



**Peter O. Ngoge t/a O.P Ngoge & Associates v Orina & 14 others (Miscellaneous Civil Application 883 of 2007) [2025] KEHC 2957 (KLR) (Civ) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2957 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**MISCELLANEOUS CIVIL APPLICATION 883 OF 2007**  
**JN MULWA, J**  
**MARCH 13, 2025**

**BETWEEN**

**PETER O. NGOGE T/A O.P NGOGE & ASSOCIATES ..... APPLICANT**

**AND**

- ERIC ORINA ..... 1<sup>ST</sup> RESPONDENT**
- DAVID MATENDE ..... 2<sup>ND</sup> RESPONDENT**
- SARAH NKATHA ..... 3<sup>RD</sup> RESPONDENT**
- MILRED BARASA ..... 4<sup>TH</sup> RESPONDENT**
- CHARLES KERICH ..... 5<sup>TH</sup> RESPONDENT**
- CAROLINE MANGO ..... 6<sup>TH</sup> RESPONDENT**
- ADIERI MULAA ..... 7<sup>TH</sup> RESPONDENT**
- IBRAHIM ORUKO ..... 8<sup>TH</sup> RESPONDENT**
- TABITHA OTWORI ..... 9<sup>TH</sup> RESPONDENT**
- BENSON OMOLLO ..... 10<sup>TH</sup> RESPONDENT**
- SARAH NDUGU ..... 11<sup>TH</sup> RESPONDENT**
- KALEKYE MUMO ..... 12<sup>TH</sup> RESPONDENT**
- JOHN OTIENO ..... 13<sup>TH</sup> RESPONDENT**
- DAVID OCHAMI ..... 14<sup>TH</sup> RESPONDENT**
- PAMELA KATHAMBI ..... 15<sup>TH</sup> RESPONDENT**



## RULING

1. Before the Court for determination is the motion dated 11/07/2024 filed by Peter O. Ngoge t/a O.P. Ngoge & Associates Advocates (hereafter called the Applicant) pursuant to Section 1A, 1B & 3A of the Civil Procedure Act (CPA), Order 22 and Order 49 of the Civil Procedure Rules (CPR) seeking *inter alia*:
  - a. Spent
  - b. That the exparte orders given on 10/07/2024 by the Deputy Registrar Hon. Silvia Motari declining to issue warrants of attachment of the movable assets of Mr. Charles Kerich ( the 5<sup>th</sup> Respondent) be set side.
  - c. That the warrants of attachment of movable assets of the said 5<sup>th</sup> Respondent be instead issued forthwith herein as was decreed and ordered by the Hon. Lady Justice Ongeri on the 24/05/2024 in Nairobi HCCC No. 390 of 2011.
  - d. That cost of this application be borne by the 5<sup>th</sup> Respondent.
2. The motion is premised on grounds found at the supporting affidavit sworn by the Applicant. The gist of the deposition is that at all material times he had rendered legal services to the 5<sup>th</sup> Respondent whereafter the latter and his colleagues in the media industry refused to settle his legal fees for services rendered thus prompting him to file a bill of costs. That the bill of costs was taxed on 25/04/2008 to the tune of Kshs. 1,056,252/- with a certificate of costs issuing on 25/09/2009 and later, the said certificate of costs was adopted as a judgment of this Court on 29/03/2011.
3. He goes on to depose that rather than appeal the latter judgment the 5<sup>th</sup> Respondent lodged Nairobi HCCC No. 390 of 2011 which was dismissed on 24/05/2024 with the Court ordering that the 5<sup>th</sup> Respondent to settle the decree in the instant matter and in default execution to issue. On 10/07/2024 upon lodging an application for execution, the Deputy Registrar declined to issue warrants of attachment in respect of the 5<sup>th</sup> Respondent in contravention of the decree of this Court issued on 24/05/2024. He states that by declining to issue warrants of attachment the Deputy Registrar abused her authority by deliberately misinterpreting the provisions of Order 22 Rule 18 of the CPR on the backdrop of the judgment of this Court issued in Nairobi HCCC No. 390 of 2011 thus meriting the urgent intervention of this
4. The 5<sup>th</sup> and 12<sup>th</sup> Respondents oppose the motion by way of a preliminary objection dated 17/07/2024 on grounds that the application for execution of the judgment issued on 29/03/2011 is time barred in line with Section 4(4) of the Limitation of Actions Act; that the interest chargeable on the decree dated 29/03/2011 is also time barred in line with Section 4(4) of the Limitation of Action Act; and that the honorable Deputy Registrar lacks jurisdiction to issue execution of the decree in a different matter being Nairobi HCCC No. 390 of 2011.
5. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Respondent did not participate in the instant proceedings.
6. The motion and preliminary objection were canvassed by way of written submissions, which this Court has duly considered.

