



**EON Energy Limited v Desnol Investments Limited (Commercial Miscellaneous Application E074 of 2018) [2025] KEHC 3667 (KLR) (Commercial and Tax) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3667 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E074 OF 2018**

**MN MWANGI, J**

**MARCH 14, 2025**

**BETWEEN**

**EON ENERGY LIMITED ..... APPLICANT**

**AND**

**DESNOL INVESTMENTS LIMITED ..... RESPONDENT**

**RULING**

1. The decree holder/applicant filed a Notice of Motion application dated 28<sup>th</sup> May 2024 pursuant to the provisions of Article 159(2)(c) of *the Constitution* of Kenya, Sections 1A, 1B, 3A & 63(d) of the *Civil Procedure Act*, Order 51 of the Civil Procedure Rules, 2010 and any other enabling provisions of the law. The applicant prays for orders directing the Officers Commanding Rabuor and Kapkerer Police Stations to accompany Crystal Valuers and provide security during the valuation of properties, parcels of land Nos. Kisumu/Kochieng/4157 and Nandi/Kapsengere/1257 while maintaining law and order and for this Court to summon the respondent to show cause why the decree issued on 28<sup>th</sup> January 2021 should not be executed.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Dwalo Ariaro, a Director of the applicant company. Mr. Ariaro averred that the applicant obtained a Court decree on 28<sup>th</sup> January 2021 against the respondent, for Kshs.19,227,154.00 plus costs and interest, but the respondent failed to satisfy the said decree and an inhibition order was issued on 16<sup>th</sup> December 2021. He further averred that attempts to execute the decree through property attachment were unsuccessful as bids were too low, necessitating a fresh valuation. Mr. Ariaro stated that to ensure a fair market price, the applicant engaged Crystal Valuers to conduct a new valuation on the suit properties, but access to the properties in question was denied. He stated that the applicant filed the instant application as the unpaid decree has escalated



to Kshs.52,080,400.26 and any continued obstruction by the respondent increases the applicant's financial losses and prevents the enforcement of the Court's decree.

3. In opposition to the application, the respondent filed a replying affidavit sworn on 17<sup>th</sup> June 2024 by Mr. Clive Natome, one of the respondent's Directors. He averred that all that parcel of land known as Nandi/Kapsengere/1257 is his personal property and not the respondent company's property, and it cannot be subject to execution for the respondent's debt. He contended that while all that parcel of land known as Kisumu/Kochieng/4157 belongs to the respondent, it is charged to I&M Bank, thus any attempted auction is legally ineffective. He asserted that the aforesaid encumbrance prevents transfer of Kisumu/Kochieng/4157 to a third party, rendering the valuation pointless and potentially unlawful.
4. Mr. Natome stated that the decree in question is over three years old and the applicant failed to first issue a Notice to Show Cause before seeking execution, making the instant application procedurally flawed under Order 22 Rule 18 of the Civil Procedure Rules, 2010.
5. In a rejoinder, the applicant filed a supplementary affidavit sworn on 18<sup>th</sup> July 2024 by Mr. Dwalo Ariaro, a Director of the applicant company. He averred that the valuation process was already considered by the Court. Further, that the deponent of the respondent's replying affidavit personally guaranteed the debt that led to the institution of the proceedings between the parties herein and as the majority shareholder, he agreed that even personal property including Nandi/Kapsengere/1257 could be used to satisfy the obligation. He contended that the said issue was litigated on in HCCOMM MISC No. E281 of 2018, where the Court found evidence of fraud justifying the lifting of the corporate veil to prevent misuse for evading debts, and ruled that the aforesaid property was subject to execution.
6. In respect to Kisumu/Kochieng/4157, Mr. Ariaro averred that in as much as it is charged to I&M Bank, the Bank has no issue with execution. He stated that the request for valuation is not an execution order but a necessary step for continued execution, as prior attempts failed. He further stated that the re-valuation is not new and was previously consented to by the respondent, making its objections contradictory.
7. The instant application was canvassed by way of written submissions. The applicant's submissions were filed on 4<sup>th</sup> September 2024 by the law firm of KMK Africa Advocates LLP, whereas the respondent's submissions were filed by the law firm of Kouko & Odero Advocates LLP on 10<sup>th</sup> September 2024.
8. Mr. Maruti, learned Counsel for the applicant relied on the case of Akumu v Odhiambo (Appeal E025 of 2023) [2024] KEELRC 961 (KLR), and submitted that all that parcel of land known as Nandi/Kapsengere/1257 is subject to execution not because it is owned by a Director of the respondent company but because its proprietor voluntarily offered it as security in case of default. Further, that since the earlier Court decision granting protection and inhibition orders was never challenged, the property remains liable for attachment. Counsel argued that the aforesaid property can rightfully be attached even without lifting the corporate veil. He contended that the respondent's Director who mismanaged the company after personally benefiting from its contracts, is now attempting to shield his personal property from execution, a clear effort to evade justice.
9. He relied on the Court of Appeal case of Githunguri Dairy Farmers Co-operative Society v Ernie Campbell & Co. Ltd & another [2018] eKLR, and urged this Court to exercise its inherent powers under Section 3 of the [Civil Procedure Act](#) to lift the corporate veil and ensure that justice is served. Mr. Maruti contended that a Notice to Show Cause was not required before filing for execution since the applicant had already obtained warrants of attachment and sale of the properties in question under a valid decree dated 3<sup>rd</sup> December 2020. He stated that past execution attempts failed due to low offers



that were below the reserve price. He cited the case of Stephen Maina Kimanga and 4 others v Lucy waithira Mwangi and 2 others [2015] eKLR, and stated that since its valuation agents were denied entry to the suit properties despite the ongoing execution process, police assistance is necessary to prevent further resistance or potential violence.

