



REPUBLIC OF KENYA



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**Lexis International Limited v ABC Investment Limited & another (Miscellaneous Civil Application E403 of 2023) [2025] KEHC 6179 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6179 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CIVIL APPLICATION E403 OF 2023**

**PN GICHOHI, J**

**MAY 12, 2025**

**BETWEEN**

**LEXIS INTERNATIONAL LIMITED ..... APPLICANT**

**AND**

**ABC INVESTMENT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR, NAKURU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide a Notice of Motion dated 30<sup>th</sup> July, 2024 and filed under Certificate of Urgency pursuant to Sections 38 & 39 of the [Civil Procedure Act](#), Order 22 Rule 20 of the [Civil Procedure Rules](#), the Applicant seeks Orders that:-
  1. Spent.
  2. This Honourable Court does and hereby Order the 1<sup>st</sup> Respondent to immediately and not later than Three(3) days execute and handover to the Applicant the duly executed and attested Transfer documents and original title deed of the plot No Block 5/34 Nakuru Municipality.
  3. In the Alternative to prayer (ii) above, the Deputy Registrar be authorized to sign all the relevant Transfer documents over plot No Block 5/34 Nakuru Municipality.
  4. This Honourable Court compels the 2<sup>nd</sup> Respondent to effect the transfer of the suit property to the Applicant.
  5. This Honourable Court, in case the 1<sup>st</sup> Respondent fails to handover the original title deed to the Applicant, Orders the 2<sup>nd</sup> Respondent to revoke the



suit property's original title in the name of the 1<sup>st</sup> Respondent and provide a new original copy with the Applicant's name.

6. The costs of this application be borne by the Respondents.
2. The application is premised on the grounds on the face of the application and supported by the Affidavit sworn on 30<sup>th</sup> July, 2024 by Mahesh Vekaria, one of the directors of the Applicant.
3. In summary, the deponent stated that he filed a Chamber Summons dated 15<sup>th</sup> December, 2023, seeking inter alia for adoption of the Arbitrator's (Eng Bwalya Lumbwe, (FCIArd) Award and costs issued on 1<sup>st</sup> September, 2023, as a judgement of the Court, which this Court allowed on 17<sup>th</sup> April, 2024 and a decree issued on 28<sup>th</sup> May, 2024.
4. He stated that despite several requests, the 1<sup>st</sup> Respondent has refused and or neglected to abide by the Orders as decreed by the Court which move has exposed the Applicant to potential financial loss and damages.
5. It is his position that time was of essence in transferring the title of the suit property to the Applicant to facilitate the earliest recommencement of construction.
6. He deposed that the Applicant is apprehensive that the continued delay in the recommencement of construction would expose the property to waste, decay and liability due to lapse of construction permits and third- party liabilities and therefore, it is imperative that the 1<sup>st</sup> Respondent is compelled to execute the transfer documents of the suit property or in the alternative this Court's Deputy Registrar to sign all the relevant documents to effectuate transfer of the suit property.
7. Lastly, he stated that no prejudice will be occasioned to the 1<sup>st</sup> Respondent should the application be allowed as prayed.
8. The 1<sup>st</sup> Respondent opposed the application vide the Replying Affidavit sworn on 28<sup>th</sup> August 2024 by its director Daniel Munywoki Ngunia. He terms the application as misconceived, bad in law and aimed at misleading this Court as to the status of the Orders issued by this Court following the Applicant's Chamber Summons dated 15<sup>th</sup> December, 2023.
9. According to him, the Orders dated 17<sup>th</sup> April, 2024 reiterated the enforcement and adoption of the Arbitral Award as delivered on 1<sup>st</sup> September, 2023, which absolved the Respondents from any responsibility regarding construction and completion of the project until the 5<sup>th</sup> Floor, within 3 years upon execution of consent as between the parties.
10. He further states that the final Award of 1<sup>st</sup> September, 2023 was expressed in providing at clause 3 that "the agreement between the Respondent and Project Consortium and the terms thereof and the strategic Investment company dated 10<sup>th</sup> May, 2016 shall be novated for the claimant who shall thereby indemnify the Respondent against any Claim/demand and /or charges from the consortium." However, the novation agreement is yet to be prepared.
11. He maintained that the Applicant has the node in setting into motion the steps that would ensure that the Arbitral award is given effect. Additionally, there is a requirement that a consent be written between the Applicant and the Respondents herein concerning the proposed program of implementation and the completion of the project, in order for the transfer of the title herein to be effected, a fact that they have tried pursuing with the Applicants through tele-conversation and correspondences but it did not bear fruits.



