. It was the Petitioner/Applicant case that upon the Land Control Board [LCB] members being served with the said documents by Kenneth Kiplagat, they stated to him that they would not accept or obey the judgment and decree as the said judgment and decree were clearly issued in error as the Hon Mr. Justice D.O Ohungo. The Petitioner/Applicant further deponed that the LCB members stated that they would not accept the decision of this Honourable Court.
5. The Petitioner further stated that the 4th Respondents purported acquisition of the suit property was illegal hence the judgment of this Honourable Court ought to be enforced, the entries be expunged and the suit property be transferred to the Petitioner.
6. The 1st Respondent filed a Replying Affidavit sworn by Johana Kiprotich Rono on 15th February, 2024 where he deponed that the re-opening of the Petition so that the Honourable Court can pronounce itself on the Respondents is an abuse of court process. He stated that the judgment was delivered and an appeal was lodged on the same in the Court of Appeal.
7. The 1st Respondent further deponed that the Applicants decision to go to the Land Control Board to execute the orders issued on 18th May, 2021 is against the Court order issued on 9th July, 2021 for stay of execution of the judgment.
8. The 4th, 5th, and 6th Proposed Respondent filed a Replying Affidavit sworn by Wilson Kenei, a Manager of the 4th Respondent dated 24th April, 2024 where he deponed that this is not a suit per se but a constitutional petition which was instituted by the Petitioner against carefully elected Respondents (1st, 2nd and 3rd Respondents) and that the Petitioner consciously chose who to pursue in the Petition after carrying out due diligence on who it deemed to have violated its constitutional rights.
9. He further stated that the Petitioner has not laid any basis upon which the proposed 5th and 6th Respondents should be joined in this petition without first applying to lift the corporate veil of the proposed 4th Respondent. He deponed that the proposed 5th and 6th Respondents are not even directors of the proposed 4th Respondent. The Manager of the 4th Respondent deponed that the proposed 4th Respondent followed the due process of the law in purchasing Land Parcel Number Nakuru/Olongai Phase II/34, a Title Deed was issued to it and urged the court to dismiss the Petitioner's application dated 5th October, 2023 with costs to the proposed 4th, 5th and 6th Respondents.
10. The Petitioner filed a further Affidavit in response to the 4th, 5th and 6th Respondents replying affidavit and deponed that the affidavit by the 4th, 5th and 6th Respondents has been filed way after the time allowed by the directions of this Honourable Court. He stated that execution proceedings cannot be used to reopen or contest a judgment and that the 4th, 5th and 6th Respondents are not proposed parties but are representatives by express definition of the law. It was his case that acts done in violation of court orders cannot vest legitimate title.

Petitioner's/ Applicant's Submissions

11. Counsel for the Petitioner/Applicant filed submissions dated 15th March, 2024 and submitted that the assertions by the 1st Respondent do not effectively answer to the Petitioners double plea of enforcement of the decree against the Respondents and punishment of the Respondents for disobedience of the Court orders, restoring the Petitioner's possession and restraining the 1st Respondents and their agents from dealing with the subject property in any manner prejudicial to the petitioner's interest in the said property.
12. Mr. Kariara submitted that the mere filing of an appeal is no bar to execution proceedings and a party would have to obtain a stay of execution either in the court by which the decree was issued or the



