



**Ndungu v National Social Security Fund Board of Trustees (Environment and Land Case Civil Suit 558 of 2016) [2025] KEELC 6404 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6404 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 558 OF 2016  
AA OMOLLO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**STEPHEN NJOROGE NDUNGU ..... DECREE HOLDER**

**AND**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES ... JUDGMENT DEBTOR**

**RULING**

1. The Decree holder/Applicant filed a notice of motion dated 29<sup>th</sup> February 2024, supported by an affidavit sworn by Stephen Njoroge Ndungu on 28<sup>th</sup> February 2024, seeking the following orders;
  1. Spent
  2. Spent
  3. That the Deputy Registrar of the Honourable Court do execute/sign on behalf of the judgment-debtor all the transfer documents in respect of apartments known as Hazina -B30/ F1-F9 and L.R No.Kitisuru 101/C233 in favour of the Decree-Holder.
  4. That the judgement debtor do refund to the Decree-Holder a sum of Kenya Shillings Three Million, Three Hundred Fifty five Thousand, Seven Hundred Forty Three and Cents Eighty Town (Ksh.3,355,734.82/=) being amount in excess of the Accounts held by the Judgement-Debtor.
  5. That the judgement-Debtor do pay the Decree-Holder Kenya Shillings Two Million, Eight hundred and Fifteen Thousand, six hundred and twenty-seven and 2 cents (Ksh.2,815,627.20)/=.
  6. That the managing Trustees David Koros in default of satisfying prayers 4 and 5 above be committed for Civil Jail for such period not exceeding Six (6) Months.



7. That in the alternative and in default of payment to satisfy prayers 4 and 5 above, the properties of the Managing Trustee, David Koros be attached and sold at a public auction in accordance with the Provisions of Order 22(28) of the Civil Procedure Rules to satisfy the decree herein.
8. That the Judgement-Debtor and/or Managing Trustee David Koros do provide the costs of the applications.
2. The grounds of the application were inter alia that a judgment was entered on 11th May 2023 after a full hearing of the suit, and the decision has not been appealed. That the judgment and decree are binding on the judgment-debtor and that the same was drawn and approved by both parties before the Deputy Registrar of the High Court sealed it.
3. The Applicant stated that the cost of the suit was taxed at Ksh. 2,815,627.20 on 14/12/2023, and the judgment debtor has failed, refused and/or neglected to satisfy the said decree despite having full knowledge of its issuance.
4. In the supporting affidavit, the Applicant stated that he filed suit on 26<sup>th</sup> May 2016 against the Judgment-Debtor after it threatened to repossess several apartments and premises he had already overpaid under a tenant-purchaser scheme. That the Judgment-Debtor failed to respond to his demand letters, leading him to commence legal action.
5. He further stated that on 11<sup>th</sup> May 2023, the court (Hon. Justice S. Okongo) delivered judgment in his favour, ordering the Judgment-Debtor, within 30 days, to provide a true and accurate statement of account for apartments Hazina B30/F1-9 and L.R No. Kitisuru 101/C233, execute all documents of transfer, and pay taxed costs. Despite these directions, the Judgment-Debtor did not comply. Therefore, he conducted an audit with a forensic report on 18<sup>th</sup> May 2021 showing that he had paid in excess and forwarded the report to the Judgment-Debtor.
6. In opposition, the Respondent filed a replying affidavit sworn on 9<sup>th</sup> September 2024 by Richard Kasiva, its Tenant Purchase Scheme Accountant. The Respondent stated that the Decree-holder frustrated efforts at reconciliation by failing to attend meetings or provide necessary documents.
7. Despite this, the NSSF conducted a reconciliation which revealed that he owes KES 2,140,504 for the Hazina Apartments but has overpaid KES 123,168.24 for the Kitisuru Property. It also found that the decree-holder has not submitted any transfer instruments for execution as is standard procedure, and therefore, the judgement debtor has not refused to execute the documents.
8. The deponent stated that it has also filed an application to challenge the cost orders, which application is pending determination. Thus, the decree-holder has not met the threshold for the reliefs sought, particularly for contempt or execution of transfers, and has failed to prove willful disobedience of court orders.