12. It is his position that the Applicant is the one that should be directed to provide a plan and , indemnify the Respondents and be held accountable as to how the Applicant finished the construction of the project.
13. He reiterated that the ends of justice will be met if the Applicant is compelled to comply with clause 3 of the Arbitral Award as the same goes to the heart of the Award, denouncing and absolving the 1<sup>st</sup> Respondent herein from any responsibility as regarding the completion of the project.
14. Further, he deponed that there is no dispute between the parties herein that would be settled by this Court, rather the parties by themselves should address the programme of implementation.
15. He therefore prayed for the dismissal of the application for being frivolous, vexatious and an abuse of Court process.

### **Applicant's Submissions**

16. The Applicant submitted on three issues:-
  1. Whether the Court has the power to direct the Deputy Registrar to execute transfer documents on behalf of the first respondent.
  2. Whether the Land Registrar, should be compelled to effectuate the transfer.
  3. Whether the Applicant is entitled to costs of this Application.
17. On the first issue, the Applicant submitted that the 1<sup>st</sup> Respondent's refusal to execute transfer documents is viewed as defiance of a lawful order, warranting judicial intervention. In support of this, reliance was placed on the case of *Mbobo v Mohammed* [2025] KEELC 976 (KLR) where T.W. Murigi J, held that;-

“Having considered the application and the submissions by the Applicant, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.11.The Applicant is seeking orders that the Deputy Registrar of this court executes the transfer instruments on behalf of the Respondent.12.Section 98 of the *Civil Procedure Act* provides that:-“Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may on such terms and conditions, if any, as it may determine order the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by the such person as the court may nominate for that purpose and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”13.The record shows that the parties herein filed a consent order dated 18<sup>th</sup> September 2023. On 9<sup>th</sup> October 2023, this court entered a consent judgment in the following terms: -i.That the Defendant executes the lease over the Apartment Number B8-1 erected on Land Reference Number 1/395 (Original Number 1/385/5) within the next thirty (30) days.ii.That the Defendant undertakes registration of the duly executed lease over the aforesaid Apartment in favour of the Plaintiff within ninety (90) days of execution of the Lease as provided for in clause 12 of the Agreement for Sale dated 18<sup>th</sup> January 2017.iii.That upon registration of the said Lease, the Defendant delivers to the Plaintiff's Advocates the ownership documents set out in clause 12 of the Agreement for Sale.iv.That the Defendant pays the costs of this suit to the Plaintiff. The same to be agreed or taxed.14.The Applicant annexed copies of the Lease (CK-2) and a letter forwarding



the Lease to the Judgment Debtor's Advocate (CK-3) to his supporting affidavit.15.The Respondent did not adduce any evidence to show that he executed and forwarded the Lease to the Lands Office for registration. It is evident that the Respondent has failed to execute the lease agreement and forward the same for registration to the Lands Office.16.From the foregoing I find that the Applicant has demonstrated merit in his application.17.The upshot of the foregoing is that the application dated 14<sup>th</sup> June, 2024 is hereby allowed as prayed with costs to be borne by the Respondent.”

18. The Applicant further relied on the case of *Fenysan Construction Ltd v Yeri* [2024] KEELC 7432 (KLR) where E.K. Makori J was of the view that:-

“The implementation and execution of the decree issued herein has not been defeated by the operation of or obstruction of the law as the defendant/respondent averred in his replying affidavit. It is more than evident that it has been impossible to execute or implement the said decree purely because of the persistent refusal of the defendant/respondent to execute the relevant transfer documents...The jurisdiction to direct the Deputy Registrar to sign the relevant transfer documents when a party has deliberately neglected or refused to do so lies with this Court. Application dated 21<sup>st</sup> of May 2024 succeeds in this manner:a.Within 15 days hereof, the defendant/respondent shall hand over all the necessary transfer documents to the plaintiff/applicant for onward transmission to the Land Registrar Kilifi County for purposes of registering the plaintiff/applicant as the owner of 2.8 hectares (7 acres) piece of land which will be hived off and subdivided from the parcel of land title No Ngomeni Squatter Settlement Scheme/1407.b.Failure to comply with (a), the Deputy Registrar of this Court, be and is hereby authorized to sign and execute the subdivision, land control board consent, transfer, and registration documents to enable the plaintiff/applicant to be registered as the owner of the 2.8 hectares (7 acres) piece of land to be hived off and subdivided from the parcel of land No Ngomeni Squatter Settlement Scheme/1407, upon the failure of the defendant/respondent to do so within 15 days as provided in (a) above.c.The Court does, therefore, order that the Deputy Registrar of this Court execute the land control board consent forms, land subdivision forms, land transfer forms, and all other related transfer documents required to have the 2.8-hectare (7-acre) parcel of land hived off from the parcel of land No Ngomeni Squatter Settlement Scheme/1407, and the title deed issued in the name of the plaintiff/applicant upon the failure of the defendant/respondent to do so within 15 days as provided in (a) above. d. The defendant/respondent is hereby condemned to pay the costs of this application.”

