



Slok Construction Limited v Beverly Lilonde Holdings Limited; Development Bank of Kenya Limited (Proposed Interested Party) (Civil Case 354 of 2016) [2025] KEHC 12658 (KLR) (Commercial and Tax) (31 July 2025) (Judgment)

Neutral citation: [2025] KEHC 12658 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 354 OF 2016**

**F GIKONYO, J
JULY 31, 2025**

BETWEEN

SLOK CONSTRUCTION LIMITED PLAINTIFF

AND

BEVERLY LILONDE HOLDINGS LIMITED DEFENDANT

AND

DEVELOPMENT BANK OF KENYA LIMITED PROPOSED INTERESTED PARTY

JUDGMENT

1. Before the court is the plaintiff's notice of motion dated 7th April 2024, seeking the following orders: -
 1. Development Bank of Kenya Limited be joined as an interested party to this suit.
 2. Development Bank of Kenya Limited to disclose the details of the balance of the loan amount against which it has registered a charge against the property Title Number; NYA/Kahuru/2219.
 3. A valuation of the property Title Number; NYA/Kahuru/2219 be conducted by a registered valuer mutually agreed on by the bank and the plaintiff.
 4. The applicant be authorised to sell the property Title Number; NYA/Kahuru/2219 by public auction in compliance with the land laws for the recovery of the decretal sum of Kshs 81,000,000/- plus interest at 14% per annum totalling Kshs. 151,474,215.84 and the proceeds



thereof be deposited in a joint interest-earning account in the names of the bank and the plaintiff.

5. Upon successful sale of the property the proceeds thereof be applied as follows; settlement of the costs for the auction of the property, payment of the outstanding balance of the loan amount secured by the charge in favor of Development Bank of Kenya, and payment of the decretal sum of Kshs. 151,474,215.84 and the balance thereof to be remitted to the Judgment Debtor.
2. The application is brought under Sections 1A, 1B, 3A of the *Civil Procedure Act*; Order 1 rule 10, Order 22 rule 9 and Order 51 rule 1 of the Civil Procedure Rules, 2010.
3. In support of the application, the applicant filed affidavits sworn by its director, Vimal Vyas, on 7th April 2024 and 28th June 2024. It also filed initial and supplementary written submissions dated 30th August 2024 and 4th February 2025.

Grounds

4. The applicant holds a decree dated 5th March, 2017 against the respondent for Kshs. 81,000,000/- plus interest and costs. The respondent's only known asset is Property Title No. NYA/Kahuru/2219. The applicant is apprehensive that the respondent might transfer the same, create a further charge against it and/or otherwise deal with it to frustrate its attempts at recovering the outstanding decretal sum, noting that the respondent has previously frustrated all its attempts to recover the same.
5. On 20th September 2017, the court adopted the parties' consent dated 25th August 2017 as a judgment of the court. Under the consent judgment, the respondent was to pay the applicant Kshs. 81,000,000/- in 48 equal monthly instalments of Kshs. 1,687,500/- per month and in default thereof, the instalment in default was to attract interest at the rate of 14% per annum until payment in full.
6. According to the applicant, the respondent has negligently and/or deliberately failed to honour the judgment and has frustrated all attempts by the applicant to recover the same by rushing to court whenever the applicant attempts recovery of the same. The applicant has not received even a penny of the decretal sum herein over 7 years later and the said sum has now accrued interest with the outstanding sum currently being in the sum of; Kshs. 151,474,215.84. The respondent still remains unresponsive to the applicant's various follow ups on payment of the decretal sum necessitating the intervention of this court to aid in recovery of the decretal sums.
7. The applicant asserted that the respondents only known asset is the property Title Number; NYA/Kahuru/2219 ("the property"). The applicant has been unable to attach the said property in execution of the decree. Upon conducting a search over the property, the applicant discovered that Development Bank of Kenya Limited (hereinafter "the Bank"); the proposed interested party holds a charge against the said property registered on 22nd December 2010, to secure a sum of Kshs. 60,000,000/-. As such, the bank's interest in the property to the extent of the said charge is superior to that of the applicant limiting the applicant's rights to attach the said property.
8. The applicant, in cognisance that the bank ranks first in any proceeds of sale of the property as fore stated and further that the same cannot be sold without its consent, requested the bank to provide it with more information on the unpaid loan balance as well as its concurrence on the proposed sale of the property vide letter dated 18th March, 2024. The bank has however remained unresponsive constraining the applicant to seek the intervention of this court.



