



**Mwangi t/a Lawrence Mwangi & Mwangi Advocates v Manyara; Njoroge (Surety)
(Miscellaneous Application 47 of 2012) [2025] KEHC 3671 (KLR) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3671 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION 47 OF 2012
SM MOHOCHI, J
MARCH 3, 2025**

BETWEEN

**LAWRENCE NGUGI MWANGI T/A LAWRENCE MWANGI & MWANGI
ADVOCATES APPLICANT**

AND

DAVID MANYARA RESPONDENT

AND

SAMMY MATHENGE NJOROGE SURETY

RULING

1. Before me are two Applications by the surety filed by two different advocates, firstly is Notice of Motion Application date 1st October 2024 filed pursuant to Order 39 Rule 3 of the Civil Procedure Rules 2010, supported by a sworn Affidavit of Sammy Njoroge seeking;
 - i. That, a stay of execution of the decree herein plus all its consequential orders.
 - ii. That the Applicant be allowed to substitute the surety documents herein being the original logbook for motor vehicle registration number KBH 243H with the judgement debtors Title Deed for all that parcel of land known as Nakuru Municipality/block 16/750 measuring approximately 0.045 Hectares currently valued at approximately Kshs. 5.000.000/= (Five Million Shillings Only).
 - iii. That the costs of this application be provided for
2. The surety contends that, he is the current surety for the defendant/judgement debtor who was arrested vide warrant of arrest for 13th April, 2022.
3. That there was a warrant of arrest currently pending against the defendant herein dated 18th July, 2022.



4. That he then gave out his logbook as surety for Kshs. 1,000,000/= (One Million Shillings Only).
5. That Justice Hon. H. K. Chemitei in his Ruling ordered that the Applicant herein surrender his motor vehicle to the Deputy Registrar for the same to be sold and recover the Kshs. 1,000,000/- (One Million Shillings Only)
6. That the judgement debtor is the registered owner of all that parcel of land known as Nakuru Municipality/block 16/750 measuring approximately 0.045 Hectares currently valued at approximately Kshs. 5,000,000/- (Five Million Shillings Only).
7. That the learned Judge was not aware at the time of delivering the ruling that the judgement debtor already had a title deed and valuation report that he wanted to surrender to Court as surety.
8. That the judgment-debtor did not fail to appear in Court either by himself or his chosen advocate
9. That the judgement-debtor did not take steps to have the judgement debtor arrested for non-attendance of Court and therefore with lack of proof the same the ordered granted against the surety Applicant.
10. That the judgement-debtor is ready and willing to have the title delivered to Court for the same to be sold and recover the decree amount,
11. That the surety only wanted to assist the judgement-debtor and should therefore not suffer for his good acts.
12. That it would be grossly unfair and miscarriage of justice for the Applicant herein to lose his main tool of business for a debt that he was not a party to.
13. That the valuation report confirms that if the land is sold, the judgement creditor will secure his debt including any interests thereon.
14. On the other hand, is a notice of motion dated 2nd October 2024 filed pursuant to Section 3A and 1A of the *Civil Procedure Act* seeking;
 - i. That, this Honourable Court be pleased to hear and determine this application first before any other application are entertained.
 - ii. That, this Honourable Court be pleased to order the Defendant/Judgement Debtor to pay directly to the firm of Lawrence Mwangi T/A Lawrence Mwangi & Co. Advocates Kshs.940,000/- being the decretal sum in the small claims Court case No.E322 of 2024 decree dated 13th June, 2024 held by the applicant herein against the Respondent which decree relates to the amount ordered by this Honourable Court in the ruling dated 16th November, 2023 that ordered; "Sammy Matheri Njoroge the surety for the judgment debtor be ordered to produce and avail to the Court Isuzu lorry registration number KBH 243H so that the same can be sold by public auction and the proceeds thereof do settle the decretal sum and any surplus if any be released back to him."
 - iii. That in the alternative and without prejudice to the prayer 2 above, this honourable Court be pleased to order that the security of motor vehicle registration number KBH 243H make isuzu FVZ pledged as security in this suit by the applicant be substituted with the title document LR No. Nakuru Municipality Block 16/750 measuring approximately 0.045 hectares in the name of David Manyara Njuki now held by the applicant herein which is valued at Kenya Shilling Five Million (Kshs.5,000,000/-).



- iv. That, the firm of Lawrence Mwangi be at liberty to execute the small claims Court decree dated 13th June, 2024 against the David Manyara Njuki, the Defendant/Judgment debtor herein or alternatively dispose the parcel of land Nakuru Municipality Block 16/750 in the name of David Manyara Njuki.
 - v. That the costs of this application be costs in the cause.
15. In response to the motion the Advocate for the Judgment Creditor equally filed an Application dated 11th November 2024 filed pursuant to Section 1A, 1B, 3A and 63 of the *Civil Procedure Act* and Orders 22 Rules 9, 48 and 68 and Order 50 Rule 1 of the Civil Procedure Rules and Articles 48, 50 and 159 of *the Constitution* of Kenya and all other enabling provisions of the law seeking inter alia;
- a. This Honourable Court be pleased to certify this notice application as one of extreme urgency and do give 26th November, 2024 a priority hearing date for the same since this matter is coming up for mention on that day.
 - b. That the judgment debtors title number Nakuru Municipality/block 16/70 and the sureties' motor vehicle registration number KBH 243H Lorry be jointly sold by public auction by an order of this Court for recovery of the entire decretal sum and accrued costs and interest in terms of the orders dated 16th December, 2023 and issued on the 17 day of January, 2024.
 - c. That pending the attachment and sale of the two properties the Court do order that the judgment debtor and Sammy Mathenge Njoroge (the Surety) be prohibited from selling or transferring or charging the same in any way and from taking any benefit from the same.
 - d. That the Registrar of this Court do assess the further interests and cost in favour of the applicant and to add the same into the decretal amount.
 - e. That the respondent be condemned to meet the costs of this application.
16. This Courts has considered the extensive submissions so far and finds that the Miscellaneous Application is moot to the extent that the Judgment debtor and his surety were not deserving of any equitable relief(s) at this juncture.
17. The explicit and contradictory nature of representation by the firm of Muthanwa & Co. advocates and that of Muiruri Mwangi & Co. advocates overlapping between the surety and judgment debtor and vice-versa is indicative of the abusive nature of the motion.
18. The surety and judgment debtor speak from one side of the mouth and this Court is afraid that there are no legal issues for adjudication at this juncture rather the surety and judgment debtor have engaged the Court in jingoistic acrobatics in avoiding settlement of a judgment decree.
19. The fatality of the two Applications dated 1st October 2024 and that dated 2nd October 2024 can be found in the decision by Hon Chemitei J. orders dated 16th December, 2023 and for all intents and purpose Court is functus officio and it cannot disturb or overturn or vary the conclusive orders of Hon. Justice Chemitei.
20. The surety and Judgment-debtor failed to satisfy all the conditions attached to the Orders dated 16th December, 2023 and as such have now moved the Court with unclean hands deserving no audience of this Court,
21. The upshot is that the Applications dated 1st October 2024 and that dated 2nd October 2024 are misconceived and incompetent, for the foregoing reasons and lack of merit and the same are dismissed with costs to the Respondent.



22. This Court finds merit and favor in the Application dated 11th November 2024, and orders execution to proceed. All other reliefs sought thereon are declined

It is So Ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 3RD DAY OF MARCH, 2025.

MOHOCHI S.M.

JUDGE