- appellate court. Counsel submitted that in the instant case, the conditional order of stay granted by this court expired way back in June 2022 and the 1st Respondent did not seek the extension of those orders by the Court of Appeal.
13. Counsel also submitted that a court does not become functus officio in so far as the execution of its own judgment is concerned and it would only be if the dictates of its judgment and decree is implemented. Mr. Kariara also stated that there is evidence and that the 1st Respondent does not deny that they sold and transferred the subject property to the 4th Respondent on 30th October, 2017 during pendency of this suit which is not only against the principle of Lis pendens but also in blatant disregard of the orders of maintenance of the status quo issued by this court on 17th September, 2017.
 14. Counsel submitted that the materials presented before court in the supporting affidavit confirm and establish that fraud has been committed by the Respondent in the way they dealt with the suit property. Counsel relied on Section 34 (1) of the *Civil Procedure Act* and the cases of Jeremiah M’njogu vs Martha Naitore M’murithi & 5 others (2021) eKLR and Kennedy Ooko Jacob t/a Ssebo Intel. Co Auctioneer v John Abich Ochanda [2021] eKLR and submitted that this court has jurisdiction to entertain the Petitioner’s application and supervise the enforcement of the judgment of the Hon Mr. Justice D.O. Ohungo.
 15. According to counsel, the 4th, 5th and 6th Respondents have previously contended that the petitioner aims to prosecute a fresh cause by changing it and adding new parties but submitted that not only is the joinder proper, but also imperative of the law because no new suit can be lodged without first satisfying the decree herein. Counsel relied on the case of Ishan Chunder v Beni Madhub (1897) 24 Cal 62 and submitted that the 4th, 5th and 6th Respondents are representatives of the 1st Respondent for purposes of Section 34 of the *Civil Procedure Act* and as such are correctly added in this execution process.
 16. Mr. Kariara further relied on Section 34 (2) and 38 (a) of the *Civil Procedure Act* and submitted that the 1st Respondent cannot attempt to tender a replying affidavit detailing how they passed good title to the 4th Respondent as waving around a contested title as evidence of ownership does not preclude an investigation of the bona fides of such a title and a title is only as good as the process that originated it. Counsel relied on the cases of Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E10) of 2021) [2023] KESC 30 KLR and Alice Chemutai Too v Nickson Kipkurui Korir & 2 others [2015] eKLR.
 17. It was counsel’s further submission that no valid title or interest was transferred by the 1st Respondent to the 4th Respondent because: the removal of the caution was done during the pendency of this suit, the 4th Respondent has not taken possession and the 1st, 4th, 5th and 6th Respondents are represented by the same advocate.
 18. Counsel submitted that the court has jurisdiction to nullify the transfer between the 1st and 4th Respondent and cited the case of Carol Silcock v Kassim Sharrif Mohamed [2013] eKLR. According to counsel, the fact that the 3rd, 4th and 5th Respondents were not parties to the original suit does not bar this Honourable court from charging and punishing them for contempt and relied on the case of Eliud Muturi Mwangi (Practicing in the name and style of Muturi & Company Advocates) v LSG Lufthansa Services Europa/ Africa GMBH & another [2015] eKLR.

1st Respondent’s Submissions

19. Counsel for the 1st Respondent filed submissions dated 12th September 2024 and submitted that this Honourable Court should determine whether or not the 1st Respondent was at all material times to this Petition a Representative for the proposed 4th, 5th and 6th Respondents. Counsel relied on Section



34 (1), (2) and (3) of the Civil Procedure Act and submitted that representation is the act of one person representing or standing in the place of another; and he who so represents or stands in the place of another is termed his “representative.”

20. Mr. Karanja Mbugua submitted that the 1st Respondent does not qualify as a representative of the 4th, 5th, and 6th Proposed Respondents as the Petitioner consciously elected not to sue the 4th, 5th and 6th Respondents in this Petition hence the Petitioner cannot now urge the Court to have the said 4th, 5th and 6th Proposed Respondents joined in the Petition for purposes of execution.
21. Mr. Karanja submitted that it shall be against Article 50 of the Constitution to condemn a party i.e. the 4th, 5th and 6th Proposed Respondents unheard all in the name of satisfying a Decree which was and still is purely between the petitioner and the 1st Respondent.
22. It was counsel’s submission that the Petitioner claims that long after the Petition was heard and decided, it learned that the subject property was in the name of the 4th Respondent. Counsel urged the court not to allow the application and relied on the cases of Jandu v Kirplal & Another (1975) EA 225, and C.C. Patel & Co Ltd vs N.B Patel [1967] EA 458.

