

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 348 OF 2018

CONSOLIDATED WITH

CAUSE NOs. 349, 350, 351, 352, 353, 354, 355, 357, 358, 359, 360,

361, 1018, 1019, 1020, 1022, 1023, 1024, 1025, AND 1026 OF 2018

WAMBUA KATUMBI (*Acting in person and on behalf*

***of all other Decree Holders*)......DECREE HOLDER/APPLICANT**

- VERSUS -

ATHI RIVER MARBLE AND

GRANITE LIMITED.....JUDGMENT DEBTOR

DON WOODS COMPANY LIMITED.....OBJECTOR

AND

NEXTGEN AUCTIONEERS.....INTERESTED PARTY

(*Before Hon. Justice Byram Ongaya on Thursday 13th November, 2025*)

RULING

1. On behalf of decree holders from various related suits, the decree

holder/ applicant herein filed a notice of motion dated 17.07.2025 brought under Sections 3A, 34 and 80 of the Civil Procedure Act; Order 22 Rules 51, 52, 68, 69, and 75 and Order 40 of the Civil Procedure Rules; Sections 24, 25 and 26 of the Land Registration Act; Sections 323, 399 and 449 of the Insolvency Act; Section 32 of the Bankruptcy Act; Articles 41, 47, 48, and 159 of the Constitution of Kenya; and all other enabling provisions of the law. The decree holders sought orders:

- i) THAT this Honourable Court be pleased to declare that the transfer of land parcel Kajiado/Noonkopir Township/28 to the objector, Don Woods Company Limited, was fraudulent, illegal and intended to defeat the execution of the decree, and is therefore null and void under Section 26(1)(b) of the Land Registration Act and in violation of Articles 47 and 159(2)(c) of the Constitution.
- ii) THAT the said land parcel Kajiado/Noonkopir Township/28 be declared available for attachment and sale under Order 22 Rule 75 of the Civil Procedure Rules in satisfaction of all decrees in the consolidated matters and all the other decrees

issued in various courts against the judgment debtor herein.

- iii) THAT an order of prohibition be issued against the Land Registrar, Kajiado County, restraining any further dealings with the said property pending full satisfaction of the decree.
- iv) THAT the objector, Don Woods Company Limited, be declared a proxy and agent of the judgment debtor (Athi River Marble & Granite Limited) and not entitled to protection as a bona fide purchaser, with the corporate veil lifted under Section 323 of the Insolvency Act.
- v) THAT the decree holders be granted leave to re-attach and recover all movable properties (valued at Kshs. 41 million) clandestinely removed from the premises in contempt of court orders issued on 19th and 23rd July 2024.
- vi) THAT the Honourable Court grant leave to cross-examine the directors of Don Woods Company Limited, Athi River Marble & Granite Limited and Prime Bank Kenya Limited to establish their roles in the fraudulent transfer and obstruction of justice.
- vii) THAT in the alternative, the Court orders that the facility

agreement between Prime Bank Kenya Limited, the objector, and the judgment debtor be subjected to equitable apportionment, with Prime Bank directed to satisfy the decretal sum either wholly or partially under Section 34 of the Civil Procedure Act.

viii) THAT the decree holders be granted garnishee orders to attach all funds held by Don Woods Company Limited in its accounts at Prime Bank Limited under Order 23 of the Civil Procedure Rules, as upheld in **Equity Bank Ltd v West Link Mbo [2013] eKLR**.

ix) THAT the judgment debtor (Athi River Marble & Granite Ltd), the Objector (Don Woods Company Ltd), and Prime Bank Kenya Limited be wound up under Section 399 of the Insolvency Act for fraudulent trading and obstruction of justice, and their directors declared bankrupt under Section 32 of the Bankruptcy Act, with a permanent bar on initiating any parallel insolvency proceedings in any other forum.

x) THAT the directors of the judgment debtor, objector, and Prime Bank be held personally liable for the decretal sum

under Section 323 of the Insolvency Act for fraudulent trading.

- xi) THAT the objector and its directors be found in contempt of court for violating Justice Ongaya's orders (19th & 23rd July 2024) by removing machinery and be fined a punitive amount, or imprisoned for contempt under Order 40 Rule 3 of the Civil Procedure Rules, and compelled to return the removed assets or pay Kshs. 40 million as compensation.
- xii) THAT an interim injunction be issued freezing all bank accounts and assets of the objector, judgment debtor, and Prime Bank pending the hearing and determination of this application under Order 40 of the Civil Procedure Rules.
- xiii) THAT the Competition Authority of Kenya (CAK) and the Ethics and Anti-Corruption Commission (EACC) be directed to investigate the fraudulent transaction and collusion by Prime Bank and file a report in court within 21 days.
- xiv) THAT the decree holders be awarded interest on the decretal sum at 14% per annum from the date of judgment until full payment under Section 26 of the Civil Procedure

Act.

xv) THAT the costs of this application be awarded to the decree holders on an indemnity basis under Section 27 of the Civil Procedure Act, given the objector's persistent fraud.

xvi) THAT the findings of this Court be published in a daily newspaper to deter similar fraudulent schemes as per Article 159(2)(c) of the Constitution.

xvii) THAT the Honourable Court grants such other or further orders or any other relief it deems just and expedient in the circumstances.

2. The application is based on the grounds set out therein and supported by the affidavit of Wambua Katumbi, sworn on 17.07.2025. He urged as follows:

a. The decree holders were employees of the judgment debtor herein, and whose claims for unlawful termination and non-payment of dues were determined in their favour in judgments delivered between September 2019 and September 2022 in ***ELRC Cause 348 of 2018*** and in ***CMEL 525-530 of 2018***.