9. The applicant contended that it is imperative that it be enjoined as an interested party to the suit herein for the effective determination of the issues before this court and to ensure that all parties' interests are protected and justice served to all the affected parties.
10. The applicant implored this court to grant orders for sale of the property whose value, the applicant has reason to believe is more than the secured amount and the proceeds thereof are sufficient to settle any of the outstanding loan amount and the decretal sum herein and the balance thereof can be remitted to the judgment debtor. It is as such in the interests of justice that the application be allowed and the orders sought herein granted as the applicant stands to be greatly prejudiced, as it has no other mode of recovering the decretal amount herein which is in millions of shillings, there being no other known assets of the judgment debtor.
11. The applicant argued that the bank shall not suffer any prejudice as upon sale thereof the proceeds will be applied in payment of any outstanding loan amount in priority with the balance thereof being used to offset the decretal sum. The judgment debtor will as well not be prejudiced as the sale will be done under the supervision of the court. In any event, the respondent having blatantly disregarded this court's judgement, the scales of justice shift towards grant of the orders sought.
12. The applicant relied on:-
 1. Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others [2014] eKLR
 2. Kariuki v Nairobi & 5 others; Parkion & 3 others (Interested Parties); Leeyio & 2 others (Proposed Interested Parties) (Judicial Review Application E003 of 2022) [2023] KEELC 16226 (KLR) (9 March 2023) (Ruling)
 3. Continental Developers Ltd v Sauti Housing Co-operative Society [1998] KEHC 179 (KLR)
 4. Sheila Akinyi Marco & 2 others v Sasanet Ltd & 3 others [2009] eKLR
 5. Kenya Anti-Corruption Commission v John Faustin Kinyua & 3 others [2016] eKLR
 6. Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints [2016] eKLR
 7. Jasbir Sing Rai & 3 others v Tarchan Sing Rai & 4 others [2014] eKLR

Responses

13. The respondent filed a replying affidavit sworn by its director, Alice Mudiri, on 20th May 2024 and written submissions dated 23rd January 2025.
14. The respondent's core contentions are that:-
 1. The application is unmeritorious, frivolous, vexatious and an abuse of the process of the Court and ought to be dismissed with costs to the respondent.
 2. The application was filed by a firm which is not properly on record.
 3. The application is not based on any substantive orders of execution.
 4. The bank did not have any stake in the proceedings and was not joined when proceedings were alive and therefore seeking to join them at this point of time when Judgement has been read will be unfair, unjust and against Article 50 of *the Constitution*.



5. The order to compel the bank to disclose the details of the loan secured by the charge over the property is contrary to its right to fair hearing. The bank was neither a party to the consent judgment or the suit. It is also against the confidentiality between the respondent and the bank.
 6. There is no suit regarding the charged property, hence its valuation would be unfair.
 7. There is no law cited by the applicant where one can execute through the sale of the charged property by public auction.
 8. The law does not allow filing of an application to commence execution of a Decree, but rather issue a Notice to Show Cause particularly when the Decree is one (1) year old as the case herein.
15. The respondent relied on:-
1. Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)

Analysis and Determination

16. The issue before the court is whether the application is merited.

Change of Advocates

17. The respondent contended that the application, filed by CM Advocates LLP which is not properly on record as it did not seek leave to come on record.
18. Order 9 Rule 9 of the Civil Procedure Rules requires that:-
- “9. When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected by order of the court —
- (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

19. I find that CM Advocates LLP are properly on record as the applicant’s former advocates; Ochwo & Company Advocates consented to them coming on record. The record confirms that on 19th March, 2024 they filed a notice of change by consent dated 6th March, 2024, signed by both firms. Therefore, the contention fails.

Notice to Show Cause

20. The respondent argued that the Civil Procedure Rules do not allow the filing of an application to commence the execution of a decree. They require issuance of a Notice to Show Cause, particularly when the decree is over one (1) year old, as in this case.
21. However, the applicant contended that the respondent had been given such notice through this application. It submitted that the purpose of a notice to show cause is to allow the judgment debtor to



show cause why the intended execution should not issue. In addition, the applicant highlighted that there is a notice to show cause dated 22nd December, 2023, filed by its previous advocates.

22. Under order 22 rule 18, a notice to show cause is not necessary if the court has previously ordered execution against the same legal representative or if the application is filed within one year from the date of the last execution order against the same party.
23. What is more, where an NTSC would normally be required, a court may proceed without it if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the interests of justice.

Bad in law?