**Submissions:**

9. The Applicant/decree-holder filed two sets of submissions dated 12<sup>th</sup> April 2024 and 13<sup>th</sup> June 2024 in support of the application, and the Respondent/judgement debtor filed submissions dated 25<sup>th</sup> August 2025 in opposition. The Applicant submitted that he seeks the enforcement of a judgment issued on 11<sup>th</sup> May 2023 and a decree dated 4<sup>th</sup> September 2023, against the Judgment-Debtor (NSSF).
10. That the Court had ordered the NSSF to furnish accurate statements of accounts for specified properties and to execute transfer documents in favour of the Decree-Holder within 30 days. The



Respondent, was duly served with that decree but it has neither appealed nor complied with the orders thus its continued inaction constitutes contempt of court and deliberate obstruction of justice.

11. The Applicant submitted that this Court should exercise its inherent powers to uphold the rule of law by ensuring its decrees are not rendered meaningless and in support of this argument cited the case of Eunice Wairimu Muturi & Another v. Mavji Ramji (ELC Civil Suit No. 586 of 2005) where the court, in enforcing a specific performance order, directed the Deputy Registrar to execute transfer documents when the defendant defaulted, similar to the reliefs sought herein.
12. Also, they relied on the cases of Frankel Max Pollak Vinderine Inc v Menell Jack Hyman Rosenberg & Co Inc [1996] ZASCA 21, and Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR), the Respondent submitted that in civil contempt proceedings, the applicant must prove four key elements, the clarity and binding nature of the court order, the Respondent's knowledge of the order, failure to comply, and deliberate conduct in breach.
13. The Respondent submitted that contempt proceedings are quasi-criminal, therefore requiring a high standard of proof, especially when liberty is at stake, and wilful disobedience must be proven beyond reasonable doubt. It further argued that in the present case, the Applicant has failed to establish the necessary elements for contempt.
14. The Respondent submitted that, despite seeking to have the Managing Trustee jailed, the Applicant has no sufficient evidence of willful or bad faith for non-compliance with orders given. Further, the Applicant has contributed to the delay by failing to execute and submit transfer documents and by declining to attend reconciliation meetings.
15. He submitted that the claim for a refund of KES 3.3 million is unsupported, with the Respondent showing a refund of only KES 110,668 already issued. Similarly, the prayer for execution of transfer documents by the Deputy Registrar is premature, as the Applicant has not first complied with the standard process, which is execution of the transfer documents, despite having been duly prepared and delivered by counsel.
16. Regarding the prayer for costs of KES 2,815,627.20, the Respondent submitted that the Applicant has used the wrong procedure. Under Section 21 of the [Government Proceedings Act](#) and as stated in Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR), monetary judgments against the Government must be enforced through a Certificate of Order served on the Attorney General, followed by an order of mandamus, not contempt proceedings.
17. The Respondent stated that this position is also supported by the case in Republic v County Secretary, Nairobi City County & another; Kenya Revenue Authority (Interested Party) Ex parte Tom Ojienda & Associates [2020] KEHC 9793 (KLR) thus the application is deemed procedurally defective and an abuse of the court process.

#### **Analysis and Determination:**

18. I have pleadings filed and the annexures thereof together with the submissions filed by the respective parties. The issues for determination are twofold;
  - a. whether this court should grant the order that Deputy Registrar of this Court do execute/sign on behalf of the judgement -debtor all the transfer documents in respect of apartments known as Hazina -B30/F1-F9 and L.R No.Kitisuru 101/C233 in favour of the Decree-Holder.