Analysis And Determination

23. This case has a long history and it would be prudent to give a short background to put everything into perspective.
24. By a judgment dated 18th May 2021 delivered by Justice Ohungo, the court issued the following orders:
 - a. The petitioner to deposit in court the sum of KShs 782,425 (Seven Hundred Eighty-Two Thousand, Four Hundred Twenty-Five) being balance of the purchase price due to the 1st respondents. The deposit to be made within 21 (twenty-one) days from the date of delivery of this judgment.
 - b. Time within which to apply for consent of the Land Control Board in respect of the transaction over the parcel of land known as LR. No. Nakuru/Ol’ongai Phase 11/34 comprised in the Agreement for Sale dated 1st December 1999, between Mathias Kimnyole Langat and the petitioner herein, is hereby extended for a period of 6 (six) months from the date of delivery of this judgment.
 - c. The 1st respondents to execute all necessary forms and transfer instruments necessary for obtaining the said consent of the Land Control Board within 30 (thirty) days from the date of delivery of this judgment. In default, the Deputy Registrar of this court to execute all such necessary forms and transfer instruments on behalf of the 1st respondents.
 - d. A declaration is hereby issued that the 1st respondents hold the parcel of land known as LR. No. Nakuru/Ol’ongai Phase 11/34 in trust for the petitioner.
 - e. The 1st respondents are hereby directed to formally transfer the parcel of land known as LR. No. Nakuru/Ol’ongai Phase 11/34 to the petitioner and to execute the transfer document within 30 (thirty) days from the date of delivery of this judgment. In default, the Deputy Registrar of this court to execute the transfer document on behalf of the 1st respondents.



- f. Upon transfer being registered in favour of the petitioner and issuance of title in the name of the petitioner, the sum of KShs 782,425 (Seven Hundred Eighty-Two Thousand, Four Hundred Twenty-Five) referred to under order number a) above be released to the 1st respondents.
 - g. Costs of the petition are awarded to the petitioner and shall be borne by the 1st respondents.
25. The 1st Respondent subsequently filed an application for stay of execution dated 31st May 2021 whereby the court gave a conditional stay on 17th June 2021 in the following terms:
- a. Pending the hearing and determination of the 1st Respondent's appeal in the Court of Appeal, I grant stay of execution of the judgment delivered herein on 18th May 2021.
 - b. The stay is conditional on the 1st respondent depositing in an interest –bearing account in the joint names of counsel on record for the Petitioner and the 1st respondent in a reputable bank, the sum of Kshs. 8,000,000/ (eight Million) as security , within 21(twenty one) days from the date of delivery of this ruling. In default the stay orders shall automatically lapse and Notice of Motion dated 31st May 2021 shall stand dismissed with costs to the Petitioner.
 - c. The stay orders shall if the 1st respondent timeously comply with the condition in (b) above, remain in force for a period of only 1 (one) year from the date of the delivery of this ruling, unless otherwise extended by the Court of Appeal.
 - d. Regarding costs, I note that the order in the judgment was that costs of the Petition were awarded to the Petitioner and were to be borne by the 1st Respondent, Consequently, the 1st respondent shall also bear costs of the present application.
26. The Petitioner's pursuit to enforce the judgment in terms of the orders went to the Land Control Board to secure a consent to transfer, but the same was met with hostility from the Land Control Board members who did not appreciate the import of the court Judgment.
27. During this execution process, the Petitioner discovered that the 1st respondent in breach of the status quo order that had been granted by the court on 17th September 2017, went ahead and transferred the suit property to the proposed 4th respondent hence the instant application.
28. When the application was served on the respondent, counsel for the respondent filed a Notice of Preliminary objection dated 31st October 2023 on the grounds that the court does not have jurisdiction as it is functus officio. The same was heard and a ruling rendered dismissing the Preliminary objection with an order that the Petitioner sets down the hearing of the application dated 5th October 2023 within 14 days.
29. The issues for determination are:
- a. Whether the 3rd, 4th, 5th and 6th Respondents should be joined to this suit for purposes of execution,
 - b. Whether the 3rd 4th 5th and 6th respondents are representatives of the 1st respondent for purposes of execution.



