



**Willesden Investments Limited v Kenya Hotel Properties Limited;
Development Bank of Kenya (Objector) (Commercial Case 367 of 2000)
[2025] KEHC 13083 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13083 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 367 OF 2000
AA VISRAM, J
SEPTEMBER 18, 2025**

BETWEEN

WILLESDEN INVESTMENTS LIMITED PLAINTIFF

AND

KENYA HOTEL PROPERTIES LIMITED DEFENDANT

AND

DEVELOPMENT BANK OF KENYA OBJECTOR

RULING

Introduction

1. Before this Court are two sets of applications both dated 18th September, 2023, one by the Judgment Debtor and the other by the Objector. In substance, the applications seek stay of execution of the decree herein, setting aside of warrants of attachment issued on 10th May, 2021, and 12th September, 2023, and a declaration that the decree issued on 6th May, 2021, is incapable of enforcement.
2. The Judgment Debtor grounds its application on two principal arguments: that the decree is time-barred under Section 4(4) of the *Limitation of Actions Act*, and that the decree is a nullity following the judgment of the Environment and Land Court (ELC) in ELC No. 35 of 2010 Kenya Anti-Corruption Commission v Willesden & Others delivered on 30th January, 2025.
3. The Objector, Development Bank of Kenya, similarly challenges execution on grounds that it is not a party to the suit and its guarantee liability is limited to Kshs. 70,902,400/=. It further argues that attachment of its assets is unlawful, that the decretal sum sought exceeds the guarantee limit, and that its goods have been wrongfully proclaimed.



4. The Decree Holder, on its part, strenuously opposes the two applications. It maintains that the decree remains valid, that the decree has been the subject of prior determinations including by the Court of Appeal and the Supreme Court, and that the Judgment Debtor and Objector are engaged in endless attempts to thwart lawful execution and to re-litigate matters long settled.

Issues for Determination

5. From the pleadings, affidavits, and submissions, the following issues arise for determination:-
 - i. Whether the decree herein is time-barred under section 4(4) of the *Limitation of Actions Act*?
 - ii. Whether the decree is a nullity by reason of the judgment in ELC No. 35 of 2010?
 - iii. Whether execution against the Objector is lawful, and if not, whether stay of execution should be granted?
 - iv. What orders should be made as to costs?

Analysis and Determination

On Limitation of Time

6. Section 4(4) of the *Limitation of Actions Act* provides that:-

“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.” (Emphasis mine)
7. The Judgment Debtor urged this Court to find that more than 12 years have elapsed since the Court of Appeal delivered judgment in Civil Appeal No. 149 of 2007 on 2nd April, 2009.
8. However, in interpreting the above wording, as a matter of logic, I do not think that the time period was intended to run in circumstances where the court has issued a stay of execution for that entire period of time. Based on the facts of the present matter, the Defendant has been the beneficiary of stay orders issued by the Court of Appeal in *Kenya Hotel Properties Limited v Willesden Investments Limited* [2007] KECA 401 (KLR) since 9th March, 2007. Therefore, it is not lost on me that the Plaintiff could not commence execution of the decree until after the Supreme Court’s decision, which decision was rendered on 20th November, 2020, in *Kenya Hotel Properties Limited v Attorney General & 5 others* [2020] KESC 6 (KLR).
9. Given the above facts, while an interpretation based on the ‘black letter of the law’ may lead one to conclude that the judgment is time barred, such an interpretation would not be judicious because it would lead to a miscarriage of justice. I say so because the stay order in the present matter legally suspended the enforcement of the decree, preventing any action by the Plaintiff to carry out execution until the same was either lifted, or until the appeal was resolved.
10. A court may not, on the one hand order, a stay of execution, and on the other hand, find that the same party is time barred for failure to execute during the course of the stay it so ordered. Such an outcome would be absurd and prone to mischief.



11. Therefore, because the record reveals that subsequent orders and proceedings have repeatedly interrupted and extended the enforceability of the decree, I find the above argument untenable.
12. The record shows that the decree was re-issued by the Deputy Registrar on 6th May, 2021, following variation by the Court of Appeal. Applications for stay have been entertained up to the Supreme Court, which in its ruling of 20th November, 2020 (Supreme Court Application No. 27 of 2020) emphatically declined an order of stay, and reaffirmed the Decree Holder’s entitlement to execution.
13. Limitation, in this context, must therefore be computed from the last effective order of the superior courts. As held by Justice Mabeya in his ruling of 18th August, 2023, the decree is not statute-barred, execution having been pursued continuously. That decision has not been overturned on appeal or set aside. As a court of concurrent jurisdiction, it would not be appropriate for me to depart from the said reasoning.

