



**Thiong'o v Mwangi (Environment & Land Case 123 of 2014)
[2023] KEELC 18594 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18594 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 123 OF 2014**

JO OLOLA, J

JULY 6, 2023

BETWEEN

PHOEBE NYAMBURA THIONG'O PLAINTIFF

AND

JAMES KARIUKI MWANGI DEFENDANT

RULING

1. By the Notice of Motion dated 20th July 2022, Phoebe Nyambura Thiong'o (the Decree-holder) prays for orders:
 1. That an order be made prohibiting the Judgment-debtor from transferring, leasing or charging LR No Nyeri/Warazo/490 and this order be registered against the title at the Nyeri Lands Registry;
 2. That the Judgment-debtor's interest in the said property, being the interest of the Decree-holder in this application, be sold and the proceeds, after deductions of the expenses attributable and incidental to the sale, as shall satisfy the decree in this cause be paid to the Decree-holder;
 3. The sale of the said property be conducted through public auction by Providence Auctioneers in Nyeri;
 4. The sale of the said property be advertised once in the Daily Nation Newspaper;
 5. The Decree-holder be authorized to bid for and purchase the said property at the public auction; and
 6. The costs of this application be awarded to the Decree-holder.



2. The application is supported by an Affidavit sworn by the Decree-holder's Counsel on record Duncan Waweru Macharia wherein he deposes that the Judgment-debtor is the registered proprietor of the said LR No Nyeri/Warazo/490 and that she verily believes that a portion of the land should be sold in order to satisfy the balance of the decretal sum which currently stands at Kshs 783,750/- after the debtor paid the sum of Kshs 518,000/-.
3. James Kariuki Mwangi (the Judgment-debtor) is however opposed to the application. In his Replying Affidavit sworn and filed herein on 19th September 2022, the Judgment-debtor avers that Judgment was delivered in this matter on 20th January, 2022 wherein the Court ordered him to pay the principal amount of Kshs 503,000/- plus interest and costs of the suit.
4. In that respect, the Judgment-debtor asserts that on the 7th May 2022, the Judgment-creditor and himself recorded a consent summing up the decretal amount, interest and costs at Kshs 1,301,750/-. He further asserts that he has since paid the decretal sum of Kshs 503,000/- and a further sum of Kshs 30,000/- to the Judgment-creditor but he is currently unemployed and dependent on farming activities to meet his daily needs.
5. The Judgment-debtor further avers that he has no other parcel of land other than the said Nyeri/Warazo/490 which is an ancestral land in which his parents are buried and that it is unfortunate that the Judgment-creditor is requesting the Court to be allowed to sell the same by public auction to satisfy the decretal amount.
6. The Judgment-debtor avers further that as a farmer he purely depends on seasons of farm proceeds and it is his case that having shown seriousness and good faith in depositing the sum of Kshs 533,000/- so far, the Court should not allow the application made by the Judgment-creditor.
7. I have carefully perused and considered both the Judgment-creditor's application as well as the response thereto by the Judgment-debtor. I have similarly perused and considered the submissions and authorities to which I was referred by the Learned Advocates representing the Parties herein.
8. This application arises from the Judgment of this Court delivered in the Applicant's favour on 20th January, 2022. By the application before the Court, the Judgment-creditor is essentially seeking to settle the terms of the decree arising therefrom by selling the Judgment-debtor's parcel of land to clear the balance of the decretal sum now standing at Kshs 768,750/-.
9. The Judgment-debtor does not deny that the said sum remains outstanding. It is however his case that he is unemployed and that he has since in good faith paid back a sum of Kshs 533,000/- towards the settlement of the decretal sum. It is his case that the parcel of land known as Nyeri/Warazo/490 is his ancestral land wherein he has buried his parents and that it would be unfair if this Court were to allow the Judgment-creditor to sell the same by public auction. He accordingly urges the Court to give him time to liquidate the sum by way of instalments.
10. From the record herein, it is apparent that pursuant to an agreement made between the Judgment-creditor and the Debtor some eleven (11) years ago on 17th February 2012, the Judgment-debtor received a sum of Kshs 503,000/- after agreeing to sell to the Judgment-creditor a portion of the parcel of land now sought to be sold in execution of the decree herein.
11. The Judgment-debtor later reneged on the sale agreement and hence the determination by this Court on 20th January, 2022 that he refunds the sum of Kshs 503,000/- plus interest at Court rates to the Judgment-creditor effective the date of the Sale Agreement.



12. From his response herein, it is apparent that having stayed with the Judgment-creditor's Kshs 503,000/- for more than 11 years, he has since only refunded the said sum together with a paltry Kshs 30,000/- on top. On account that he is a farmer relying on seasons to make ends meet, the Judgment-debtor now urges the Court to allow him to settle the balance of Kshs 768,750/- in an unspecified seasonal instalment.
13. Unfortunately for the Judgment-debtor, this is a Court of justice. Its decisions are not based on sympathies but on the concept that all individuals appearing before it are treated in a manner that is equitable and fair. That concept demands of this Court to deliver justice to the Parties in a manner that is fair and expeditious. And it informs me that a Party who has acquired a Judgment from the Court must not unnecessarily and unreasonably be kept away from enjoying the fruits of that Judgment.
14. From the submissions filed on behalf of the Judgment-debtor, it was apparent that he requires some twelve (12) years from today to clear the balance of the decretal sum. That proposal lacks in seriousness and cannot be entertained by this Court.
15. It follows that I am persuaded that there is merit in the Judgment-creditor's Motion dated 20th July 2022. I allow the same as prayed.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 6TH JULY, 2023.**

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J. O. OLOLA

JUDGE

In the presence of:

Mr. Waweru Macharia for the Plaintiff

Mr. James Kariuki Mwangi – the Defendant in person

Court assistant - Kendi

