

that the plaintiff/respondent and others, as administrators of his late father Jacob Kibiwott Mwolemet, had sued the applicant, whose suit was dismissed with costs assessed at **Kshs. 736,120/=**.

- 2.** In attempts to recover the same, the applicant deposes that warrants of attachment were issued to M/S Lifewood Auctioneers, who on **29/6/2022** proclaimed the respondent's goods as per the decree attached marked **EX-VRK-(1)** and **(2)**. The applicant deposes that on going back to collect the proclaimed items, the auctioneers were shocked to find that the respondent had relocated all the proclaimed goods, hence there was nothing to attach.
- 3.** The applicant deposes that other warrants of attachment were issued for movable goods, but once again the respondent became elusive; hence, the auctioneers have been unable to recover anything, following which a mode of execution was changed on **18/10/2024** as per the warrant of arrest attached as annexure **EX-VRK-(3)**.
- 4.** Even though the respondent was arrested on **7/11/2024** and brought to court, it appears that the warrants of arrest were withdrawn, and he was discharged by the court because he was an

administrator of the estate. The applicant says that on **7/12/2024**, he again applied for a notice to show cause why LR No. **Sinyerere/Sitatunga Block 7/Chepkoiyo/545** should not be sold to recover the decretal sum, but the trial court declined to issue it because the property in question does not belong to the estate but the respondent in person, yet it initially was part of the estate of his father, where he was an administrator as per annexure marked **EX-VRK-(4)**.

- 5.** The applicant deposes that the respondent had sold and transferred part of the said parcel of land on **18/3/2021**, about **5** months before the judgment was delivered on **5/8/2021**.
- 6.** The applicant deposes that it is clear, therefore, that the suit used to be part of the estate of the deceased and was simply subdivided by the respondent and transferred to defeat justice in this case after sensing defeat.
- 7.** The application is opposed through a replying affidavit sworn by Raphael Kibiwott Ruto on **4/9/2025**. He submits that he filed this suit in his capacity as the legal representative of the deceased father's estate after obtaining a grant in **2014**. He says that the suit property was never registered in the name of the

deceased and, therefore, it has no nexus with the deceased father and himself.

8. The respondent terms the application as an abuse of the court process, for he has even appealed against the ruling dismissing his case. The respondent in paragraph **31** submits that he obtained the title originally through succession and doubts whether a review of the ruling of the Deputy Registrar lies before this court.
9. The respondent deposes that the Deputy Registrar Order closed the matter to do with execution, while the administration of the estate of the deceased has not only been concluded but closed; otherwise, the assets of the deceased that were transferred to him were as a beneficiary, hence he has no further obligation to anyone in respect of the estate of his late father.
10. The respondent deposes that the only hope for the applicant is to revert to the **High Court Succession Cause No. 91 of 2014** to seek its rival. The respondent insists that the decree of the trial court should not be a liability to the estate, and was not personally liable for any debts of the estate.

11. Section 83 of the Law of Succession Act provides that personal legal representatives have a duty to provide and pay out of the estate of the deceased, all expenses of obtaining a grant and all other reasonable expenses of the administration, and all its debts.

12. The applicant seeks to execute for costs imposed against the respondent, whose suit on behalf of the estate of the deceased was dismissed. The respondent holds the view that he is not personally liable for the said costs. Further, the respondent holds the view that this court has no power to review the orders declining such an execution as were issued by the Deputy Registrar.

13. Section 37 of the Civil Procedure Act provides for the extent of liability to which execution proceedings may be brought against a legal representative. **Section 38** thereof relates to modes of execution, while **Section 39** thereof relates to the enforcement of a decree against a legal representative where it is proved how the property came into possession of the judgment debtor. **Section 85** of the Civil Procedure Act relates to arrest or attachment.

- 14.** The applicant asks this court to exercise its powers under **Order 22, Rules 48, 49, and 50** of the Civil Procedure Rules.
- 15.** Executing for costs arising out of a suit falls under the jurisdiction of the Deputy Registrar. The application before the court is not an appeal or reference against the orders of the Deputy Registrar, related to execution for costs filed pursuant to **Order 49 Rule 7 Sub-Rule 2** of the Civil Procedure Rules. The applicant has not attached any copy of the orders or proceedings to show that the Deputy Registrar has neglected, refused, and or denied him a chance to execute for the costs. Jurisdiction is everything. Without it, a court downs its tools. See ***Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd [1989] eKLR***
- 16.** As much as I sympathize with the frustrations of the applicant in trying to execute the decree, this court has no original jurisdiction to hear and determine matters falling under **Orders 22 and 49** of the Civil Procedure Rules.
- 17.** Whether or not to change the mode of execution is a matter falling under the jurisdiction of the Deputy Registry under **Order 49** of the Civil Procedure Rules.

18. The upshot is that I find the applicant has jumped the gun. The application is declined until the jurisdiction of this court is properly invoked. There will be no order as to costs.

19. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **22nd** day of **October 2025**.

In the presence of:

Court Assistant - Dennis

Nyakundi for the 2nd defendant/applicant present

Japeth in person present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**