19. In light of the above, he submitted that decrees are meant to be executed and litigation must come to an end. Accordingly, it was submitted that the Decree should be executed as it is and not partially as intimated by the 1<sup>st</sup> Respondent. He therefore urged that the Deputy Registrar be directed to execute the transfer documents in favour of the Applicant.
20. While relying on Section 98 of the *Civil Procedure Act*, he submitted the 2<sup>nd</sup> Respondent can be compelled to effect transfer of the suit property. In further support of this, reliance was placed on the case of *Republic v Chief Land Registrar & 2 others; Alot (Suing as the Administrator of the Estate of Samuel Alot Magaga - Deceased) (Exparte Applicant)* [2024] KEELC 1442 (KLR), in which LN Gacheru held that;-

“From the above analysis, it is clear that the Land Registrar, ought to adhere to the directives of the court in its decree of 1<sup>st</sup> March 2022, and he should not insist that the exparte



applicant ought to follow the procedure provided by Section 33 of the Land Registration Act, and Regulation 28 of General Regulations 2017, of Land Registration Act. The Exparte Applicant is not the registered proprietor of the suit land, but a legal representative of the estate of Samuel Alot Magaga, and a Decree holder. For the above reasons, the court finds that the Land Registrar as a holder of a Public Office has failed to perform a public duty and has also failed to comply with a clear decree of the court, and the Exparte Applicant has satisfied the court that he deserves the orders sought in the instant Judicial Review Application dated 31<sup>st</sup> August 2023.”

21. He therefore urged this Court to order the 2<sup>nd</sup> Respondent to affect the transfer and facilitate the issuance of a fresh title in favour of the Applicant.
22. With regard to costs, the Applicant cited the case of Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR on discretion of the Court to award costs and therefore urged that cost of this application be awarded to it.
23. Lastly and while emphasising the importance of upholding judicial authority and the integrity of court decrees, the Applicant urges the Court to enforce the Orders sought as the 1<sup>st</sup> Respondent’s continued non-compliance undermines the authority of this Court and the arbitral process.

#### **1<sup>st</sup> Respondent’s Submissions**

24. The 1<sup>st</sup> Respondent reiterated his Replying Affidavit and argued in summary that the application is unnecessary and misconceived, as the matter was already settled through arbitration with an award dated 1<sup>st</sup> September 2023, adopted by this Court on 17<sup>th</sup> April 2024.
25. He argued that the Arbitral Award absolves the 1<sup>st</sup> Respondent from responsibility for completing the project and requires the Applicant to novate the project consortium agreement dated 10 May 2016.
26. He claimed that the Applicant has not fulfilled the conditions of the Arbitral Award, including amending the agreement and indemnifying the 1<sup>st</sup> Respondent and furthermore, the Applicant has not taken steps to comply with the arbitral award, including creating a new project consortium or amending the existing agreement. He emphasised that the Court is functus officio and cannot micromanage the parties’ affairs.
27. In conclusion, he submitted that they will release the title deed once the Applicant fulfils the conditions of the Arbitral award, including novating the agreement and absolving the Respondent from project completion responsibilities.

#### **Determination**

28. This Court has considered the application , affidavits together with the annexures thereto and the submissions by parties. Regarding the provisions of the law that this application is anchored, Section 38 of the Civil Procedure Act Provides for the powers of the Court to enforce execution thus: -

“Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree—(a)by delivery of any property specifically decreed;(b)by attachment and sale, or by sale without attachment, of any property;(c)by attachment of debts;(d)by arrest and detention in prison of any person; (e)by appointing a receiver; or(f)in such other manner as the nature of the relief granted may require.”