- c. Whether the 1st respondent breached the doctrine of lis pendens and if so whether the 3rd 4th 5th and 6th respondents are bound by the judgment or decree in the suit by virtue of the doctrine of lis pendens
- d. Whether the respondents are guilty of contempt of court.
30. Having given an elaborate background to this case, the first issue to be determined is whether the 3rd, 4th, 5th and 6th Respondents should be joined in this case. It is not in dispute that the 4th, 5th and 6th Respondents purchased the suit property during the pendency of this case.
31. Order 1 Rule 10(2) of the Civil Procedure Rules on joinder provides as follows:
- “The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
32. However, the instant application is for joinder of a party after judgment. In the case of *Bellevue Development Company Limited v Vinayak Builders Limited & another* [2014] eKLR the court held as follows:
- “Joinder of parties is possible after judgment. I will give some examples where such joinder of parties is permitted; 1) in cases of representative suits; or 2) substitution of one or more parties, for instance, in case of death, or incapacity of a party or change of status of a party; or 3) in execution process. In the broader sense, it is deemed to be a kind of joinder of parties where a contemnor was not a party in the suit where judgment has already been entered and for which he is being cited for contempt of court. Equally, it is a joinder of parties where an objector raises objection to execution under Order 22 rule 51 of the CPR.”
33. Similarly, in the case of *Carol Silcock v Kassim Sharrif Mohamed* [2013] eKLR the court stated as follows in respect of joinder after judgment:
- “It will be a mockery of justice for the court to subject the Plaintiff to another rigour of litigation as against the Intended Interested Party and prove fraud as against the said party.
- Everyman, as quoted in the proceeding paragraphs, is presumed to be aware of the pending suits, especially litigation involving land governed by the ITPA, 1882. Therefore, purchase made of a property actually in litigation pendente lite for valuable consideration affects the purchaser in the same manner as if he had notice and will be accordingly be bound by the judgment or decree in the suit.”
34. This case deals with joinder and the import of the doctrine of lis pendens which is also an issue for determination in this case. Before a court can issue an order of joinder after judgment, it has to examine the circumstances and weight them against the applicable principles of law. A party should not be allowed to subvert the course of justice by changing the substratum of the suit being the suit property in dispute. I find that the application for joinder of the respondents is proper and is hereby allowed.



35. On the second issue as to whether the 3rd 4th 5th and 6th respondents were representatives of the 1st respondent, the term representative is defined in Mulla's Code of the Civil Procedure Act, Sixteenth Edition at Page 675 as follows:

“The ‘representative’ in this section includes not only, ‘legal representatives’ in the sense of heirs, executors or administrators, but also representatives in interest,’ that is, any transferee of the decree-holder’s interest, or any transferee of the judgement-debtor’s interest, who so far as such interest is concerned is bound by the decree. The word ‘representative’ as used in this section means a person in whom the interest of a party to the suit has vested either by an act of the party (i.e., a transferee from the party) or by operation of law. The question of the validity of the representative is one that falls to be decided by the court of execution, and it mattered not that the court was called upon to decide the question formally after the judgement debtor had sold the property.”

36. The above definition captures what a representative is and in this case it is not disputed that the 1st respondent transferred his interest in the suit land to the 4th respondent while the suit is pending before the court. There was an existing court order for maintenance of status quo, which was flouted by the 1st respondent.
37. The catch phrase is “any transferee of the decree-holder’s interest, or any transferee of the judgement-debtor’s interest, who so far as such interest is concerned is bound by the decree. The word ‘representative’ as used in this section means a person in whom the interest of a party to the suit has vested either by an act of the party (i.e., a transferee from the party) or by operation of law.”
38. It follows that any decree that was issued against the 1st respondent who is the judgment debtor and who transferred his interest in the suit property during the pendency of the suit is binding on the respondents who are termed as representatives of the 1st respondent. The 1st respondent transferred the responsibilities of the decree which must be satisfied in execution.
39. In the case of *Ishan Chunder v Beni Madhub* [1897] 24 Cal 62 the court held that:

