



REPUBLIC OF KENYA



**Ngome v Muyaka & another; KCB Bank Kenya Limited & another (Interested Parties)  
(Land Case E008 of 2022) [2025] KEELC 5236 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5236 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
LAND CASE E008 OF 2022  
EC CHERONO, J  
JUNE 24, 2025**

**BETWEEN**

**CHARLES KIBANANI NGOME ..... PLAINTIFF**

**AND**

**CHRISTIINE NASIMIYU MUYAKA ..... 1<sup>ST</sup> DEFENDANT**

**STEPHEN WANGUSI FEDHA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**KCB BANK KENYA LIMITED ..... INTERESTED PARTY**

**STANLEY W NAKITARE NDOMBI ..... INTERESTED PARTY**

**RULING**

1. The plaintiff Charles Kibanani Ngome moved this Honourable court vide a Notice of Motion under certificate of urgency dated 20<sup>th</sup> March 2025 seeking the following orders;
  - i. (Spent)
  - ii. That the Deputy Registrar of this Honourable Court to execute transfer instruments in respect of the three parcels of land known as LR NO. Ndivisi/Muchi/9XX1; Ndivisi/Muchi/10XX5 and Ndivisi/Muchi/2XX4 in favour of the plaintiff or third parties for purposes of recovering the outstanding sum of Kshs. 6,000,000/ (six million) and attendant costs in terms of order No.4 of the consent judgment/order dated 26<sup>th</sup> April 2024
  - iii. That cost be provided for.
2. The application is premised on five grounds shown on the face of the said application supported by the affidavit of the plaintiff/Applicant sworn on even date. By way of a response, the 2<sup>nd</sup> Defendant filed a Replying affidavit in opposition thereto sworn on 10<sup>th</sup> April 2025. The 1<sup>st</sup> Interested party



indicated that they were not filing any response to the said application after they recorded a consent which determined this matter.

### **Plaintiff/applicant's Summary of Facts.**

3. The plaintiff/Applicant stated that on 26<sup>th</sup> April 2024, the parties herein entered into a consent Judgment/order which determined this suit as follows;

“BY Consent of the parties herein, judgment is entered in favour of the plaintiff as against the Defendants and 2<sup>nd</sup> Interested party in the following terms;

1. The Defendants shall refund the plaintiff Khs. 8,000,000/ (Eight million only) comprised of the first instalment deposit of six million Kenya shillings and accrued interest pursuant to the sale Agreement dated 8<sup>th</sup> November 2017 between the plaintiff and the 1<sup>st</sup> Defendant, as follows;
  - a. The 2<sup>nd</sup> Defendant shall deposit into the plaintiff's Bank account Kshs. 1,000,000/ (one million only) at the instant of adoption of this consent as an order of the court.
  - b. The 2<sup>nd</sup> Defendant shall draw fourteen post-dated cheques of Kshs. 500,000/ (five hundred thousand only) each dated the 15<sup>th</sup> day of every consecutive month starting on 15<sup>th</sup> May 2024 and ending on 15<sup>th</sup> June 2025 in favour of the plaintiff.
2. The Defendants and the 2<sup>nd</sup> Interested party shall surrender to the plaintiff's Advocates within two (2) days of execution of this consent the following Land Title deeds, with duly signed transfers in favour of the plaintiff, spousal consent to this guarantee by the 2<sup>nd</sup> Interested party's spouse and all completion documents, free from any encumbrances as securities/collateral until full payment;
  - a. Title Number Ndivis/Muchi9XX1 Steven Wangusi Fedha
  - b. Title Number Ndivisi/Muchi/10XX5 Steven Wangusi Fedha
  - c. Title Number Ndivisi/Mihuu/2XX4 Stanley Wafula Nakitare Ndombi
3. The plaintiff shall register this order against the three titles at paragraph 2 hereinabove on the strength of the instant consent/ court order until payment in full whence the order will be lifted at the defendants' and 2<sup>nd</sup> Interested party's cost.
4. In default of payment of any of the above instalment upon falling due by way of dishonoured cheque for reason of insufficient funds or otherwise, the whole of the balance shall become due and immediately payable to the plaintiff and the plaintiff shall be at liberty to execute for this consent judgment in any manner recognized by law as against the Defendants and the 2<sup>nd</sup> Interested party including but not limited to the sale to third parties or transfer of any of the above securities to the plaintiff to recover the outstanding amount.



