



Njuguna t/a Frank Mwangi & Company Advocates v Njuguna (Miscellaneous Application E026 of 2022) [2025] KEHC 15 (KLR) (10 January 2025) (Ruling)

Neutral citation: [2025] KEHC 15 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E026 OF 2022
SM MOHOCHI, J
JANUARY 10, 2025**

BETWEEN

**FRANCIS MWANGI NJUGUNA T/A FRANK MWANGI & COMPANY
ADVOCATES APPLICANT**

AND

WACHIRA NJUGUNA RESPONDENT

RULING

1. Before Court for determination is the Applicant's Notice of Motion Application dated 4th June, 2024 brought under Sections 51(2) of the *Advocates Act* and Order 22 Rules 48, 57 and 68 and Order 51 Rule 1 of the *Civil Procedure Rules*. The Applicant is seeking: -
 - a. Spent
 - b. Spent
 - c. That the subject parcel of land known as Dundori/Lanet Block 5/3269 (Kiamunyeke) be advertised and sold by public auction by Bensure Auctioneers to recover the total outstanding decretal sum of Kshs 10,000,000 together with further accrued interests thereon until payment in full;
 - d. That the Respondent Wachira Njuguna be Ordered to grant free and unlimited access to the subject parcel of land for purposes of inspection and valuation.
 - e. That this Honourable Court to allocate a convenient date for settlement of the terms of the conditions of Sale of the property known as Dundori/Lanet Block 5/3269 (Kiamunyeke) belonging to the Respondent;
 - f. That the costs of valuation, auctioneers' fees and any other related expenses to be paid from the proceeds of the sale of the subject parcel of land;



- g. That costs of this Application to be borne by the Respondent.

Applicant's Case

2. The Application is predicated on the grounds at face value and supported by the sworn Affidavit of Francis Mwangi Njuguna Advocate wherein he deposes that he was retained by the Respondent in Succession Cause No 11 of 2019, Estate of Erastus Njuguna Kamau. That the legal fees payable was agreed upon and a consent dated 15th July, 2022 was recorded and adopted on 18th October, 2022 as an order of the Court. A certificate of taxation was issued on 2nd November, 2022 with a certificate of costs being adopted on 14th November, 2023.
3. He averred that the Respondent has failed to honour the decretal sum outstanding at Kshs. 10,000,000 and that it would be in the interests of justice that the Court issues an Order of prohibition prohibiting registration of any disposition of parcel known as Dundori/Lanet Block 5/3269 (Kiamunyeke) which belongs to the Respondent. That he intends to have the land auctioned and the valuation and auctioneers' costs and other related expense be paid from the proceeds of the sale.
4. He was apprehensive that he stood to suffer irreparable loss and damage as he may never recover the fruits of his decree and that the Respondent stands to suffer no prejudice.

Respondent's Case

5. In opposing the Application, the Respondent filed a Replying Affidavit sworn on 19th July, 2024 wherein he deposed that the Application is made in bad faith, devoid of merit as a tactic for the Applicant to unjustly acquire property illegally, an attempt at restricting him from exercising his right to satisfy the decree and that the orders were served late rendering him incapable of adequately responding.
6. He stated further that the property to be attached is no longer in his possession as it was sold to one Timothy Munyori Karwe and only continued to hold in trust of the purchase till he completes paying the balance.
7. It was his case that he was coerced to record the consent in respect of Advocate Client Bill dated 23rd May, 2022 and in doing so he became indebted to the tune of Kshs 10 million. That despite being dissatisfied with the outcome of these proceedings, he stated that he allowed the Respondent to collect his share of rent collected from the Estate of Erastus Njuguna Kamau and Loise Wangari in a bid to settle the decretal sums owed, a matter the Applicant agreed to and as such the decretal sum gradually reduced as he continued to make alternative arrangements to settle the sum in full.
8. He added that the Applicant has not satisfied the provisions of Order 22 Rules 2 (1) and (2) requiring him to inform Court about any payments or adjustments made in respect of the decree or, Rule 9 requiring him to specify the Respondent's share or interests in the property to be attached and Rule 18 requiring him to file notice to show cause before filing this Application.
9. It was further the Respondent's case that the Applicant has never moved to Court for execution by other means including Execution by Warrants of Sale or Notice to Show Cause. That no Certificate of Search has been attached to demonstrate the property is registered in the Respondents name.
10. The Applicant in his Supplementary Affidavit in response sworn on 14th October, 2024 and stated that the Respondent was never coerced into recording the consent and he had the right to object to the same being adopted in Court. That the letter dated 15th December, 2023 to collect rent from the months of December, to March totaling Kshs. 192,230 was in relation to HCF E025 of 2022 Francis



Mwangi Njuguna T/A Frank Mwangi & Company Advocates vs Wachira Njuguna where the parties entered into a consent for taxation of the matter which was taxed at Kshs. 2,500,000 with a Certificate of Taxation being issued.