“The answer to the question stated in the Reference and the decision of this appeal, depend upon the meaning of the word “representative” as used in Sec. 244 with reference to the judgment-debtor. It may have only the meaning ordinarily attached to the expression “Legal representative,” that is, include only the heir, executor or administrator of the judgment-debtor, but not the purchaser of the judgment-debtor’s interest, whether the purchase is made at a private sale or at an execution sale, as was held by the Allahabad High Court in *Znuki Lil v. Jawahir Singh* (2) and *Jagat Narain v. Jug Rup* (21); or it may mean a representative in interest, and include a purchaser of the judgement-debtor’s interest who, so far as that interest is concerned, is bound by the decree, whether the purchase is made at a private sale or at an execution sale, as was decided by Pentifex, J., in *Rishbehari Mookhopadhaya v. Maharani Sumomoyee* (22); or it may have a meaning intermediate between these two, being neither so narrow as the former, nor quite so broad as the latter, i.e., it may mean a representative in interest and include a purchaser at a private sale of the judgment-debtor’s interest, who is bound by the decree, but not a purchaser at an execution sale ...” [emphasis supplied] “These cases only show that the rights of an execution purchaser are in some respects different from those of a purchaser at a private sale, but because that is so, it does not follow that the execution purchaser is not to be regarded as a representative in interest of the judgment-debtor even in those respects in which and for those purposes, for which his rights are no higher than those of the judgment-debtor, whose right, title, and



interest he has purchased. Whereas in this case, it is admitted, that the purchaser at a sale in execution of a money decree is bound by the mortgage decree sought to be executed, in the same way as the judgment-debtor is bound. It is difficult to understand why he should not be treated as a representative in interest of the judgment-debtor. The third case relied upon in the judgment in *Gour Sunder v. Hem Chunder*, namely, that of *Lalla Prabhulal v. Mylne* does not require any detailed examination, as it is based, chiefly, upon two Privy Council decisions just referred to. On the other hand, in the recent case of *Mir Mahomed v. Kishori Mohun Roy*, their Lordships of the Privy Council have held that the equitable principle of estoppel laid down in the case of *Ramcoomar Koodoo v. McQueen* (30), which applies to any person is equally binding on the purchaser of his right, title and interest at a sale in execution of a decree.”

40. In this case 4th respondent is a purchaser of the judgment debtor’s interest who, so far as that interest is concerned, is bound by the decree and is not a purchaser at an execution sale. I find that the respondents are bound by the terms of the judgment and decree.

41. On the issue as to whether the 1st respondent breached the doctrine of lis pendens and if so whether the 3rd, 4th, 5th and 6th respondents are bound by the judgment or decree in the suit by virtue of the doctrine of lis pendens, in the case of *Mawji vs US International University & Another* [1976] KLR 185, Madan, J.A. stated thus:

“The doctrine of lis pendens under section 52 of TPA is a substantive law of general application. Apart from being in the statute, it is a doctrine equally recognized by common law. It is based on expedience of the court. The doctrine of lis pendens is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice. It therefore overrides, section 23 of the RTA and prohibits a party from giving to others pending the litigation rights to the property in dispute so as to prejudice the other...”

42. The court further stated in the same case that:

“Every man is presumed to be attentive to what passes in the courts of justice of the State or sovereignty where he resides. Therefore, purchase made of a property actually in litigation pendete lite for a valuable consideration and without any express or implied notice in point of fact affects the purchaser in the same manner as if he had notice and will accordingly be bound by the judgment or decree in the suit.”

43. The 1st respondent flouted the doctrine of lis pendens by transferring the suit property to the 4th respondent hence such transfer was illegal and therefore is bound by the decree that the court had granted in this case. The same is pending execution, which must be allowed to proceed.