5. Upon performance of obligations at paragraphs 1, 2 and 3 above, this consent order shall serve as plaintiff's unequivocal withdrawal of his complaint against the Defendants I Bungoma Criminal Case No. E462 of 2023; *Republic v christine Nasimiyu Muyaka & Steven Wangusi Fedha*. This consent order shall be filed in Criminal case for further action by the trial court under section 204 of the *Criminal Procedure Code*.
  6. Upon performance of obligations at paragraphs 1, 2 and 3 above, the plaintiff shall similarly withdraw the High Court Bungoma judicial Review Application No. E009 of 2023; *Charles Kibanani Ngome v Director of Public Prosecution* Be And Is Hereby Marked Withdrawn And Closed.
  7. Each party bears its own cost of this suit.”
4. The plaintiff stated that from the contents of the above consent order which was adopted as the judgment of this Honourable Court, the 2<sup>nd</sup> plaintiff was to refund the plaintiff/Applicant a sum of Kshs. 8,000,000/ (eight million only) by way of monthly instalments of Kshs. 500,000/ over and above initial payment of Kshs.1,000,000/= He stated that the 2<sup>nd</sup> Defendant and the 2<sup>nd</sup> Interested party surrendered to him three Title Deeds as security/collateral until full payment and that in the event of default of any of the instalments, the whole of the balance shall become due at the instant and the plaintiff shall be at liberty to transfer the property to himself or third parties to recover the outstanding balance. He further deposed that upon aggregated payment of Kshs. 2,000,000/ by July/August 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants requested him to hold on the August, September and October 2024 cheques and when the said cheques were eventually deposited in November 2024 together with the November, they were all dishonoured by the bank for lack of funds. He stated that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have continued to default to date and further declined to respond to calls by the plaintiff's Advocates and has been left with no option but to seek the indulgence of this Honourable Court to actualize the fruits of the judgment.
  5. The application is opposed by Stephen Wangusi Fedha, the 2<sup>nd</sup> defendant/Respondent herein vide a Replying affidavit sworn on 10<sup>th</sup> April 2025 in which he stated that by the time he signed the consent dated 25<sup>th</sup> April 2025, the debt owed to the Applicant was Ksh. 8,000,000/. He stated that so far, he has managed to pay Ksh. 2000,000/ leaving a balance of Ksh. 6000,000/ and that it would be unfair for the Applicant to acknowledge receipt of Ksh. 2000,000/ and still pray for a transfer of the three properties. He deposed that it is only just that either the Applicant refunds Ksh. 2000,000/ and get the three properties transferred to his name or surrenders the Title number Ndivisi/Muchi/9XX1 that is worth Ksh. 2000,000/ and that the Applicant cannot have his cake and eat it as that amounts to unjust enrichment which the law abhors. He stated that he had all intentions to pay the agreed amount but fell into debts due to non-payment by his clients. He deposed that the agreement to transfer the three properties was akin to a distress sale but having paid a quarter of the debt, it is only just that one property is spared to grant him a new lease of life.
  6. In his further affidavit, the Plaintiff/Applicant stated that the Respondents and the 2<sup>nd</sup> Interested party have clearly averred in their Replying affidavit that the only way for him to actualize the balance of Ksh.6000,000/ is by way of disposal of the securities as listed and provided in the consent judgment Order and whose physical title deeds are in his possession. He deposed that the consent judgment/ Order is so clear and plain that it is not in the Respondents place to appear to be urging this honourable court to amend the same by their averments as to which plot should or should not be sold first. He stated that the terms of the consent judgment order do not provide which security to be disposed of first or in which order the same are to be disposed and that the securities will be disposed of in the order



in which they attract potential buyers. However, the Applicant undertakes to give to the Respondents and the 2<sup>nd</sup> Interested Party any residual monies over and above Ksh.6000,000/ and attendant costs that may be realized from the disposal of the said securities and further that he shall file in this court and also serve the Respondents and the 2<sup>nd</sup> Interested party a report of the sale. In the same vein, he expects the Respondents and the 2<sup>nd</sup> Interested Party to pay him any difference should the said securities fail to fetch at least Ksh.6000,000/

