



Cooperative Bank Of Kenya v Ondieki & another (Civil Appeal 128 of 2019) [2025] KEHC 6730 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6730 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL 128 OF 2019
BM MUSYOKI, J
MAY 23, 2025**

BETWEEN

COOPERATIVE BANK OF KENYA APPELLANT

AND

HENRY NYABUTO ONDIEKI 1ST RESPONDENT

CHEMELIL SUGAR COMPANY LIMITED 2ND RESPONDENT

RULING

1. The first respondent has brought a notice of motion dated 5th July 2024 praying for the following orders;
 1. Spent.
 2. The Honourable Court be pleased to review, vary and/or adjust the decree issued herein on 19th October 2022.
 3. Consequent to prayer (2) hereinabove, the appellant/1st appellant herein (Co-operative Bank of Kenya Limited) be given credit for and/or be deemed to have paid the sum of Kshs 1,990,724.66 pursuant to the said decree and the amount be certified as paid.
 4. The 1st applicant/respondent (Henry Nyabuto Ondieki) be granted leave and/or be at liberty to execute for the balance of the decretal sum of Kshs 441,970.00 plus the accrued interest therein of Kshs 36,094.20 to date against the appellant/1st respondent herein (Co-operative Bank of Kenya Limited).
 5. The Honourable Court be pleased to make any further or other orders as it may deem fit or expedient in the circumstances.
 6. Costs of the application be awarded to the 1st applicant/respondent herein.



2. The application was supported by the affidavit of the applicant sworn on 5th July 2024 and supplementary affidavit dated 3rd December 2024. The applicant has also filed submissions dated 18th November 2024. The appellant responded to the said application through a replying affidavit sworn by one Jackson Oire on 12th October 2024.
3. The background of this appeal is that the 1st respondent had secured a decree in his favour against the 2nd respondent in Nyando Senior Principal Magistrate's courts. In efforts to execute the decree, the 1st respondent instituted garnishee proceedings against the appellant herein (1st garnishee) and KCB Bank (2nd garnishee) and by ruling dated 31st October 2019, the Honourable Magistrate ordered as follows;
 - a. The 1st garnishee to transfer Kshs 854,384.30 from the judgment debtor's account number [particulars withheld] to the decree holder.
 - b. The amount of Kshs 20,000.00 be deducted from the above sum in satisfaction of the 1st garnishee costs.
 - c. The 1st garnishee to further transfer Kshs 1,176,967.40 from the judgment debtor's account number [particulars withheld] to the decree holder.
 - d. The amount of Kshs 30,000.00 be deducted from the above sum of Kshs 1,176,967.40 in satisfaction of 1st garnishee's costs.
 - e. Kenya Revenue Authority's agency notice issued to the 1st garnishee on 9th September 2019 shall not apply to the above stated sums.
 - f. A copy of the order to be served upon Kenya Revenue Authority by the 1st garnishee.
 - g. The 1st garnishee to comply with orders particularly order a and c within seven (7) days from the date herein failure to which the decree order will be at liberty to institute contempt of court proceedings against the 1st garnishee.
4. In a ruling dated 24-09-2021, Honourable Justice J Kamau ordered the appellant to pay out to the 1st respondent a sum of Kshs 2,031,251.70 and directed parties to exchange submissions on the issues of interest and costs. The parties filed submissions and in a ruling dated 27-07-2022, the Honourable Judge awarded the 1st respondent costs of the suit and interest at court rates in the undisputed amount of Kshs 2,031,351.70 from the time of filing Nyando SPMCC No 69 of 2016 at the trial court.
5. Following the above ruling, the 1st respondent filed his bill of costs dated 18-08-2022 which was taxed at Kshs 42,045.00 vide ruling dated 6-10-2021. Nothing seem to have been done in the file until 8-07-2024 when the current application was placed before Honourable Lady Justise M.S. Shariff
6. I decided to give the above background to refresh the memories of the parties on the status of the appeal because it appears to me from their affidavits that the parties are seeking to relitigate what has already been decided by the previous Judges. None of the previous rulings of the court has been appealed or otherwise challenged by the parties. The rulings were to me clear on interest, costs and what was payable to the 1st respondent.
7. The 1st respondent has admitted that, the appellant has since paid a sum of Kshs 1,990,724.66 which has also been confirmed by the appellant. Prayers 2 and 3 of the application are in my view superfluous. Once a court issues a decree, the same should be satisfied in full through an execution process which is elaborately provided for under Order 22 of the *Civil Procedure Rules*. The decree holder cannot be coming back to court to have the decree adjusted or varied every time part payment or partial execution



is done. That is an administrative function which should be done by the Deputy Registrar unless the party is seeking to have the court clarify its judgment or orders.

8. Prayer 4 seeks that the 1st respondent be allowed to execute against the appellant for a sum of Kshs 441,970.00 plus accrued interest of Kshs 36,094.20. Similarly, this is not a function of this court. The 1st respondent doesn't need to seek or get leave of this court to execute what had already been decreed to him. He should go on and use the various methods of execution provided for under the *Civil Procedure Act* and Rules.
9. In view of the above, the application dated 5th July 2024 is dismissed with no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT

Judgment delivered in presence of Miss Oduor Adipo for the respondent/appellant and in absence of the applicant.

