



**Kimani v Director, Recovery Trial Treatment Centre; Kihara alias
Titus Nderitu (Applicant) (Criminal Miscellaneous Application
37 of 2021) [2025] KEHC 3529 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL MISCELLANEOUS APPLICATION 37 OF 2021
LN MUTENDE, J
MARCH 17, 2025**

BETWEEN

HARUN KIMANI APPLICANT

AND

DIRECTOR, RECOVERY TRIAL TREATMENT CENTRE RESPONDENT

AND

TITUS NDERITU KIHARA ALIAS TITUS NDERITU APPLICANT

RULING

1. This is a matter where a certificate of costs was issued dated 29th January, 2024. The Party to Party Bill of Costs was drawn and taxed at Kshs.175,835/-.
2. Subsequently, a notice to show cause was issued to the Respondent to make payment of the costs which was disregarded and no appearance was made in court. Consequently, a warrant of arrest was issued against the Respondent.
3. Following directions by Ndung'u J, the application to revoke the order was to be disposed through written submissions.
4. The Applicant, Titus Nderitu Kihara seeks an order of the court to stay, set aside, and, or annul the warrant of arrest dated 13th September, 2024 and the notice to show cause issued against the Applicant dated 19th June, 2024. That the court do issue a declaration that the notice to show cause against the Applicant, Titus Nderitu Kihara is illegal, unprocedural and unlawful as the same was obtained fraudulently and arose out of non-existent judgment and/or decree of the court against the Applicant.



5. It is submitted by the Applicant, Titus Nderitu, that the Respondent failed to have the certificate adopted as the judgment of the court and no decree was issued capable of being executed, the warrant of arrest was issued in error and wrongful.
6. That proceedings were against an unnamed director of the entity known as Recovery Trails Treatment Centre, but, the notice to show cause issued by the court was in the name Titus Nderitu inserted as the Director of the Entity. That there was no application lifting of the veil to enable the court to proceed against the Applicant. Reliance was placed on Thika ELC Suit No. 729 of 2017, *Stanley Thyatha Muindi v Matewa Agencies Ltd & 2 Others*.
7. That according to the affidavit of service the Applicant was served.
8. The Respondent on his part argued that the Respondent initiated proceedings of Habeas Corpus against the Director of Recovery Trails Treatment Centre which is not a company but a treatment centre registered with the registrar of societies, according to an excerpt print out from the Business Registration Services co-authored by the Applicant. But, attempts to get the records from the society have been futile.
9. That according to records of e-citizen platform the business registered as Recovery Trails of Registration Number BN/2013/21604 has Titus Nderitu Kihara (Applicant) as its proprietor who was the person incharge of admission of Faith Njeri Kariuki into the Health Facility without her consent or that of her family.
10. That the application for Habeas Corpus was heard by Kariuki J who directed her release. That orders were served upon the Applicant in his capacity as the Director and the patient was released immediately.
11. Admitting that the Applicant herein as the Director was introduced at the execution stage, he did admit Faith Njeri Kimani and subsequently discharged her. That being a rehabilitation facility and not a company there is no corporate veil capable of being lifted. That execution proceedings for costs can therefore only be initiated against the Applicant.
12. In this regard the Applicant relied on the case of *Serah Njeri Mwobi v John Kimani Njoroge* [2013] eKLR where the Court of Appeal stated that;

“The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person.”
13. The Respondent admitted that there was no decree in these proceedings and that no decree would have been issued at the conclusion of these proceedings had the application gone to inter-parties hearing.
14. That the certificate of costs is as a result of a party and party bill of costs within the mother file underpinned on the orders of this court issued on 28th April, 2021 and 24th April, 2021. That the bill of costs was not taxed under a different miscellaneous cause, therefore, it is not necessary to have the certificate of costs adopted as a decree in a fresh suit.
15. That in the result, the procedure for taking out the Notice to Show Cause and the execution of the same through warrants of arrest is therefore proper.
16. That a certificate of costs itself cannot be executed, there ought to be an existing decree first. That in the case an order ought to come first. And that there is indeed a final order of the court. Hence the prayer for dismissal of the application dated 27/09/2024.



17. I have considered the application, affidavits in support and the rival submissions. The party to party bill of costs herein was ordered by Kariuki J. to compensate Faith Njeri Kimani who had been detained to enable her travel to Nairobi. The court stated thus;

“To facilitate the patient Faith Njeri Kimani travel to Nairobi due to lock down, the court hereby issues an order for her to be allowed to Nairobi home without being obstruct by any barrier to Nairobi.”

18. The costs were subsequently taxed and a certificate thereof drawn dated 3rd October, 2023.
19. On the question of the Applicant Titus Ndiritu Kihara alias Titus Nderitu, as admitted by the Respondent, his name was introduced in proceedings at the execution stage but argued that he is the proprietor of the Respondent.
20. The process of execution which involves enforcing the court order is ordinarily made against a party who has failed to comply. In civil law it is directed against the judgment debtor. In the instant matter the application was filed by the Applicant herein challenging unlawful detention of Faith Njeri Kimani and the costs emanated from the order of the court.
21. Pursuant to the Habeas Corpus Rules, the person to whom the writ was directed was the Director of Recovery Trails Treatment Centre. The name Titus Nderitu was inserted/ introduced in the warrant of arrest in execution without a court order. The order by the Hon. Deputy Registrar was directed to the Director of the entity sued. At that point in time there was no suggestion whatsoever that Titus Nderitu Kihara was the one who failed to comply with the order. His name should have been included in the pleadings as the individual whose entity had been ordered to pay the monetary amount payable as costs/to facilitate the obligation as per the court ruling.
22. In a nutshell, execution cannot be levied against a party who was not part of the original pleadings and/or proceedings.
23. In the premises, the application has merit and is allowed. In the result, the warrant of arrest dated 13th February 2025 and Notice to show Cause issued against the Applicant, Titus Ndiritu Kihara alias Titus Nderitu be and is quashed hereby set aside.
24. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF MARCH, 2025.

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L.N. MUTENDE

JUDGE