### **Plaintiff/applicants Submissions.**

7. The plaintiff through the Firm of M/S Musyoka Murambi & Associates submitted on whether the court should grant the orders which he answered in the affirmative. The learned Counsel submitted that the orders sought by the Applicant are aimed at facilitating the implementation and execution of this Court's consent Order/Judgment dated 26<sup>th</sup> April 2024 and that a successful litigant is entitled to the fruits of his judgment and may only be prevented from benefitting as such within the provisions of the law. Reliance was placed in the following cases; *M & E Consulting Engineers Limited v Lake Basin Development Authority & Another* (2015) KLR, *Machira T/A Machira & Co. Advocates v East Africa Standard (No.2)* (2002) KLR 65, *Mwangi Ndegwa v Kanyi Gichubi* (2019) KLR and *John Simiyu Palanga (deceased) & another v Chopkooe Koskei & another* (2018) KLR.

### **Legal Analysis And Decision.**

8. I have considered the Notice of Motion application, the supporting and Further affidavits, the Replying affidavit, the pleadings, the proceedings, the consent order/judgment dated 27/02/2024, the submissions by the Applicant and the applicable law. It is not in contention that the parties herein compromised this suit vide a consent Judgment dated 27/02/2024 and adopted by this Honourable Court on 24/04/2024 as follows;

“It Is Hereby Ordered By Consent As Follows That

1. The Defendants shall refund the plaintiff Kshs. 8,000,000/ (Eight million only) comprised of the first instalment deposit of six million Kenya shillings and accrued interest pursuant to the sale Agreement dated 8<sup>th</sup> November 2017 between the plaintiff and the 1<sup>st</sup> Defendant, as follows;
  - a. The 2<sup>nd</sup> Defendant shall deposit into the plaintiff's Bank account Kshs. 1,000,000/ (one million only) at the instant of adoption of this consent as an order of the court.
  - b. The 2<sup>nd</sup> Defendant shall draw fourteen post-dated cheques of Kshs. 500,000/ (five hundred thousand only) each dated 15<sup>th</sup> day of every consecutive month starting on 15<sup>th</sup> May 2024 and ending on 15<sup>th</sup> June, 2025 in favour of the plaintiff.
2. The Defendants and the 2<sup>nd</sup> Interested party shall surrender to the plaintiff's Advocates within two (2) days of execution of this consent the following land title deeds, with duly signed transfers in favour of the plaintiff, spousal consent to this guarantee by the 2<sup>nd</sup> interested Party's spouse and all completion documents, free from any encumbrances as security/collateral until full payment;
  - a. Title Number Ndivisi/muji/9XX1 Steven Wangusi Fedha



