



Mburu v County Government of Kajiado (Environment and Land Miscellaneous Case 95 of 2019) [2025] KEELC 6466 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6466 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS CASE 95 OF 2019
MD MWANGI, J
SEPTEMBER 25, 2025**

BETWEEN

PAMELA WAITHERA MBURU PLAINTIFF

AND

COUNTY GOVERNMENT OF KAJIADO DEFENDANT

RULING

(In respect of the Notice of Motion application dated 11th September 2024 pursuant to Section 34(1) of the [Civil Procedure Act](#); and the Preliminary Objection dated 28th October 2024 pursuant to Order 9 Rules 9,10 and 11 of the Civil Procedure Rules)

Introduction

1. Before this Court for determination is a Notice of Motion application dated 11th September 2024, brought by the County Government of Kajiado pursuant to Sections 34(1). The Applicant prays for the following orders:
 - a. That this Application be certified urgent and be heard ex-parte in the first instance, and service thereof be dispensed with in the first instance.
 - b. That pending the hearing and determination of this Application, this Honourable Court be pleased to stay the Notice to Show Cause proceedings scheduled for 16th September 2024, until the hearing and determination of this application.
 - c. That pending the hearing and determination of this Application, this Honourable Court be pleased to stay this Honourable Court's order issued on 19th March 2024, until the hearing and determination of this application.
 - d. That this Honourable Court be pleased to issue an order of stay of execution of the decree issued on 21st February 2022, pending the assessment of the applicable interest rate.



- e. That this Honourable Court be pleased to declare that the interest rate applicable is 12% per annum from the date of the decree to the date of payment of the sums due in full.
 - f. That the costs of and incidental to this Application be provided for.
2. The application is premised on the grounds that the decree, emanating from a judgment delivered on 23rd November 2021, contains patent errors—namely, the omission of the applicable interest rate, failure to indicate the period over which interest accrued, and an alleged exaggerated computation of interest in the sum of Kshs. 1,156,983, which is said to be disproportionate to the decretal sum of Kshs. 2,110,000 over the two-years’ period. It is further contended that the impugned decree was issued without inviting the Applicant’s input, contrary to the Civil Procedure Rules, and that the impending Notice to Show Cause scheduled for 16th September 2024 threatens the arrest and committal to civil jail of the County Executive Committee Member for Finance, thereby prejudicing the County’s operations and the public interest.
 3. The application is supported by the affidavit of Norbert Tude O. Onyango, counsel for the Applicant, reiterating the above grounds and annexing correspondence with the Respondent’s counsel on the disputed interest. The Applicant asserts that unless the execution is stayed, it will suffer irreparable reputational and operational damage, and that the Respondent may be unable to refund any sums irregularly recovered from the public purse.
 4. In opposition, the Respondent, Pamela Waithera Mburu, filed a Preliminary Objection dated 28th October 2024 contending that the firm of Jude & Sheila Associates Advocates is not properly on record for the Applicant contrary to the mandatory provisions of Order 9 Rules 9, 10, and 11 of the Civil Procedure Rules, the judgment herein having already been delivered. Additionally, the Respondent filed a replying affidavit challenging the merits of the application and maintaining that the decree and interest computation are proper, execution is lawful, and the Applicant has not satisfied the threshold for the grant of stay of execution.

Directions

5. It is against this factual and procedural background that the Court directed that the Notice of Motion application be heard alongside the Preliminary Objection by the Respondent; and be canvassed by way of written submissions. I have read the submissions filed and the same have been considered in the writing of this ruling.

Analysis and Determination

6. Given that by its very nature, a Preliminary Objection has the ability to dispose of a matter completely if found meritorious; I will consider it first. In *Mukhisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, the Court defined a Preliminary Objection in the following terms:

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
7. In the present case, the Respondents’ Preliminary Objection is anchored on the argument that the law firm of Jude & Shelia Associates Advocates is not properly on record as required under Order 9 Rules



9, 10, and 11 of the Civil Procedure Rules. Order 9 Rule 9 of the Civil Procedure Rules provides as follows:

“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 without an 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.”

