



**Kariithi & another (Suing in their capacity as Administrators ad litem of the Estate of John Kariithi Nyoike - Deceased) v Super Metro Limited; National Bank of Kenya Limited & another (Interested Parties) (Commercial Case E290 of 2023) [2025] KEHC 127 (KLR) (Commercial and Tax) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 127 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E290 OF 2023  
JWW MONG'ARE, J  
JANUARY 20, 2025**

**BETWEEN**

**ALICE NGIMA KARIITHI ..... 1<sup>ST</sup> APPLICANT**

**JANE WAIHERA KARIITHI ..... 2<sup>ND</sup> APPLICANT**

**SUING IN THEIR CAPACITY AS ADMINISTRATORS AD LITEM OF THE  
ESTATE OF JOHN KARIITHI NYOIKE - DECEASED**

**AND**

**SUPER METRO LIMITED ..... RESPONDENT**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... INTERESTED PARTY**

**COOPERATIVE BANK OF KENYA LIMITED ..... INTERESTED PARTY**

**RULING**

1. What is before the court is a Notice of Motion Application dated 8<sup>th</sup> August 2024 filed under Certificate of Urgency and brought under Order 51 Rule 1(a) of the Civil Procedure Rules, sections 1A,1B, 3A and 63(c) and (e) of the [Civil procedure Act](#) seeking for the following orders:-
  - a. Spent
  - b. That an order be and is hereby issued compelling 2<sup>nd</sup> Interested Party to provide certified copies of loan agreements, statement of accounts and any other relevant and pertinent documents



in their possession in respect of and on account of motor vehicle registration number KDG 019Q to the Applicant.

- c. That an order be and is hereby issued to the 2<sup>nd</sup> Interested Party to provide certified copies of demand notices, proclamation notices and other notices issued by it to or on its behalf in respect of and on account of and on account of motor vehicle registration number KDG 019Q to the Applicant.
  - d. That an order be and is hereby issued to the Respondent, the 2<sup>nd</sup> Interested Party, their agents, servants and any other person(s) whether acting on their own behalf or on the Respondents and the 2<sup>nd</sup> Interested Party's behalf to hand over possession of motor vehicle registration number KDG 019Q to the Administrators of the Estate of John Kariithi Nyoike (deceased).
  - e. That costs of this application be provided for.
2. The application is supported by the grounds set out on its face and the supporting affidavit of Alice Ngima Kariithi sworn on 8<sup>th</sup> August 2024. The Application is opposed and the Respondent filed a replying affidavit of Peter Kariuki Mukuria, a director of the Defendant, sworn on 30<sup>th</sup> August 2024.
  3. It is important to note when the suit herein was first filed, parties agreed to submit themselves to the court annexed mediation process and a substantive settlement agreement was filed in court touching on various assets of the Estate of the Late John Kariithi Nyoike and the same was adopted and made an order of this court on 19<sup>th</sup> July 2024. In the said consent order, parties at paragraph 8 thereof agreed as follows; "8. THAT the Defendant shall provide a comprehensive statement of Account for motor vehicle Registration Number KDG 019Q to enable parties resolve the status of the said motor vehicle."
  4. It appears from a perusal of the record and a reading of the said consent agreement that the issues surrounding motor vehicle registration number KDG 019Q have not been fully resolved by and between the parties.
  5. The Applicant seek two main reliefs, one, that the 2<sup>nd</sup> interested Party do provide loan documents as they relate to the subject motor vehicle and two, the said motor vehicle be released to the estate of the late John Kariithi Nyoike. In the affidavit supporting the Application hereto, the deponent, Alice Ngima Kariithi, alludes to non-adherence of the terms of the consent order as it relates to the subject motor vehicle. The said affidavit is silent as to adherence to the other parts of the consent order.
  6. In opposing the application, PEter Kuria Mukuria has refuted the demands as set out in the application. Mr. Mukuria depones that the Applicant is being selective and has concealed material facts to the court in the present application in that the Estate of the late John Kariithi Nyoike was expected to continue servicing the loan with the 2<sup>nd</sup> interested but they have neglected and or refused to do so, leading to the repossession of the subject motor vehicle. The Defendant allege that as an entity, they stand to lose their credit rating if the said account remains unserviced. Mr. Mukuria deponed that all necessary documents as per the consent order were made available to the estate as agreed and the current demand is an attempt to scuttle the consent order on the part of the Applicants. The Defendant argue that the Applicant are underserving of the equitable relief they seek as they have come to equity with unclean hands. The Defendant urged the court to find the application unmerited and dismiss the same with costs.

#### **Analysis and Determination:-**

7. I have carefully considered the application and the supporting affidavit, the response by the Defendant and the rival written submissions thereto. The record reflects that when the Plaintiffs moved this court



by a plaint dated 26<sup>th</sup> June 2023, they at the simultaneously sought and obtained temporary injunctive reliefs restraining the Defendant and the two interested parties from interfering with various motor vehicles, among them motor vehicle registration number KDG 019Q, subject matter of the present application. Thereafter parties agreed to settle the outstanding issues and a comprehensive settlement agreement was reached and made an order of this court on 19<sup>th</sup> July 2024. Both parties agree that the consent order superseded the previous temporary reliefs of the court and therefore it is the terms of the consent order that are in force.

8. I have looked at the consent order provided in the proceedings before me. I note that in the order parties agree that where necessary, the services of an independent auditor were to be sought to help in unravelling the accounts. I note from the application and the affidavits thereto, this part of the consent order has not been acted upon if the Applicants dispute the documents made available to them.
9. It is trite that where parties reach a mutually agreed position on a matter, courts will only interfere with a consent order if it is established that the same was obtained through duress, coercion or undue influence.
10. Courts have held the position that a consent order is binding upon the parties and can only be set aside if it was proved that the same was obtained through misrepresentation, undue influence or coercion. The court of appeal in the case of Hirani –v- Kassam (1952) EACA 131 observed as follows” It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out....” Similarly the court of appeal in J.M Mwakio Vs. Kenya Commecal Bank Limited, Civil Appeal No 28 OF 1982 AND 69 of 1983, citing with approval Purcell V, F.C Trigell LTD (1970) ALL ER 671, Winn LJ sad at 676 “It seems to me that , if a consent order is to be set aside, it can only be set aside on grounds of which would justify setting aside of a contract entered into with the knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked as a contract.”
11. Although the present application does not outrightly seek that the court vacates the consent order of 19<sup>th</sup> July 2024, the effects of the prayers sought herein amount to the same as it has not been demonstrated where the difficulty in implementing the terms of the consent order lie. I am therefore in agreement with the Defendants that the present application is unmerited. I direct that the parties implement the terms of the consent orders negotiated and agreed upon in full before moving the court to alter or amend the same.
12. In conclusion I hold and find that the application dated 6<sup>th</sup> August 2024 is without merit. The same is hereby dismissed and with costs to the Defendants. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY 2025**

.....

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

1. Ms. Wambui holding brief for Mr. Nduati for the Applicant.
2. Mr. Njuguna Mwaura for the 1<sup>st</sup> Respondents.
3. Ms. Abok for the 2<sup>nd</sup> Respondent.



4. Mr. Kibuthu for the Interested Parties.

5. Amos - Court Assistant

