



Kagwimi Kang'ethe & Co Advocates v Wachira (Miscellaneous Cause 339 of 2017) [2023] KEHC 18652 (KLR) (Civ) (8 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CAUSE 339 OF 2017

JN MULWA, J

JUNE 8, 2023

**IN THE MATTER OF THE ADVOCATES ACT, CAP 16 OF THE
LAWS OF KENYA**

AND

**IN THE MATTER OF TAXATION OF COSTS BETWEEN
ADVOCATE AND CLIENT**

BETWEEN

KAGWIMI KANG'ETHE & CO ADVOCATES APPLICANT

AND

MARGARET WANGECI WACHIRA RESPONDENT

RULING

1. The application for determination is the Applicant/Advocate's Notice of Motion dated May 17, 2022 brought under Order 22 Rule 48(1) of the [Civil Procedure Rules](#), Section 1A, 1B and 3A of the [Civil Procedure Act](#) and Section 52 of the [Advocates Act](#). The Applicant seeks the following orders:
 1. That this Honourable court be pleased to issue an Order directing that all that property known as Land Reference Number Nairobi/Block 104/411 situated in Nairobi and registered in the name of the Respondent herein be sold by public auction and the proceeds of sale be utilized to settle the outstanding taxed costs amounting to Kshs 174,944/= together with accrued interest thereon in terms of the Decree given on July 30, 2019.
 2. That this file be forwarded to the Deputy Registrar for the purpose of settlement of the terms of sale of the subject property.



3. That the costs of this application be borne by the Respondent.
2. The Application is supported by an Affidavit sworn by George Kang'ethe Advocate who is the proprietor of the Applicant Firm. It is predicated on the grounds that the Respondent is the registered proprietor of all that property known as Land Reference number Nairobi/Block 104/411 situated in Nairobi. The Applicant rendered legal services on behalf of the Respondent in CMCC No 487 of 2004: Margaret Wangechi Wachira vs Wanjiru Gitau & Others but the Respondent failed to pay for the services. As a consequence, the Applicant filed an Advocate/Client Bill of Costs dated August 18, 2017. The taxation proceedings were concluded and by a Decree dated July 30, 2019, judgment was entered for the Applicant against the Respondent for the sum of Kshs 174,944/= in terms of the annexed Certificate of Taxation dated May 28, 2019 together with interest thereon at court rates until payment in full, which she has failed to pay despite demand notices send to her.
3. The Respondent did not file any response to the Application despite service upon her.
4. Section 38 (b) of the Civil Procedure Act provides as follows:

“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) ...
 - (b) by attachment and sale, or by sale without attachment, of any property.”
5. Similarly, Section 44.(1) of the Civil Procedure Act provides that:

“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”
6. From the evidence placed before the court, it is clear that the Applicant holds a decree of Kshs 174,944/- against the Respondent emanating from a Certificate of Taxation of Costs. According to the annexed land Title marked annexture "GKK 1", it is also evident that the Respondent is the registered proprietor of all that property known as Land Reference number Nairobi/Block 104/411 hence the property is liable to attachment and sale in execution of a decree. In addition, there is no evidence that the judgment and decree in issue has been set aside, reviewed or appealed against to the Court of Appeal or that the decree has been satisfied. Accordingly, the court finds no reason to prevent the Applicant from executing the decree by selling the suit property by public auction.
7. Order 22 Rule 57(1) of the Rules provides for the terms of sale by public auction as follows:
 - (1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause public notice and advertisement of the intended sale to be given in such manner as the court may direct.
 - (2) Such public notice shall be drawn up after notice to the decree-holder and the judgment-debtor, and shall state the time and place of sale, and specify as fairly and accurately as possible
 - (a) the property to be sold;
 - (b) any encumbrance to which the property is liable;



- (c) the amount for the recovery of which the sale is ordered; and
- (d) every other thing which the court considers material for a purchaser to know in order to judge the nature and value of the property:

Provided that notice to the judgment-debtor may be dispensed with, or substituted service thereof ordered, for reasons to be recorded by the court.

8. The upshot of the foregoing is that the instant Application is merited and the same is allowed in the following terms;
- a. The suit property known as Nairobi/Block 104/411 registered in the names of Margaret Wangeci Wachira shall be sold by public auction at the current market value to satisfy the decree.
 - b. The sale will be conducted in accordance with the provisions of Order 22 Rule 57 of the *Civil Procedure Rules*, 2010.
 - c. The Respondent to provide access to the property and vacate within 45 days of this Ruling.
 - d. The proceeds of sale to be use to satisfy the decree, costs of valuation, auctioneer's fees and any other antecedent expenses.
 - e. This file to be placed before the Deputy Registrar for settlement of any other terms as may be necessary.
 - f. Each party shall bear own costs of this application.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 8TH DAY OF JUNE 2023.

JANET MULWA

JUDGE