24. The respondent asserted that there is no law cited by the applicant where one can execute through the sale of the charged property by public auction.
25. However, the applicant cited Section 44(1) of the Civil Procedure Act provides that:-
 - “(1) All property belonging to a judgment debtor, including property over which or over the profits of which he has a disposing power which he may exercise for his own benefit, whether that property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree:...”
26. The applicant also relied on *Continental Developers Ltd v Sauti Housing Co-operative Society* [supra] where it was held that:-

“The fact that a charge exists as an encumbrance on the property does not stop the owner from selling the property subject to the charge or stop any creditor of the chargor from obtaining a decree for attachment of the charged property. It is lawful for the court to make an order that any charged property be sold subject to the charge”

27. Therefore, I am not convinced that the application is bad in law.

Joinder of Development Bank

28. The applicant contended that the bank does not oppose its joinder since it was duly served with the application but has to date never appeared nor filed a response. It submitted that the threshold for joinder of the bank as an interested party has been met.
29. On the other hand, the respondent argued that bank did not have any stake in the proceedings and was not joined when proceedings were alive and therefore seeking to join them at this point in time when judgment has been read will be unfair, unjust and against Article 50 of the Constitution.
30. In *Merry Beach Limited v Attorney General & 18 others* [2018] KECA 18 (KLR), the Court of Appeal noted that “...there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed.”
31. In my considered view, this case meets the threshold discussed in *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [supra] for the joinder of Development Bank Limited as an interested party. Its presence will result in the complete settlement of all the questions involved in the execution proceedings. Its joinder is necessary to provide protection of its rights which would otherwise be adversely affected in law.



Prohibitory order

32. Order 22 Rule 48 (1) of the Civil Procedure Rules, 2010 provides that:-

“Where the property to be attached in immovable, the attachment shall be made by an order prohibiting the judgement – debtor from transferring or charging the property in any way, and all persons from taking any benefit from the purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.”

33. In *Samuel Njeru Daniel v James Njeru Nthiga & 2 others* [2017] eKLR the court observed that:-

“ 13. The purpose of such prohibitory or inhibition order is obviously to preserve the property pending completion of the process of execution. Such orders prevent any further dealings with the subject property so that a decree for its attachment or delivery, as the case may be, is not rendered nugatory.”

34. Section 68 of the *Land Registration Act* provides for the court’s power of the court to inhibit registered dealings. It states that:-

“ 68.

- (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.
2. A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register”

35. Order 40 states:-

“ 1. Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or is wrongfully sold in execution of a decree;
or;
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”



36. In this kind of requests, it is not far-fetched to require the applicant to demonstrate a prima facie case, irreparable injury that cannot be compensated by damages and that the applicant intends to steal a match on the applicant 3herefor the balance of convenience becomes relevant. *Giella v Cassman Brown* [1973] EA 358
37. The applicant's case is that the parties entered into the consent dated 25th August 2017, adopted as a judgment of the court and a decree was subsequently issued on 20th September 2017. The respondent did not deny that it has not settled the decretal amount. Nor has the respondent given a payment proposal.
38. The applicant contended that if the prohibitory order is not granted, it risks being unable to recover the decretal sums as it knows no other assets of the respondent that would sufficiently satisfy the decree.
39. Therefore, I find that the applicant has met the threshold required.
40. But, the prohibitory order should be careful not to rout the rights of the bank. The prohibitory order should therefore, not affect the charge and the power of the bank to realize security. Except, however, the prohibitory order will extend to any surplus of the proceeds of sale in exercise of the chargee's power of sale; in effect prohibiting the bank from paying the balance over to the defendant. A prohibitory order in the circumstances of this case would also extend to restraining the J/D from dissipating the suit property aimed at frustrating execution of the decree.

Conclusion

41. In conclusion, the application is partially allowed, in the following terms:-
 1. Subject to the charge, a prohibitory order is issued prohibiting the respondent from dissipating the suit property through inter alia, transferring, disposing, creating a further charge or dealing in any manner or any way with property Title Number NYA/Kahuru/2219 to the detriment of the rights of the D/H to execute the decree against the respondent.
 2. Development Bank of Kenya Limited is joined as an interested party to the suit.
 3. The applicant is directed to serve the order and the application upon the interested party within seven (7) days from the date hereof.
 4. The interested party shall file and serve a response to the application within fourteen (14) days of service.
 5. The applicant shall thereafter have seven (7) days to file a supplementary affidavit, if necessary.
 6. All other substantive issues will be determined once the interested party is fully involved as directed.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 31ST DAY OF JULY 2025

F. GIKONYO M

JUDGE

In the presence of: -

Ms. Monchogu for Ms. Kendi for Applicant

Ms. Odembo/Osoro for Respondent