19. Whether an order for refund can be made. The decree in subject issued by this court stated as follows;
1. That the Defendant shall within 30 days from the date hereof furnish the Plaintiff with true and accurate statements of accounts in respect of each of the apartments known as Hazina -B30/F1 to F9 and LR No.Kitisuru 101/C233 from the inception to 26th May 2016.
  2. That the Defendant shall refund to the Plaintiff any monies found to have been paid by the Plaintiff to the Defendant in excess of what was due to the Defendant in respect of apartments known as Hazina -B30/F1 to F9 and LR No.Kitisuru 101/C233 upon the furnishing of the said accounts.
  3. That the Defendant shall within 30 days from the date hereof execute instruments of transfer in respect of apartments known as Hazina -B30/F1 to F9 and LR No.Kitisuru 101/C233 in favour of the Plaintiff.
  4. That either party shall be at liberty to apply to Court in respect of orders (1) and (2) above.
  5. That the Plaintiff shall have the costs of the suit.
20. The decree-holder stated that the judgement debtor has failed to transfer the properties in question as decreed by this court and that they have also failed to provide a true statement of accounts and/or refund the monies paid in excess. Conversely, the judgement-debtor argued that it is the Applicant who impeded the transfer of the suit properties by failing to attend meetings and provide the necessary documents for execution.
21. From my reading of the replying affidavit, the Respondent does not deny that the decree requires it to execute transfer documents in favour of the Applicant. Hence, there is no need for my analysis on whether to make an order for the execution of the transfer documents. Consequently, prayer (3) is granted, subject to the condition that the Applicant shall forward the transfer documents to the Respondent for their signature. If the documents are not executed within 14 days of receipt of the letter forwarding them, the Deputy Registrar shall proceed to sign on behalf of the Respondent.
22. Under prayer (4) of the motion, both parties have attached copies of their respective statements of accounts, which do not agree. The Applicant states that he is owed Kshs 3,355,734.82 and seeks a refund. Conversely, the Respondent claims it is the Applicant owing them Kshs 2,017,335.76. In his submissions, the Applicant did not make any comments about the statement of accounts attached by the judgment debtor. For this court to order a refund, it may require the taking of evidence under section 34 of the *Civil Procedure Act*. It provides thus;
- “ 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”
23. However, before taking evidence on the accounts presented, I order the two parties to meet on a date to be set by this court during the delivery of this ruling. If the parties are unable to reconcile the accounts after this meeting, the matter will be scheduled for a hearing to decide whether to grant or deny prayers (4) of the application.
24. With regard to prayer (5) which is on settlement of costs, the judgement debtor avers that the Applicant has not followed the legal process provided to execute against a government institution. The sum



of Kshs 2,815,627 are costs that were taxed on 14<sup>th</sup> December 2023. Besides filing of the present application, the Applicant has not deposed steps he had taken to execute for the taxed costs. The judgment debtor is a government institution hence execution proceedings are governed by section 21 of the *Government Proceedings Act*, Cap 40.

25. Section 21 (1) of Cap 40 provides that;

“Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:”

26. Order 29 rule 3 of the Civil Procedure Rules invokes the application of section 21 of the *Government Proceedings Act*. Therefore, the court cannot grant prayer 5 of the application where no evidence has been shown that the Applicant has complied with the provisions of this law. Thus this court cannot make an order for refund as requested because it amounts to executing the decree unprocedurally.

27. The reliefs sought in prayers 6 and 7 were dependent on the success of prayers 4 and 5 of the motion. Although prayer 4 is held in abeyance pending a joint meeting of the parties or the taking of evidence to determine the accounts provided, prayer no 5 is dismissed. In any case, prayers 6 and 7 can only be granted once the Applicant complies with the provisions of section 21 of the *Government Proceedings Act*. In this case, processes envisaged under section 21 were yet to be done hence no merit in granting the said prayers (6 and 7).

28. Since the application has succeeded in part, the appropriate order regarding costs is that each party bears their own costs of the application.

29. In conclusion the application is determined in part and I make the following orders;

- a. i. The applicant shall forward to the Respondent, transfer documents in respect of the suit property for their signatures. The Respondent to execute the said transfers within 14 days of receipt from the Applicant.
- ii. In case of default by the Respondent/judgment-debtor within the stated timelines, the Deputy Registrar of the Court shall execute/sign on behalf of the judgment-debtor all the transfer documents in respect of apartments known as Hazina -B30/F1-F9 and L.R No. Kitisuru 101/C233 in favour of the Decree-Holder.
- b. The determination of the remaining prayers 4 shall abide the meeting between the parties and or taking of oral evidence as the case may be.
- c. The orders sought under prayers 5, 6 and 7 are dismissed/struck out for want of procedure.
- d. Each party to bear their costs

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**A. OMOLLO**

**JUDGE**