Issues for determination



- a. Whether execution of the decree and interest thereon is time barred in line with Section 4(4) of the Limitation of Action Act?
  - b. Whether the application motion is merited?
  - c. Who ought to bear the costs of the motion?
7. At the outset Applicant cites Section 3A of the CPA which specifically reserves the inherent power of the court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court, as well as provisions of Order 49 of the CPR rule 7(1)(b)(x) as read with Sub-Rule (2), which provisions accords a party aggrieved with the decision of Deputy Registrar with respect to execution, the right to file a reference and or appeal before a Judge, as may concern the requisite impugned decision.
  8. That said, before addressing the crux of the said reference, it would be imperative to address the preliminary contestations raised therein by the 5<sup>th</sup> and 12<sup>th</sup> Respondent, ideally coined as issues (a) and (b), for this Court consideration.

**Whether execution of the decree and interest thereon is time barred in line with Section 4(4) of the Limitation of Action Act?**

9. As earlier noted, the Applicant vide the instant motion has moved to challenge the Deputy Registrar's decision declining the issuance of warrants of attachment as against the 5<sup>th</sup> Respondent, of which, this Court has been urged to set aside. Meanwhile, the 5<sup>th</sup> and 12<sup>th</sup> Respondent in riposte have lodged a preliminary objection (PO) in opposition to the motion thereof.
10. As to what constitutes a preliminary objection, the same was reasonably discussed in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, with the position further being amplified in *Oraro v Mbaja* (2005) KLR 141 and *Kigwor Company Limited v Samedy Trading Company Limited* [2021] eKLR as cited with approval in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR.

The Preliminary Objection is premised on Section 4(4) of the Limitation of Actions Act. Section 4 of the Limitation of Actions Act It provides that: -

1. The following actions may not be brought after the end of six years from the date on which the cause of action accrued—
  - a. actions founded on contract;
  - b. actions to enforce a recognizance;
  - c. actions to enforce an award;
  - d. actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
  - e. actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.
2. ....
3. ....



