



REPUBLIC OF KENYA



KENYA LAW
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**Nyaki Farmers Co-operative Society v Ambutu (Environment and Land
Appeal 76 of 2019) [2025] KEELC 6943 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6943 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 76 OF 2019**

BM EBOSO, J

OCTOBER 9, 2025

BETWEEN

NYAKI FARMERS CO-OPERATIVE SOCIETY APPELLANT

AND

JEDIEL GIKUNDA AMBUTU RESPONDENT

RULING

1. Judgment in this appeal was rendered by Nzili J on 23/3/2022. The disposal orders in the judgement read as follows:

“

“75. In the premises, I find the appeal with merits. The same is allowed with costs. The lower court decision is overturned and substituted by allowing the appellant’s claim for special damages of Kshs 667, 000 with interest at court rates with effect from 1st December 2004 when the respondent let out the premises to third parties till payment in full.

76. Costs for the lower court are awarded to the appellant
Orders accordingly.”

2. Subsequent to that, on 26/5/2022, the Deputy Registrar of the court extracted and issued a formal decree out of the judgment. The decree reads as follows:
 - i. That the lower court decision is overturned and substituted by allowing the appellant’s claim for special damages of Kshs 667,000 with interest at court rates with effect from 1st December 2004 when the respondent let out the premises to third parties till payment in full.
 - ii. That costs for the lower court are awarded to the appellant.



3. Against the above background, the respondent in this appeal brought a notice of motion dated 12/5/2025 seeking the following verbatim orders:
 1. Spent
 2. Spent
 3. That this honourable court be pleased to set aside the suit decree as the same is erroneous.
 4. That the honourable court reviews and calculates the decretal sum with the suit concluded dated being 4th day of April, 2025.
 5. That the applicant be awarded costs of this application.
 6. That the Honourable court be at liberty to make any other orders it deems fit in the interest of justice.
4. The above application is the subject of this ruling. The application was premised on the grounds outlined in the motion and in the supporting affidavit sworn on 12/5/2025 by Mr Hillary Sandi. It was canvassed through written submissions dated 18/7/2025 filed by M/s Hillary Sandi & Co Advocates.
5. The case of the applicant is that the decree-holder attached the applicant's movable properties in execution of the decree of this court. Upon perusal of the warrant of sale, the applicant noticed that the decretal sum had been wrongly tabulated. The applicant contends that interest was incorrectly tabulated, adding that "payment of the decretal sum was held in abeyance due to the passing on of the appellant, Jediel Gikundi Ambutu. The applicant points out that because the deceased's estate did not have an administrator, payment could not be made.
6. The applicant adds that, besides the above., they had paid to the appellant Kshs. 100,000 on conclusion of the case in the lower court and the said sum has not been factored in the warrants of attachment. They add that the warrants of sale do not factor in the money which the respondent owes the applicant.
7. The appellant opposed the application through a replying affidavit dated 23/5/2025, sworn by Allan Muriuki Gikunda. In addition, the appellant filed written submissions dated 29/7/2025 through M/s Joe Ng'ang'a & Associates Advocates. The case of the appellant is that the deceased died on 2/11/2022 and a grant was obtained vide Meru CMC Succession Cause No. E038 of 2023, after which substitution was effected. He adds that the sum of Kshs 100,000 was declined, a fact which they contend the applicant is aware of.
8. The court has considered the application, the response to the application, and the parties' rival submissions. The key question to be answered in this ruling is whether there is a proper basis for setting aside or reviewing the substituting decree in this appeal.
9. The court has looked at the judgement rendered by Nzili J and the decree extracted from the said judgment by the Deputy Registrar of the court. The extracted decree is fully in tandem with the judgment that was rendered by the court.
10. Secondly, it is clear from the application that the applicant has mistaken the warrants of attachment/sale for the decree of the court. A warrant of attachment/sale is not a decree. If the warrant has an error, that is an issue for the court registry of the court executing the decree to correct. An error in the warrants does not call for the setting aside or review of a decree that is otherwise in tandem with the judgement, such as the one on this appeal.



11. Lastly, when this matter came before me in open/virtual court for the first time, the court demanded to know why execution was being mounted on the platform of an appeal file instead of the trial court file. Upon hearing the parties, the court rendering the following verbatim ruling:
 - a. This ruling relates to the question as to whether this appellate court file should be the arena of execution of the decree issued in this appeal. One of the issues in contest is the allegation that the decree of the lower court was partially settled and that there is duplicity of enforcement.
 - b. The decree of an appellate court replaces the decree of the trial court. The arena of execution should always be the trial court file. One of the reasons why there should be one arena of execution is to avoid duplicity in execution or enforcement. It was an error on part of the Court Registry when it accepted the decree holder's application for execution on the platform of an appeal file.
 - c. For the above reasons, the warrants of execution issued in this appeal file are recalled and cancelled. The decree holder is ordered to enforce the decree on the platform of the lower court file.
 - d. It is so ordered.
12. It is clear from the foregoing that the warrants of attachment were cancelled and the appellant was directed to enforce the decree on the platform of the trial court file. The trial court was/is expected to issue fresh warrants of attachment. If the new warrants have any error, the relevant Court Registry and the Judicial Officer of the enforcing/executing court are the ones to deal with the issue.
13. For the above reasons, the court has not found a proper basis for setting aside or reviewing its decree dated 23/3/2022 and issued on 26/5/2022. Consequently, the application dated 12/5/2025 is rejected and dismissed for lack of merit.
14. On costs, this application was filed in this appeal because the Court Registry of the Environment and Land Court irregularly allowed execution to be mounted on the platform of an appeal file. For that reason, parties will bear their respective costs of the application. Those are the orders of the court.

DATED, SIGNED AND DELIVERED AT MERU THIS 9TH DAY OF OCTOBER, 2025.

B M EBOSO [MR]

ELC JUDGE

