



Wekesa & Simiyu Advocates v East Africa Portland Cement Co. Ltd & another (Civil Miscellaneous E055 of 2023) [2025] KEHC 14061 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14061 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL MISCELLANEOUS E055 OF 2023
RN NYAKUNDI, J
OCTOBER 9, 2025**

BETWEEN

WEKESA & SIMIYU ADVOCATES APPLICANT

AND

EAST AFRICA PORTLAND CEMENT CO. LTD 1ST RESPONDENT

GALAXY AUCTIONEERS 2ND RESPONDENT

RULING

1. Before this court is an application dated 26th September 2025. The applicant sought for the following prayers;
 - i. That this application be certified as urgent, service thereof be dispensed with in the first instance, and the same be heard ex parte owing to the urgency of the matter;
 - ii. That pending the hearing and determination of this Application, there be temporary stay of execution of the Decree issued on the 28th day of July, 2025 together with any warrants of attachment or sale issued thereunder;
 - iii. That the Warrants of Attachment and Proclamation Notice issued to Galaxy Auctioneers pursuant to the ruling delivered on 11th August 2025 be set aside, lifted and/or declared null and void;
 - iv. That the Advocate/Applicant and Galaxy Auctioneers be restrained from proceeding with any execution in respect of the satisfied decretal sum
 - v. That this Honourable Court be pleased to grant such further orders as are fair and just;
 - vi. That the costs of and incidental to this application be provided for
2. The application is made on the following grounds;



- i. That through a Ruling delivered on 11th of August, 2025, the Learned Judge, Honourable R. Nyakundi, entered judgment in favor of the Advocate/Applicant for the sum of Kshs. 662,011.00 with interest at 14% per annum from 28th July,2025.
 - ii. That as at the date of the Ruling, the Respondent had already settled the said sum on 9th of August 2024 through Cheque Payment Number 138321 and the Advocate received the same in full satisfaction of the Certificate of Taxation issued on 24th January, 2024
 - iii. That despite full settlement, the Advocate/Applicant obtained Warrants of Attachment and instructed Galaxy Auctioneers, who on 23rd September, 2025, issued a Proclamation Notice attaching the Respondent's assets.
 - iv. That the execution is illegal, irregular, and amounts to double recovery since there is no outstanding decretal sum.
 - v. That unless this Honourable Court intervenes, the Client/1st Respondent stands to suffer irreparable loss, embarrassment and damage through unlawful execution, despite having already satisfied the decretal sum in full
 - vi. That once execution is carried out the prejudice to the Client/1st Respondent will be irreversible as recovery of any sums unlawfully paid would be uncertain and the respondent would be forced to satisfy a debt that is wholly non-existent.
 - vii. That the orders sought herein are necessary for the preservation of justice and no prejudice will be suffered by the Advocate/Applicant if the same are granted, whereas the Client/1st Respondent stands to suffer grave injustice if the application is not allowed.
3. The application is supported by an affidavit sworn by Abdi Salam stating as follows;
- a. That I am the Legal Officer of the Client/1s Respondent Company herein, fully conversant with the issues in this instant application and competent and duly authorized to swear this Affidavit on behalf of the said company.
 - b. That I have read and had explained to me by the Respondent/Client Company's advocates on record Messrs. PMAK Advocates, and specifically, Simon Peter, a partner at the said firm, the contents of the instant Application.
 - c. That I swear this affidavit in support of this instant application seeking stay of execution of the Orders emanating or arising out of the Ruling issued on the 11th August 2025.
 - d. That through a Ruling delivered on 11th of August, 2025, the Learned Judge, Honourable R. Nyakundi, entered judgment in favor of the Advocate/Applicant for the sum of Kshs. 662,011.00 with interest at 14% per annum from 28th July,2025.
 - e. That as at the date of the Ruling, the Respondent had already settled the said Advocate received the same in full satisfaction of the Certificate of Taxation issued on 24th January 2025.
 - f. That notwithstanding the full settlement, the Advocate/Applicant irregularly proceeded to obtain warrants of attachment and appointed Galaxy Auctioneers, the 2nd Respondent, to execute against the 1st Respondent.
 - g. That unless this Honourable Court intervenes, the Client/ta Respondent stands to suffer irreparable loss, embarrassment, and damage through unlawful execution, despite having already satisfied the decretal sum in full.



- h. That once execution is carried out, the prejudice to the Client/1 Respondent will be irreversible, as recovery of any sums unlawfully paid would be uncertain and the Respondent would be forced to satisfy a debt that is wholly non-existent.
- i. That the orders sought herein are necessary for the preservation of justice and no prejudice will be suffered by the Advocate/Applicant if the same are granted, whereas the Client/1ST Respondent stands to suffer grave injustice if the application is not allowed.
- j. That what is deponed to herein is true to the best of my knowledge, information and belief.

Decision

- 4. Pursuant to this application, the parties negotiated and mediated the issues culminating into a consent order which has all the attributes of an order made after a contest as herein reflected. By Consent:
 - a. That the Decree issued on 28th July, 2025 be and is hereby marked as fully settled.
 - b. That no further execution or enforcement proceedings shall be issued or be undertaken in respect of the said Decree
 - c. That the Application dated 26th September, 2025 be and is hereby marked as settled, with no orders as to costs
- 5. The Financial arrangements that are agreed on between the parties for the purpose of receiving the approval and being made the subject of a consent order by the court, once they have been made the subject of the court order no longer depend on the agreement of the parties as the source from which their legal effect is derived.
- 6. As a consequence of the above consent order is patently clear and the same is adopted as a court order capable of being enforced as a decree of this court.
- 7. It is so ordered

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 9TH DAY OF OCTOBER, 2025

.....

R. NYAKUNDI

JUDGE