10. Mr. Kouko, learned Counsel for the respondent submitted that the applicant seeks leave to summon the respondent to show cause why the decree herein should not be executed, as required under Order 22 Rule 18 of the Civil Procedure Rules, 2010. He stated that the respondent has not yet been summoned vide a Notice to Show Cause, which exercise must be conducted before execution can proceed. He argued that the applicant should have first invited the respondent to show cause, and only if the respondent failed to do so, could the current application be considered.

### **Analysis and Determination.**

11. I have considered the instant application, the grounds on the face of it, and the affidavits filed in support thereof. I have also considered the replying affidavit filed by the respondent as well as the written submissions by Counsel for the parties. The issue that arises for determination is whether the instant application is merited.
12. It is not in dispute that the applicant has a Court decree issued on 28<sup>th</sup> January 2021 against the respondent for Kshs.19,227,154.00 plus costs and interest. It is also not in dispute that the decree has never been satisfied thus an inhibition order was issued on 16<sup>th</sup> December 2021 to be registered against the suit properties. The applicant contends that the properties in question have been valued before, but attempts to sell them by way of public auction were unsuccessful as bids were too low, which necessitated a fresh valuation. The plaintiff however stated that when its valuation agents tried to access the suit properties for purposes of carrying out a valuation, they were denied access.
13. The respondent on the other hand opposed the instant application on two major grounds. Firstly, the respondent contended that all that parcel of land known as Nandi/Kapsengere/1257 is his personal property and not the respondent company's property, and it cannot be subject to execution for the respondent's debt. Secondly, he averred that in as much as Kisumu/Kochieng/4157 belongs to the respondent, it is charged to I&M Bank hence any attempted auction is legally ineffective since I&M Bank's rights being a secured creditor rank superior to those of the applicant. The respondent further claimed that since the decree the applicant wishes to execute is over three years old, the applicant ought to have first issued a Notice to Show Cause before seeking execution.
14. Under the provisions of Order 22 Rule 18(1) of the Civil Procedure Rules, 2010, in the event an application for execution is made more than a year from the date of the decree, a Notice to Show Cause why the decree should not be executed should first be issued against the person whom execution is applied. Order 22 Rule 18(1) of the Civil Procedure Rules, 2010 states that –

Where an application for execution is made -

- a. more than one year after the date of the decree;
- b. against the legal representative of a party to the decree; or
- c. for attachment of salary or allowance of any person under rule 43, the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution



if the application is made within one year from the date of the last order against the party against whom the execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him:

Provided further that no such notice shall be necessary on any application for the attachment of salary or allowance which is caused solely by reason of the judgment-debtor having changed his employment since a previous order for attachment.

15. Further, Order 22 Rule 18(1) of the Civil Procedure Rules, 2010 provides that–

Nothing in subrule (1) shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

16. In the case of Reuben Nyanginja Ndolo v Dickson Wathika Mwangi & 3 others, Election Petition No. 11 of 2008 cited by the Court in Kenya Hotels and Allied Workers Union v Nyanza Club [2024] KEELRC 966 (KLR), the Court set out the rationale for the requirement of a Notice being issued before execution, when a decree was more than one year old as follows -

The requirement for Notice To Show Cause serves two purposes in my view: First, it serves to give notice to the Judgment debtor to pay the decretal sum in cases where as a result of the lapse of time, he may have forgotten about the existence of the decree altogether; secondly, the requirement for notice to show cause is also meant to put the decree holder on notice that if he delays in pursuing his rights, the process of execution will be subjected to the said notice.

17. In this case, the decree that the applicant seeks to execute was issued on 28<sup>th</sup> January 2021. The applicant contends that the purpose of the valuation to be conducted on the suit properties by Crystal Valuers is to facilitate their sale by way of public auction in execution of the decree issued on 28<sup>th</sup> January 2021. More than one year has however elapsed since the issuance of the said decree and the applicant has neither alleged nor demonstrated any of the exceptions provided for under Order 22 Rule 18(1) of the Civil Procedure Rules, 2010, for this Court to conclude that the Notice to Show Cause provided for thereunder is not necessary. It is my considered view that having sought for an order for this Court to summon the respondent to show cause why the decree issued on 28<sup>th</sup> January 2021 should not be executed, the applicant appreciates the provisions of Order 22 Rule 18(1) of the Civil Procedure Rules, 2010 and acknowledges that it is necessary for the notice contemplated thereunder to be issued to the respondent before the execution process can begin.

18. Accordingly, I agree with Counsel for the respondent that a Notice to Show Cause why the decree issued on 28<sup>th</sup> January 2021 should not be executed ought to first issue to the respondent and be determined, before the applicant can seek any orders in furtherance and/or to facilitate execution of the said decree. It is my finding that the order seeking this Court to direct the Officers Commanding Rabuor and Kapkerer Police Stations to accompany Crystal Valuers so as to provide security during the valuation of the suit properties while maintaining law and order is premature, as such an order can only be entertained after determination of the Notice to Show Cause as provided for under Order 22 Rule 18(1) of the Civil Procedure Rules, 2010, and as sought by the applicant under prayer No. 3 of the instant application.



19. The upshot is that the application herein is partly successful and it is allowed in the following terms –
- i. Summons shall issue to the respondent to show cause why the decree issued on 28<sup>th</sup> January 2021 should not be executed; and
  - ii. Each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF MARCH 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Munywoki h/b for Mr. Maruti for the applicant

Ms Muheso h/b for Mr. Kouko for the respondent

Ms B. Wokabi –Court Assistant.