4. An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.
11. With the above in reserve, the Applicant has submitted before this Court that at Paragraph 75 of the judgment delivered in Nairobi HCCC No. 390 of 2011, “Annexure PON 1”, the learned judge was express that the 5<sup>th</sup> and 12<sup>th</sup> Respondent were ordered to satisfy the decree in the instant matter whereas the latter have since not preferred an appeal as against the said decision. Therefore, the judgment in Nairobi HCCC No. 390 of 2011 delivered on 24/05/2024 binds the Deputy Registrar and this Court as both lack the jurisdiction to set-aside or overturn the said decision rendered by a Court of concurrent jurisdiction. It was further submitted that the 5<sup>th</sup> and 12<sup>th</sup> Respondent, enjoined stay of execution orders therefore they cannot not seek to deny the Applicant to successfully enforce the decree of this Court rendered on 29/03/2011 by Rawal, J. (as she then was).
12. In summation, it was argued that in the alternative, the 5<sup>th</sup> and 12<sup>th</sup> Respondent’s preliminary objection cannot be raised ex post-facto enforcement of the valid judgment of this Court( Ongerij) rendered at paragraph 75 of the judgment in Nairobi HCCC No. 390 of 2011.
13. In response the 5<sup>th</sup> and 12<sup>th</sup> Respondent, while calling to aid the decisions in *Assia Pharmaceuticals Ltd v Kenya Alliance Insurance Co. Ltd* [2021] KEHC 19 (KLR), *Moses Kipkurui Bor v John Chirchir* [2019] eKLR and *Isaac Olang Solongo v Gladys Nanjekho Makokha (being representatives of the estate of Antonina Makokha(deceased) & Another* [2021] eKLR summarily argued that the execution of the decree rendered on 29/03/2011 is time barred by dint of Section 4(4) of the *Limitation of Actions Act*. Meanwhile, counsel called to aid the decision in Paul Ojigo Omanga v Japheth Angila [2011] eKLR, to posit that the Deputy Registrar lacks jurisdiction to issue execution in the instant matter in respect of the decree issued in Nairobi HCCC No. 390 of 2011.
14. Thus, to address the issue in question, the limitation period on execution of a decree of the court on exceptional circumstances where limitation may be waived, is relatively settled and this Court does not intend to re-invent the wheel. That said, this Court draws guidance from the exhortation in *Koinange Investment and Development Company Limited v Ian Kabiu Ngethe & 3 others (Being sued as the personal representatives of the Estate of Robert Nelson Ngethe (Deceased))* [2019] KECA59 (KLR) wherein it was observed that;-
- “.....While we agree that the word “action” in Section 4(4) includes all kinds of civil proceedings (including execution proceedings) as held by this Court in *M’Ikiara M’Rinkanya & Another vs Gilbert Kabeere M’Mbijiwe* (supra) we must state that the deceased was not commencing fresh execution proceedings, rather he was proceeding with an execution exercise that had already been commenced but halted by the court pending hearing and determination of an appeal.
36. In the M’Ikiara matter, the Court held that all post judgment proceedings including originating proceedings and interlocutory proceedings for execution of judgments are statute barred after 12 years.....
37. Where a party is prevented from executing a lawful decree by a court order pending hearing and determination of an appeal against the decree, it would be unjust to hold that time still runs against the decree holder over the period



when the appeal remains undetermined, and until the stay order is vacated. In *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 2ALL ER 1513, the Court of Appeal held that:-

“Where a stay is granted pending the hearing of an appeal, it is assumed that nothing can be done by the successful plaintiff to enforce the judgment until the appeal has been heard.”

38. ....” (sic)

15. Here, firstly, on the application of Paragraph 75 of the decision of Onger, J. in Nairobi HCCC No. 390 of 2011, the Court does not agree with the Applicant’s interpretation of the same. What the learned judge expressed in her decision thereof was that the 5<sup>th</sup> and 12<sup>th</sup> Respondent were obligated to settle the decree in the instant matter rendered on 29/03/2011, and failure to wit, the Applicant was at liberty to execute. That said, the paragraph cannot be read in exclusion of the clear provision of statute as urged by the Applicant, as such, the argument by the Applicant that the 5<sup>th</sup> and 12<sup>th</sup> Respondent ought to have appealed the said decision in contrast with the preliminary objection, is rejected.
16. Meanwhile, it can reasonably be concluded that the Deputy Registrar by dint of the above Paragraph cannot proceed or purport to issue execution orders of the decree in respect of Nairobi HCCC No. 390 of 2011, in the instant matter.
17. Secondly, as to when time begins to run, in the case of *Jestimure Simmenyi v. Samson Sichangi* [1997] eKLR the Court stated that time starts running on the date of judgment and stops running when an application for execution is made and that execution is barred where no steps are taken to enforce a judgment. See Also:- *Hudson Moffat Mbue v. Settlement Fund trustees & 3 Others* ELC No. 5704 of 1992 [05] [UR] and *Godfrey Ajuang Okumu v. Nicholas Odera Opiya* [2017] eKLR. In *Hatfield v Kewal Contractors Limited* [2024] KEHC 14017 (KLR), purposefully observed that to allow execution of a decree to proceed after the statutory period under Section 4(4) of the *Act*, a satisfactory demonstration by the decree holder to realize the decree before the Limitation period expires must be made to bring it within the meaning contemplated under the Act.
18. Further, as to computation, this Court concurs with Otieno J. in *Chepkwony v Chetambe & another* (Civil Suit 15 of 1995) [2022] KEHC 13862 (KLR) who succinctly observed that  