29. Further, Section 98 of the Civil Procedure Act, on the other hand, provide for the execution of instruments by Order of the Court and states that;-

“Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”

30. Order 22 Rule 20 of the Civil Procedure Rules provides for the process for execution thus:-

“When the preliminary measures (if any) required by the foregoing rules have been taken, the court shall, unless there is cause to the contrary, issue its process for the execution of the decree. (2) Every such process shall bear the date and the day on which it is issued, and shall be signed by the judge or such officer as the court may appoint in this behalf, and shall be sealed with the seal of the court and delivered to the proper officer to be executed.”

31. The Applicant prays for Orders that the 1<sup>st</sup> Respondent be compelled to execute the title transfer documents in line with the decree of this Court issued on 17<sup>th</sup> April, 2024, failure to which the Court direct the Court’s Deputy Registrar to execute the said Transfer documents and the Land Registrar compelled to ensure transfer is affected.

32. The Decree issued by this Court on 17<sup>th</sup> April, 2024 was drawn pursuant to adoption of the Arbitral Award of Eng. Bwalya Lumbwe (Arbitrator) on 1<sup>st</sup> September, 2023.

33. Having adopted the award given by the Arbitrator as a judgment and decree of this Court in line with the law, execution proceedings are to be affected by this Court thus, informing the filling of the current Application. Therefore, the only duty of this Court at this point is to ensure enforcement of its Orders and not delve into any other issue arising.

34. As regards execution of Arbitral Award, Section 36 of the Arbitration Act provides that a domestic arbitral award shall be recognized as binding and, upon application in writing to the High Court, shall enforced such Award subject to this section and section 37.

35. Once recognition and enforcement of Arbitral Award under Section 36 of the Arbitration Act have been given by the Court, the Award becomes executable as the decree of the Court.

36. On that basis, the decree subject of these proceedings has been exhibited herein and the 1<sup>st</sup> Respondent agree to the terms of the Arbitration. In effect, he is not challenged the same.

37. The only point of contention, as per the 1<sup>st</sup> Respondent, is that the Applicant has not complied with its part of the Award of novating the Agreement of 10<sup>th</sup> May, 2016 and that consent be written between the Applicant and the Respondent concerning the proposed program of implementation and the completion of the project.



38. It is the 1<sup>st</sup> Respondent's argument that once these two issues are settled, then they will execute the transfer documents. For emphasis, the 1<sup>st</sup> Respondent stated that the Applicant has not complied with clause 3 of the Arbitral Award which provided that:-

“The Agreement between the Respondent & the project Consortium and the terms thereof and the strategic Investment company dated 10<sup>th</sup> May, 2016 shall be novated for the Claimant who shall thereby indemnify the Respondent against any claim/ demand and or charges from the said Consortium.”

39. This Court has noted the Arbitral Award and the consequent Decree issued by this Court which is the subject of the application herein. Each of the 7 clauses of that Award is independent. There is no precondition on any in regard the Award. The requirement to consent proposed program implementation and completion of the project is not captioned in the Award.

40. If the 1<sup>st</sup> Respondent needed the transfer of the title documents to be conditional upon the parties giving effect to clause (3) of the Award, it ought to have raised it before the Arbitrator and not at this stage.

41. Be that as it may, the Award adopted as the decree of this Court on 17<sup>th</sup> April, 2024, and without any objection of the 1<sup>st</sup> Respondent, has not been complied with for more than a year now. The 1<sup>st</sup> Respondent is aware of the Orders of the Court which have not been set aside or appealed against.

42. It is therefore clear that the application herein for enforcement of the Decree of this Court is merited. It is allowed in the following terms:-

1. The 1<sup>st</sup> Respondent to execute and handover to the Applicant the duly executed and attested Transfer documents and original title deed of the plot No Block 5/34 Nakuru Municipality within Thirty (30) days from the date of this Ruling.
2. In default of Order 1 above, the Deputy Registrar of this Court is authorized to sign all the relevant transfer documents over Plot No Block 5/34 Nakuru Municipality.
3. The 2<sup>nd</sup> Respondent to effect the transfer of the suit property to the Applicant.
4. The Applicant is awarded costs of this Application.

**DATED , SIGNED AND DELIVERED AT NAKURU THIS 12<sup>TH</sup> DAY OF MAY, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Ogendo for Applicant

Ms. Karungu for the 1<sup>st</sup> Respondent

N/A for 2<sup>nd</sup> Respondent

Ruto, Court Assistant