8. From the record, it is not in dispute that at the time material to this application, the Respondents were unrepresented in the proceedings leading to the judgment. The law presupposes the existence of an “outgoing advocate” for the mandatory leave requirement under Rule 9 to apply. In the absence of an outgoing advocate, there was no advocate-client relationship to be terminated, and hence no procedural impediment to Jude & Sheila Associates Advocates coming on record.

9. In *Lalchand Fulchand Shah v Investments & Mortgages Bank Limited & 5 others* [2018] eKLR, the Court held that:

“Order 9 Rule 9 is not intended to lock out a litigant who was previously unrepresented from instructing an advocate after judgment without leave. The mischief it cures is the mischief of changing advocates behind the back of an advocate who has already rendered services.”

10. Given that the County Government and its officers were previously unrepresented, there was no need for the Advocates representing them to first seek leave of Court. Accordingly, the court finds that the Preliminary Objection is without merit and is hereby dismissed.

11. Now I will proceed to determine the Notice of Motion application. The Applicant has invoked the provisions of Section 34(1) of the *Civil Procedure Act*, Order 21 of the Civil Procedure Rules, and other enabling provisions of the law, seeking a stay of execution pending what they describe as the “assessment of the applicable interest rate” on the decretal sum arising from the judgment of this Court in these Judicial Review proceedings delivered on 23rd November 2021.

12. It is however imperative to state from the outset that the Judicial Review proceedings in question were commenced in execution of a judgment and decree of the court in ELC/E620 of 2017, in which judgment was delivered on 14th March 2018. That decree in ELC/E620 of 2017 expressly provided for interest “at the prevailing court rate of 12% per annum, computed from the date of judgment”, not from the date of the issuance of the decree, and certainly not from the date of the Judicial Review judgment of 23rd November 2021.

13. A Court of law has the discretion to award interest in any matter under Section 26(1) of the *Civil Procedure Act*, which states that:

“Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.”



14. The Applicants' Advocates argue that they were never issued with the draft decree, yet by their own admission they were not on record at the time the decree was extracted. Their grievance is therefore misconceived, as they cannot fault a process to which they were not party to at the material time. Furthermore, their attempt to re-open the question of interest at this late stage is nothing more than an impermissible collateral attack on a valid decree of a competent court.
15. Section 34(1) of the *Civil Procedure Act* is explicit:
- “ All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”
16. This Court is not sitting on appeal on the decision in ELC E620 of 2017. The power to award interest is a discretionary power vested in the trial court. In *New Tyres Enterprises Ltd v Kenya Alliance Insurance Co. Ltd* [1988] KLR 380, the Court of Appeal affirmed that position stating that:
- “ At all times a trial court has wide discretion to award and fix the rate of interest provided that the discretion must be used judiciously. Given this discretion, an appellate court is, therefore, enjoined to treat the original decision by a trial court with utmost respect and should refrain from interference with it unless it is satisfied that the lower court proceeded upon some erroneous principle or was plainly and obviously wrong.”
17. This Court finds no such error in the judgment of 14th March 2018 in ELC No. 620 of 2017. On the contrary, the trial court was clear and unambiguous on the interest rate payable, which was to be computed from the date of judgment, being 14th March 2018. This position aligns with the principles in *Gulamhussein v French Somaliland Shipping Company Ltd* [1959] EA 25 and *Highway Furniture Mart Ltd v The Permanent Secretary & Another* (2006) 2 EA 94, which underscore that interest prior to judgment is a matter of substantive law, while post-judgment interest is purely at the discretion of the court that rendered the judgment.
18. The Applicants have therefore, approached this Court with unclean hands. They seek to stay execution not with the intention to resolve a genuine legal uncertainty but to frustrate execution of a valid decree and to relitigate a matter already conclusively determined. This Court has no legal basis to interfere with the discretion already exercised by my predecessor in the case ELC at Kajiado E620 of 2017.
19. Accordingly, the court finds that the Notice of Motion herein is devoid of merit and it is hereby dismissed with costs.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ndikimi for the Respondent

N/A for the Applicants

Court assistant: Mpoye



M.D. MWANGI
JUDGE