“On the prayer to declare the decree stale and incapable of enforcement, I interpret the provisions of Section 4 (4) of the *Limitation of Actions Act* to say that for a decree to become incapable of enforcement, no steps must have been taken towards its enforcement for a continuous period of twelve (12) years. If, like in all limitations, a step is taken within 12 years, the period of computation terminates and commences afresh. It is the commencement of the process of execution which determines the date the computation of time under Section 4(4).”
19. That said, the Applicant has deposed and further augment the same in his submissions, that the 5<sup>th</sup> and 12<sup>th</sup> Respondent, enjoined stay of execution orders, that more or less barred the execution of a lawful decree of this Court. A cursory perusal of the affidavit in support of the motion no material was evinced demonstrative of orders issued in Nairobi HCCC No. 390 of 2011 staying proceedings in the instant matter. The same appears to be a blanket assertion without any material to shore it up. Meanwhile, it is undisputed that decree sought to be executed was rendered on 29/03/2011, whereas as at 29/03/2023 the Applicant has yet to execute the decree as against the 5<sup>th</sup> & 12<sup>th</sup> Respondent.



20. However, to revert on the issue of computation, ex facie “Annexure PON 2” captures that the last attempt at execution of the decree in the matter was 19/07/2018, which was well within the limitation period of twelve years. Thus, applying my mind to the dicta in Chepkwony (*supra*) consecutive time would obviously begin running from 19/07/2018 and not 29/03/2011. It nevertheless warrants mentioning that the purport of the *Limitation of Actions Act* is not to extinguish bona fide claims; it equally serves the purpose of bringing litigation to an end. Here, it would appear that going by the wording of Section 4(4) of the *Limitation of Actions Act* both execution and the claim on interest seem not to be barred by limitation given that the last attempt made on execution was within the twelve years limitation period and six-year limitation period on interest.

### **Whether the application is merited?**

21. At a perusal of the record, it would seem that the Deputy Registrar’s notes (on the face of the application for warrants) in rejecting to issue the warrants of attachment was premised on the fact that the decree was more than one year old. Order 22 Rule 18(1) of the *CPR* provides that: -

- (1) 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:

22. The Court’s understanding of the above provision and use of the word “shall” therein, is that where a decree is older than one year, a notice to show cause must be taken out as against the judgment debtor requiring him to show cause on a date to be fixed, why the decree should be not be executed as against him. The said provision I believe is deliberately couched in mandatory wording. Earlier, this Court had found that the last attempt at execution was made on 19/07/2018 therefore it would follow that the decree was more than one year old, a consequence, of which the Deputy Registrar was within her rights to decline the Applicant’s application for warrants of attachment “Annexure PON 2”.

### **Who ought to bear the costs of the motion?**

23. Given the foregoing, taking due consideration of the cause of action between the parties, the resultant outcome and exercising my discretion, this Court would, in the circumstance, deems it fit that the commending order on costs would issue that each party bears own costs.



24. In the end therefore, the court finds and holds that the Application dated 11/7/2024 as well as the Preliminary Objection to the Application are both without merit and are dismissed with each party to bear own costs.

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

.....

**JANET MULWA.**

**JUDGE**

