



**Hamilton Harrison & Mathews v Ngengi (Miscellaneous Application 428 of 2017)
[2025] KEHC 13913 (KLR) (Commercial and Tax) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13913 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

MISCELLANEOUS APPLICATION 428 OF 2017

AA VISRAM, J

OCTOBER 2, 2025

BETWEEN

HAMILTON HARRISON & MATHEWS APPLICANT

AND

MUMBI NGENGI RESPONDENT

RULING

Introduction & Background

1. Warrants of arrest issued by the court on 12th February, 2024, forms the subject of two applications by the parties: The Client's application dated 6th June, 2024, that seeks to lift, stay, and/or set it aside and the Advocates' application dated 7th June, 2024, that seeks to enforce it with the help of the police. The Client's application is supported by grounds set out on its face and her affidavit sworn on 10th June, 2024. It is opposed by the Advocates through the replying affidavit of its Senior Partner, Kiragu Kimani, SC, sworn on 27th June, 2024.
2. The Advocates' application is supported by the affidavit of Kiragu Kimani, SC, and Isaac Miano, a Licensed Process Server and it is opposed by the Client through her replying affidavit sworn on 26th July, 2024. The court directed that the applications be canvassed by way of written submissions which are on record and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

3. I have considered the two applications, the affidavits filed, and the submissions of Counsel. The core issue before this Court is whether the warrant of arrest issued on 12th February, 2024, should be set aside as prayed by the Client, or enforced with police assistance as prayed by the Advocates.



4. It is common ground that the Advocates' Bill of Costs was taxed by the Deputy Registrar at Kshs. 3,438,158.90/-, and judgment duly entered in their favour on 20th April, 2023. That judgment, being one entered upon a certificate of taxation, is final as to the quantum of costs payable by virtue of Section 51(2) of the Advocates Act and as affirmed in Kenya Airports Authority v Otieno Ragot & Company Advocates [2024] KESC 44 (KLR). The doctrine of res judicata therefore applies, and the Client is estopped from re-litigating the amount payable at the stage of execution.
5. Turning to execution, Section 38 of the Civil Procedure Act sets out the various modes by which a decree may be enforced. These include attachment and sale of the Judgment Debtor's movable or immovable property, attachment of debts and earnings, appointment of a receiver, or delivery of specific property. Order 22 of the Civil Procedure Rules supplements these provisions, with rules on attachment and sale of movable property (Rules 7–10), immovable property (Rules 48–68), garnishee proceedings (Order 23), and examination of the Judgment Debtor as to means (Rule 35).
6. It is only after these remedies have been shown to be ineffective or inadequate that the court may consider the more drastic option of arrest and committal to civil jail under Section 38(d) Civil Procedure Act and Order 22, rules 31–34 Civil Procedure Rules. The Court of Appeal has cautioned that deprivation of liberty for civil debt should not be resorted to where other lawful means are available: See Braeburn Limited v Gachoka & Another [2007] eKLR. The constitutional safeguards against arbitrary detention also require a careful balancing of the decree-holder's right to realise a judgment with the debtor's right to liberty, as recognised in Wanjiku & Another v Attorney General & Another; Muna & Another (Interested Parties) [2012] KEHC 5410 (KLR).
7. On the record before me, the Advocates have not demonstrated that they exhausted or attempted to employ the other modes of execution prior to seeking the arrest and committal of the Client. Committal should not be treated as the first port of call; it is, and must remain, a remedy of last resort.
8. That said, it cannot be overlooked that judgment was entered on 20th April, 2023, and remains unsatisfied. The Client's indebtedness to the Advocates is not in dispute, having been admitted by her Counsel during the hearing of the Notice to Show Cause. Justice will therefore be best served by directing the decretal sum be satisfied by lawful means of execution against property in the first instance, while preserving the Advocates' entitlement to the funds presently held on deposit.
9. Accordingly, I decline to issue a committal order at this point and direct that the deposit of Kshs. 1,000,000.00/- held in court or in an interest earning account in the names of the Advocates on record be released to the Advocates in satisfaction of the decretal sum. I make the said order pursuant to my inherent powers under Section 3A of the Civil Procedure Act.

10. The orders of this court are as follows:

Conclusion and Disposition

- i. The Client's application dated 6th June, 2024, is dismissed.
- ii. The Advocates' application dated 7th June, 2024, succeeds only to the extent set out herein.
- iii. The sum of Kshs. 1,000,000.00/- deposited in court on 18th July, 2024, and thereafter placed in an interest earning account in the names of the Advocates on record shall forthwith be released to the Advocates, Hamilton Harrison & Mathews, in partial satisfaction of the decree issued on 30th June, 2023.
- iv. In the event of any overpayment, the same shall be refunded to the Client.



- v. Should any balance of the decretal sum remain outstanding, the Advocates shall first, as may be reasonable, exhaust the various modes of execution provided under Section 38 of the Civil Procedure Act and Order 22 and 23 of the Civil Procedure Rules, before resorting to committal of the Client to civil jail.
- vi. Each party shall bear their own costs of the present applications, save that the decretal costs already taxed and certified remain payable.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 2ND DAY OF OCTOBER 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court assistant: Lisper

..... Applicant/Advocates

..... Respondent/Client