11. That he was served with a letter indicating that he should not collect rent anymore and that the Rent should be collected by the Respondent. That the Respondent has not settled the fees in HCF E025 of 2022 and Kshs 2,307,680 plus interests or made any attempts to settle the decretal amount in this matter.
12. The sale agreement attached by the Respondent is a tactic to defeat the Applicant's claim. That a year has not lapsed since the Certificate of Taxation was issued on 14th November, 2023.

Applicant's Submissions

13. The Applicant submitted that it has been two years since the consent was entered on settlement of legal fees with the Respondent frustrating the Applicant. He contended that litigation must come to an end and justice must be served to all parties.
14. That the Applicant represented the Respondent and the Respondent has failed to settle the decretal sum despite demands being made. He argued that Dundori/Lanet Block 5/3269 (Kiamunyeki) belonging to the Respondent can be sold through public auction to recover the decretal amount owing as well as valuation, auctioneers fees and other related expenses.
15. Reliance was placed in *Peter Kariuki Njeru v Erastus Gilbert Kimani & Another* [2022] eKLR where the Court held that Section 38(1) of the *Civil Procedure Act* Grants Courts power to enforce executions. It was submitted that this was the only avenue and mode of recovering legal fees that the Applicant has to satisfy his decree.
16. In the Supplementary Submission dated 14th October, 2024 it was submitted that Dundori/Lanet Block 5/3269 (Kiamunyeki) belongs to the Respondent within Section 26 of the *Land Registration Act* and the certificate of search attached both in the supporting affidavit and the supplementary affidavit indicate that the property still belongs to the Respondent and the allegation that the property has been sold is a false fact.
17. The Respondent elected not to file any written submissions but relied wholly on his replying Affidavit dated 19th July, 2024

Analysis and Disposition

18. This miscellaneous cause has been filed to aid the Advocate execute and realize the fruits of his fees.
19. The Respondent ought to have by this time settled the judgment decree dated 14th November, 2023 as certified.
20. The Respondent ignores the fact that these are execution proceedings fails to demonstrate as to why he has not yet settled the decree, attempts to argue that the impugned property has since been sold to third parties, attempts to reopen determined issues by arguing that the Consent dated 15th July, 2022 was obtained by coercion and that finally the Decree Holder/Applicant has not exhausted other execution measures to warrant the instant relief sought.
21. The Respondent has unfortunately approached this Court with an ignorant, cavalier and/or lackluster attitude that does not make his case any better.



22. This Court finds that the Applicant has satisfied the conditions for grant of the orders sought, I am persuaded that the Respondent does not desire to settle this claim in the near future or otherwise and it is in the interests of justice to allow this motion as prayed.

Final Orders

- i. An Order is hereby issued for the subject parcel of land known as Dundori/Lanet Block 5/3269 (Kiamunyeki) be advertised and sold by public auction by Bensure Auctioneers to recover the total outstanding decretal sum of Kshs 10,000,000/- together with further accrued interests thereon until payment in full;
- ii. The Respondent Wachira Njuguna is hereby Ordered to grant the Applicants free and unlimited ingress and egress to the subject parcel of land for purposes of inspection and valuation.
- iii. The Deputy Registrar of the High Court shall allocate a convenient date for settlement of the terms of the conditions of Sale of the property known as Dundori/Lanet Block 5/3269 (Kiamunyeki;
- iv. The costs of valuation, auctioneers' fees and any other related expenses shall be paid from the proceeds of the sale of the subject parcel of land;
- v. That costs of this Application to be borne by the Respondent.

It is so ordered.

SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 10TH DAY OF JANUARY, 2025.

MOHOCHI S.M.

JUDGE

