



**Kahome v Momanyi (Civil Appeal E468 of 2020)  
[2024] KEHC 14485 (KLR) (Civ) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14485 (KLR)

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

**CIVIL**

**CIVIL APPEAL E468 OF 2020**

**LP KASSAN, J**

**NOVEMBER 20, 2024**

**BETWEEN**

**STEPHEN NGARI KAHOME ..... APPELLANT**

**AND**

**ONGETTA HESBON MOMANYI ..... RESPONDENT**

**RULING**

1. This is an Application seeking OCS assistance in enforcing warrants of arrest against the Respondent in execution of order 4 of the decree issued on 2<sup>nd</sup> December 2023. I have read the proceedings and submissions and wish to make the following notes in order to dispose off this Notice of Motion;

1. The Respondent filed a replying affidavit which I shall largely rely on in determining this application alongside the Ruling delivered by the Late Justice Majanja on 8th December 2023. First, the Respondent at paragraph 3 of his Replying Affidavit dated 11th January 2024 averred that there was no valid decree. Contrary to this, Justice Majanja at paragraph one of the said Ruling said; and I quote:

“ Although the Respondent disputes that there is a Judgement and a decree in the matter or that in fact it cannot be enforced, the record is clear that by a Ruling dated 23.02.21, Chitembwe J adopted the decision of the Advocates Disciplinary Tribunal by ordering the Respondent to pay ksh 500000 together with interest...”

This automatically means that there is a valid decree in this matter.

2. Secondly, the Respondent at paragraph 4 avers that he has never been served with a draft decree for approval and at paragraph 6, he depones that the alleged decree is fake. This is now irrelevant



or water under the bridge because one, Justice Chitembwe and the Late Justice Majanja ruled that the decree is valid and secondly no one has been charged with false documentation.

3. I have not seen an application for review of their decision and what I am currently handling is neither a review. The above addresses paragraphs 7, 8. and 12 of the issues raised in the Replying Affidavit.
  4. On paragraph 9, it is contended that the decretal sum of ksh1,021,600 is disputed but however the Respondent has not given a figure based on his own assessment and besides decretal amount is easily calculated by the court.
  5. On paragraph 10, the Respondent alluded to the fact that there are pending cases such as JR E20/23 and E241/22 and if the decision of the tribunal is implemented, he will be prejudiced. To this extent, no stay has been granted in those matters and so this matter cannot stall. I see nothing in the Replying affidavit to surmount adequate challenge against the supporting Affidavit of the Application.
2. The Respondent has a right to go to a court of Appeal or even the highest court in the land and I would have granted stay were it not for the fact that Jayden J in HC misc no 71/2016 directed the Respondent to deposit ksh 520,000 in a joint interest account within 30 days but it was not done and now the decretal amount has soared way above the sparrows. Litigation is like a sword which cuts both sides because all parties depending on which side they are, are inconvenienced and so it must come to an end in order to end fear of the unknown and ensure enjoyment of rights within a reasonable period. The Respondent has not demonstrated that if execution is enforced, the Applicant would not be able to pay back in case his appeal succeeds.
  3. The inevitable onset as above therefore is that the Application dated 8th of December is allowed with cost  
Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF NOVEMBER 2024**

**L. KASSAN**

**JUDGE**

In the presence of:

Kigen for the Applicant

Momanyi for Respondent

Carol – Court Assistant