44. Similarly, according to the 10th edition of G. C. Bharuka’s treatise *Mulla on the Indian Transfer of Property Act*, law does not allow or encourage litigants to give rights which are still under dispute to others who are not litigants and in the process prejudice fellow litigants. Further that the doctrine of lis pendens is intended to avoid conflicts between parties to a suit and innocent purchasers and also to stop those who want to circumvent the court’s jurisdiction by removing the subject matter from the court’s grasp. This is exactly what the 1st respondent did to circumvent the court’s jurisdiction by transferring the suit parcel to the 4th respondent and claim that the court is functus officio.

45. The execution of the decree is still pending and Section 34 of the *Civil Procedure Act* bars parties from filing separate proceedings to determine issues emanating from execution of decrees in a suit as was



held in the case of South Nyanza Sugar Co Ltd vs Alfred Sagwa Mdeizi t/a Pave Auctioneers (2010) eKLR, J. Makhandia as he then was stated:

“Section 34 of the Civil Procedure Act strictly bars the filing of separate proceedings to determine issues that emanate or arise from execution of decrees in a suit. Without obvious regard to these mandatory provisions of the law, the learned magistrate held that the appellant, if he sought to recover any monies from any of the parties to the application had to bring or initiate independent proceedings. In the face of the clear provisions of Section 34 of the Civil Procedure Act, this conclusion was clearly erroneous.” The above decisions have clarified the meaning and purport of Section 34 (1) of the Civil Procedure Act. The appellant’s proceedings seek to determine issues arising from execution and Section 34 Civil Procedure Act clearly provides the procedure by which the appellant should move the court. He should have brought the application the mother file in CMCC 82/2018.”

46. It is therefore proper for the petitioner for bring this application for execution of the decree and not file a separate suit as suggested by the respondents.

47. On the last issue as to whether the respondents are in contempt of court, according to the Black’s Law Dictionary:

“Contempt is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”

48. In the case of Kenya National Union of Nurses v County Government of Meru and another [2022] eKLR where the court stated:

“...Contempt proceedings, like submitted by the respondent call upon the alleging party to put in a high degree of proof, beyond a balance of probabilities. This is because of its quasi criminal nature and consequential effect of affecting the fundamental right to liberty...”

49. In the case of Absolom Opini Mekenye v James Obegi [2018] eKLR the court held as follows:

“In the foregoing circumstances, I cannot find there was any willful disobedience of any court order. Besides, the plaintiff had invoked the execution process for the enforcement of the judgment. My position is that where a party chooses to invoke the execution of decree process under Order 22 of the Civil Procedure Rules such party cannot at the same time invoke contempt proceedings under the provisions of Contempt of Court Act.”

50. The court is persuaded by the above authority and find that the applicant had already started the execution process under Order 22 of the Civil Procedure Rules and cannot at the same time invoke contempt proceedings under the provisions of the Contempt of Court Act. This was also not contempt on the face of the court that can be dealt with summarily. For that reason, the prayer for contempt fails.

51. I have considered the application, the submissions and the relevant authorities and find that the application has merit and issue the following specific orders:

a. An order is hereby issued joining the 3rd, 4th, 5th and 6th as Respondents.



- b. The 4th Respondent is hereby ordered to surrender the original Certificate of Lease issued in the 4th Respondent's name in respect of all that parcel of land known as Nakuru/Olongai/Phase 11/34 for cancellation by the Land Registrar Nakuru.
- c. An order is hereby issued for cancellation of all entries identified as entries Nos 6, 7, 8 and 9 in the register purporting to transfer the lease from the estate of the Late Mathias Kimnyole Langat to Royal Sian Limited and issuance of a certificate of lease over Nakuru/Olongai/Phase 11/34 to Royal Sian Limited.
- d. The Land Registrar Nakuru is hereby ordered to issue a fresh certificate of lease in the name of Cove Investments Limited.
- e. The respondents are hereby restrained from interfering the suit land.
- f. The 1st respondent to pay the costs of this application.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OF OCTOBER 2024.

M. A. ODENY

JUDGE

