



**Kaberia v Mwonjuru (Civil Appeal E210 of 2025)  
[2025] KEHC 14119 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14119 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E210 OF 2025  
SM GITHINJI, J  
OCTOBER 6, 2025**

**BETWEEN**

**LEORNARD KABERIA ..... APPLICANT**

**AND**

**JOANINA MWONJARU ..... RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 12/9/2025 pursuant to Section 79G of the *Civil Procedure Act*, Order 42 Rules 1, 2, 6 & 7 of the Civil Procedure Rules, Articles 29 (f), 47 & 50 of *the Constitution*, seeking that:
  1. Spent
  2. Pending the hearing and determination of this application, this Honourable Court be pleased to order the immediate release of the Applicant from civil jail.
  3. The Appellant be released from civil jail pending the hearing and determination of the appeal.
  4. There be a stay of execution of the order committing the Applicant to civil jail pending the hearing and determination of the appeal herein.
  5. There be a stay of execution of the order committing the Appellant to civil jail pending the hearing and determination of this appeal.
  6. The costs of this Application be provided for.
2. The application is premised on the grounds that the Applicant/Appellant has partially settled the decretal sum and has proposed a reasonable and genuine payment plan of Ksh. 20,000 per month, notwithstanding his monthly income of Ksh. 13,000 after statutory deductions. He is a senior clinical officer, and his incarceration not only undermines his ability to earn an income and settle the



outstanding debt but also deprives the public, particularly the vulnerable, of essential medical care. He is a diabetic patient who requires strict and continuous medical management, including regular insulin administration, dietary control and timely medical review, and his current incarceration poses a serious and immediate threat to his health, as the conditions in civil jail do not allow for proper diabetic care. The committal order violates Article 29 (f) of *the Constitution* and Article 11 of the ICCPR, as it amounts to imprisonment for inability to pay a civil debt.

3. The Respondent swore a Replying Affidavit on 18/9/2025 in opposition to the application. She averred that in 2020, she was involved in a near fatal accident, which left her crippled, leading to amputation of her limbs. Although the judgment was entered against the Applicant in 2023, he has never bothered to pay anything until he was required to show cause, when he made the 1<sup>st</sup> payment of Ksh. 250,000 and an additional payment of Ksh. 150,000, and while he committed to pay at least Ksh. 750,000 by 9/9/2025, he only managed to pay Ksh. 150,000. The decretal sum is Ksh. 4,950,753 and if the Applicant's proposal to pay it in monthly instalments of Ksh. 20,000, it will take him 21 years to clear. The Applicant is a senior clinical officer with a vast resource and from a very well established family of lawyers and a high school principal, who is just hell bent on delaying justice, and she prayed for the dismissal of the application with costs.
4. The Applicant swore a supplementary affidavit on 22/9/2025 in support of his application.
5. The application was canvassed orally in court, and a ruling was reserved.

#### **Determination**

6. The singular issue for determination is whether the Applicant has established a case warranting his release from civil jail pending hearing and determination of the appeal.
7. Section 38 of the *Civil Procedure Act* empowers the court, upon application by a Decree Holder, in this case, the Respondent, to order execution, and one of the means of execution is arrest and detention in prison of the Judgment Debtor. That section provides as follows; "Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree -

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- “(a) by delivery of any property specifically decreed;
- (b) by attachment and sale, or by sale without attachment, of any property;
- (c) by attachment of debts;
- (d) by arrest and detention in prison of any person;
- (e) by appointing a receiver; or

(f) in such other manner as the nature of the relief granted may require:

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons to be recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree —
  - (i) is likely to abscond or leave the local limits of the jurisdiction of the court; or



- (ii) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or
  - (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which, by or under any law, or custom having the force of law, for the time being in force, is exempt from attachment in execution of the decree; or
  - (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.”
8. Order 22 Rule 34 of the Civil Procedure Rules provides that; “(1) Where a judgment-debtor appears before the court in obedience to a notice issued under rule 31, or is brought before the court after being arrested in execution of a decree for the payment of money, and it appears to the court that the judgment-debtor is unable, from poverty or other sufficient cause, to pay the amount of the decree, or, if that amount is payable by instalments, the amount of any instalment thereof, the court may, upon such terms as it thinks fit, make an order disallowing the application for his arrest and detention or directing his release, as the case may be. (2) Before making an order for the committal of the judgment-debtor to prison, the court, for reasons to be recorded in writing, shall be satisfied— (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree— (i) is likely to abscond or leave the local limits of the jurisdiction of the court; or (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which is exempt from attachment in execution of the decree; or (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.”
9. In *Charles Lutta Kasamani v Concord Insurance Co Ltd & Deputy Registrar Milimani High Court Commercial and Admiralty Division* [2018] eKLR, the court (C. Mwita J) rendered thus; “37. Even under sections 38 and 40 of the *Civil Procedure Act*, no one should be committed to civil jail because of his or her inability to pay. In the case of an application for committal, the determining factor is always the ability to pay. Inability should be taken to mean that the judgment debtor has completely no means of settling the decree even if he was given how much time to do so. He has completely no means of paying. He is simply unable and cannot pay...42. In that regard therefore, where a party goes through legal process and obtains a decree from a competent Court, s/he has a right that has crystalized in his favour and that right is recognized in law. It can only be realized through execution including committal to civil jail which is a known legal process for enforcing that right. Such a right should not easily be defeated because a judgment debtor who though able to pay, cannot be committed to civil jail and nothing can be done about him. That would be a contradiction in the enforcement of rights where one right would be deemed superior to another. The law should be read as only protecting those who cannot genuinely pay and not otherwise.”
10. The applicant was placed in civil jail on 9/9/2025 and is there todate, of which is a period of almost one month. He is said to suffer from diabetic and prison conditions and facilities cant sufficiently meet his medical needs.



11. His net pay is 18,504 Kshs and he is committing himself to pay 20,000/= per month pending payment of a good sum expected to be raised in a harambee organized for the purpose on 6/12/2025.
12. Some of the grounds upon which one can be released from civil jail are:-
  1. Payment of the debt in full.
  2. Partial payment or settlement agreement accepted by the decree holder.
  3. Expiry of committal period, which is a maximum of 6 months for one decree.
  4. Order by the court for release upon sufficient cause shown like illness, inability to pay and error in procedure.
13. It is not disputed that the applicant is a clinical officer and is a diabetic patient under continuous medical supervision and requires strict dietary management, regular medication, and timely medical review, none of which can be adequately accessed or maintained within the conditions of civil jail.
14. It is trite law that civil jail is not intended to serve a punitive purpose but to compel compliance with court order, and where detention endangers the life or health of the debtor, the court is empowered to order release on compassionate and humanitarian grounds.
15. Continuance confinement of the Applicant pending hearing and determination of this appeal, poses a substantial risk to his health and life, thereby contravening his rights under Articles 25(a), 28, and 51(1) of *the Constitution* of Kenya 2010, which guarantee the right to human dignity, freedom from inhuman or degrading treatment, and human condition of detention.
16. In view of the foregoing, It is in the interest of justice, fairness, and humanity that the Applicant be released from civil jail forthwith, subject to his payment without fail to the Judgment Creditor, 20,000/= every month and not less than One million by 15<sup>th</sup> December, 2025.
17. The said order subsists pending hearing and determination of the appeal, and in case of non-compliance the conditional release from civil jail lapses.

**DATED AND DELIVERED AT MERU THIS 6<sup>TH</sup> OCTOBER, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearances:-

Mr. Mwirigi for Applicant absent.

Mr. Kaume for the Respondent absent.