On Nullity and the ELC Judgment

14. The Judgment Debtor contended that the decree collapsed with the ELC judgment of 30th January, 2025, which nullified the title IR No. 66986. Counsel relied on authorities such as *Macfoy v United Africa Co Ltd* [1961] 3 All ER 1169 and *Arthi Highway Developers Ltd v West End Butchery Ltd* [2015] KECA 816 (KLR) to argue that nothing can be founded on a nullity.
15. The Decree Holder, however, cites the very ELC judgment at paragraphs 229–231, where the court held that the land trespassed upon by the Judgment Debtor was the very parcel allocated under the 1993 PDP, and that the issue of non-payment of the decretal sum “does not arise.” The ELC distinguished between the erroneous survey plan and the actual parcel, affirming that trespass had occurred on the Decree Holder’s land.
16. Based on my reading, the ELC did not extinguish the basis of the decree herein. Rather, it corrected clerical errors in the survey and ordered issuance of a fresh title reflecting the proper parcel. The finding of trespass and award of damages by Justice Mutungi in 2006 was neither set aside nor displaced. Indeed, the Supreme Court in *KHPL v AG & 5 Others* [2022] KESC 62 (KLR) underscored the principle of finality in this litigation.
17. I am therefore unable to agree with the Judgment Debtor that the decree has been rendered a nullity. The decree remains valid and enforceable.

On Execution against the Objector

18. The Objector furnished a bank guarantee DBK2007/030 in favour of the Decree Holder pursuant to orders of the Court of Appeal. Its liability is capped at Kshs. 70,902,400/=. It submitted that execution has been irregularly levied against its goods rather than through the guarantee. The relevant part of the terms of the said guarantee has been reproduced below:-

“... we hereby covenant, guarantee, and be bound by this Honourable Court that if the said determination is not set aside by this Honourable Court, we shall stand as guarantors by the said Appellant for any damages suffered and costs incurred by the said Appellant for any damages suffered and costs incurred by the said Respondent PROVIDED HOWEVER our total liability hereunder shall not, in any event, exceed the sum of Kshs. 70,902,400/= (Kenya Shillings seventy million nine hundred and two thousand four hundred only).” (Emphasis mine)



19. It is trite that a guarantor assumes a secondary obligation to answer for the debt of the principal debtor. In this matter, orders have been made by Justice Njagi (4th February, 2011) and affirmed by Justice Mabeya (18th August, 2023) expressly directing the Objector to satisfy the decree under the guarantee. The Objector is therefore not a “stranger” to execution, but rather is a party bound by prior determinations of the court.
20. The Objector’s liability having been established by a court of concurrent jurisdiction, and orders having been issued, it therefore follows that this Court may not sit on appeal of those orders. The said orders have not been set aside or overturned on appeal. The Objector is accordingly bound to honour the said orders of the court (as stipulate in the two previous rulings) to the extent of Kshs. 69,979,918.37/=.
21. However, it is also evident that the liability of the Objector is limited to the extent of the Guarantee stipulated above, and it may not execute against the Objector in excess of the either the amount stipulated by the court, namely Kshs. 69,979,918.37/= or in excess of the the sum expressly provided in the above guarantee, namely, Kshs 70, 902,400/=.
22. It therefore stands to reason the warrants of attachment sought to be executed against the Objector which exceeds both the amount stipulated in the previous orders of the court, and the terms of the guarantee (in the sum of Kshs. 99,939,137.24/=) is irregular. Accordingly, execution may not proceed based on the same. The appropriate remedy is to set aside the said warrants with liberty to apply for fresh warrants of attachment that conform with the orders of the court and do not exceed the liability of the Objector.
23. Finally, as regards the prayers seeking a stay of execution, I do not think that it would be appropriate for this court to consider the issue of stay in relation to the orders of a court of concurrent jurisdiction. In my view, the appropriate court is the Court of Appeal. I therefore decline to entertain those prayers.
24. Therefore, based on the reasoning above I find merit in the Objector’s grievance and allow the same in the terms stated above. That said, for the sake of clarity, the Objector’s liability under the guarantee remains extant, and it may not escape payment of the decretal sum as varied by the decision of the Court of Appeal and affirmed by the previous rulings as stated above.

Disposition

25. Based on the reasons set out above, I make the following orders:-
 - a. The Judgment Debtor’s application dated 18th September, 2023 is without merit and is hereby dismissed with costs.
 - b. The Objector’s application dated 18th September, 2023 partially succeeds to the limited extent that execution by way of attachment of its goods exceeding the amount stipulated in the order issued on 18th August, 2023 and exceeding the upper limit of its guarantee is irregular. The warrants of attachment dated 12th September, 2023 are hereby set aside.
 - c. The Decree Holder is at liberty to apply for fresh warrants of attachment and is at liberty to proceed with enforcement of the decree strictly in accordance with the terms of the guarantee DBK2007/030 dated 4th April, 2007, and as upheld by prior orders of the Court.
 - d. Costs of the Objector’s application shall be borne by the Objector, given that its substantive liability has not been extinguished.



DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 18TH DAY OF SEPTEMBER, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lisper

.....for Plaintiff

.....for Defendant

.....for Objector