- b. Title Number Ndivisi/muji/10XX5 Steven Wangusi Fedha
  - c. Title Number Ndivisi/mihuu/2XX4 Stanley Wafula Nakitare Ndombi
3. The plaintiff shall register this order against the three titles at paragraph 2 hereinabove on the strength of the instant consent/court order until payment in full whence the order will be lifted at the Defendants' and 2<sup>nd</sup> Interested party's cost.
  4. In default of payment of any of the above instalments upon fallin due by way of dishonoured cheque for reason of insufficient funds or otherwise, the whole of the balance shall become due and immediately payable to the plaintiff and the plaintiff shall be at liberty to execute for this consent judgment in any manner recognized by law as against the Defendants and the 2<sup>nd</sup> Interested party including but not limited to the sale to third parties or transfer of all of the above securities to the plaintiff to recover the outstanding amount.
  5. Upon performance of obligations at paragraph 1, 2 and 3 above, this consent order shall serve as plaintiff's unequivocal withdrawal of his complaint against the Defendants in Bungoma Criminal Case No. E462 of 2023; *Republic v Christine Nasimiyu Muyaka & Steven Wangusi Fedha*. This consent order shall be filed in Criminal case for further action by the trial court under Section 204 of the [Criminal Procedure Code](#).
  6. Upon performance of obligations at paragraphs 1, 2 and 3 above, the plaintiff shall similarly withdraw the High Court Bungoma Judicial Review Application No. E009 of 2023; *Charles Kibanani Ngome v Director Of Public Prosecution* be and is hereby marked as withdrawn and closed.
  7. Each party bears its own costs of this suit.”
9. The plaintiff/Applicant has deposed on oath that after this Honourable court adopted the said consent judgment, he presented the post-dated cheques for the months of August, September, October and November 2024 and all were dishonoured by the Bank for reason of insufficient/and or lack of funds. Copies of the said cheques were annexed to the supporting affidavit and marked as “SN-2”. The 2<sup>nd</sup> Defendant at paragraph 9 of his Replying affidavit fell short of admitting that he failed to perform his obligation in the consent judgment and stated that he had all intentions to pay the agreed amount but fell into debts due to non-payment by his clients. What the Plaintiff/Applicant is seeking in the present application is enforcement /execution of the consent judgment/order which was adopted as the judgment/order of this Honourable Court.
  10. It is not in contention that where the parties presented themselves to this Honourable Court and duly signed/executed the consent order which was adopted as the judgment/order of the Court, the same becomes an order of the court and enforceable against the parties. Under the law, the court is empowered to make further orders to serve the solitary purpose of enforcing its judgment. This court cannot fold its hands as by doing so would cause hardship to the decree holder from enjoying the



fruits of his judgment. In the case of *M & E Consulting Engineers Limited v Lake Basin Development Authority & Another* (2015) KLR, the Court of Appeal held;

“ We re-affirm the dicta in the High Court Case of *Kenya Commercial Bank Ltd v Specialized Engineering Company Ltd* (1982) KLR 485 as was upheld by this Court in Civil Appeal No. 43 of 1980 thereof where it was stated inter alia as follows;

“ A consent order entered into by counsel is binding on all parties to the proceedings.....The making by the court of a consent order is not an exercise to be done otherwise than on the basis that the parties fully understand the meaning of the order either personally or through their advocates and when made, such an order is not lightly to be set aside or varied save by consent or on one or either of the recognized grounds.”

11. Again in *John Mwangi Ndegwa v Kanyi Gichuhi* (2019) eKLR, the Court held;

“ I understand the prayers of the Applicant to be based on execution of the decree. The Applicant wants the Deputy Registrar of this Court to be ordered to execute on behalf of the Defendant all the documents necessary to enforce the decree dated the 10/5/2018 such as land control board consent, mutation forms transfer documents which shall be required to effect registration of a portion of 0.5 acres out of the suit land in the name of the decree holder. To that extent the court is empowered to determine execution proceedings and I refer to the case of *Lamb & Sons Ltd V Rider* (1948) 2ALL ER 402 the English Court of Appeal noted “...The Court is of the view that it can only be allowed to make further orders to serve the limited purposes of enforcing its judgment. In the circumstances of this case, the court cannot fold its hands as by doing so will cause hardship to the decree holder who should enjoy the fruits of his judgment. The upshot is that the application is allowed with costs to the defendant.”

12. I agree with the holding in the above two decisions which are in all fours with the facts of the present case. The upshot of my finding is that the Notice of Motion dated 20<sup>th</sup> March 2025 is merited and the same is hereby allowed as prayed with costs.

13. Orders accordingly.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 24<sup>TH</sup> DAY OF JUNE, 2025**

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of;

Plaintiff/Advocate-absent.

Defendants/Advocate-absent.

Bett C/A.