- b. The total decretal amount in the consolidated matters exceeds Kshs. 25 million and remains unpaid to date despite various execution attempts. The deliberate failure to satisfy the lawful decrees issued in favour of the decree holders offends their constitutional right to fair labour practices and amounts to contempt of court. In addition, the decree holders are elderly and indigent former workers who have waited over eight years for justice, and continued delay violates their constitutional rights to fair labour practices, property and access to justice.
- c. The judgment debtor also owes Kshs.13,205,193/- in SACCO contributions that were deducted but never remitted.
- d. Pursuant to the judgments, warrants of attachment were issued and execution commenced against the movable property of the judgment debtor situated at its factory on land parcel Kajiado/Noonkopir Township/28.
- e. On 15.07.2024, the objector filed an objection application under certificate of urgency and claimed ownership of both land and fixtures by virtue of a sale agreement dated

27.07.2017, allegedly financed through Prime Bank Kenya Limited (hereinafter “Prime Bank”). The Court subsequently granted the objector stay of execution orders on 19.07.2024 and encouraged parties to compromise. Similar stay orders had already been granted in *ELRCA/E151/2024 - John Caleb Yonge vs. Don Woods Company Limited*, following a similar objection application filed therein.

- f. During the course of hearing of the objector application on or about 25.07.2024, the objector secretly removed all proclaimed machinery in violation of the Court Orders dated 19th and 23rd July 2024 by the Honourable Justice Ongaya, undermining the lawful execution process. The said objection was dismissed with costs on 27.02.2025 on grounds that the issues raised by the objector were substantially similar to those already determined in an appeal Judgement by Abuodha J. in *ELRCA/E151/2024* (supra). The said similar objection application, first filed in the Chief Magistrate’s Court, and the appeal therefrom (*ELRCA/E151/2024*), was also dismissed on 24.05.2024 with findings that the objector

was a proxy of the judgment debtor and the transfer was fraudulent.

- g. In *CMEL Nos. 525-530 of 2018*, the decree holder, John Caleb Yonge, made a similar application to attach the same movable properties and found that the objector herein has already removed all the attachable assets as proclaimed by Nextgen Auctioneers, thereby frustrating the execution and in further blatant violation of the said orders by Justice Ongaya issued on 19th and 23rd July 2024. Notably, the objector had sent an email to the claimant on 12.06.2024, threatening to take action if auctioneers proceeded to claim the goods. At that time, the claimant was not aware of the existence of stay orders, which is proof that the objector had an intention and was in the process of transferring the movable assets.
- h. In other additional employment claims, including *Cause No. 1015 of 2018 (Geoffrey Nyamori)*, judgment was entered for over Kshs. 722,250 plus costs, while *Cause No. 1021 of 2018 (Angelica Mutinda)* and one more yet unconsolidated, involve the same judgment debtor and seek similar reliefs.

- i. During the hearing of the matters, the factory remained idle with all equipment and machinery intact and visibly rotting, a fact the Court also confirmed. The said movable properties amounting to over Kshs. 41 million were moved on or about 23.07.2024, when the objector obtained stay orders in his third objection attempt in *ELRC Cause No. 348 of 2018*.
- j. A recent official search of the subject land confirms it is charged to Prime Bank for Kshs.75 million, yet the objector and judgment debtor cannot explain the origin or substance of the loan. Prime Bank is not an innocent third party, having been involved in a transaction that was never disclosed to regulatory bodies, and which frustrates execution.
- k. The objector's sale was never submitted for mandatory review to the Competition Authority of Kenya (CAK) as required under Sections 41 and 42 of the Competition Act. Accordingly, the purported transaction between the objector and the judgment debtor herein is void *ab initio* and incapable of conferring legal title.
- l. Where there is evidence of fraud, the corporate veil can be

lifted to look behind the company and unmask individuals using it as a facade to defeat justice. Consequently, the objector is a proxy of the judgment debtor, and the veil of incorporation should be lifted.

- m. The Court in **Kuria Kiarie & 2 Others v Sammy Magera [2018] eKLR** declared that a transfer intended to defeat a judgment is void *ab initio*, which supports the prayer that the transfer of LR No. Kajiado/Noonkopir Township/28 is null and void, and the property should be made available for execution.
- n. This Court is duty-bound to intervene and forestall the miscarriage of justice being occasioned against the constitutional rights to access justice and fair administrative action.
- o. In the alternative and without prejudice to the foregoing, should this Court find that the said land parcel LR No. Kajiado/Noonkopir Township/28 is incapable of attachment; it is in the interests of justice that the Court orders that the facility agreement involving Prime Bank, the objector and the

judgment debtor be hived and/or apportioned to satisfy the decretal sums herein, and that Prime Bank be directed to pay the same either wholly or proportionately as may be just. This is premised on case law and the doctrine that equitable relief may be granted against a financier or intermediary that knowingly participates in or benefits from a fraudulent transfer that undermines execution of a valid judgment.

- p. Further, in light of the judgment debtor's and objector's persistent fraud as detailed above, and Prime Bank's collusion in retaining the illicit transaction, it is just and expedient for this Court to: (i) grant the decree holders unconditional authority to attach the objector's Prime Bank accounts under Order 23 of the Civil Procedure Rules, as upheld in **Equity Bank Ltd v West Link Mbo [2013] eKLR**; and (ii) order the immediate winding-up of the judgment debtor, objector and Prime Bank under Section 399 of the Insolvency Act, and declare their directors bankrupt under Section 32 of the Bankruptcy Act, as their actions constitute fraudulent trading under Section 449 of the

Insolvency Act; and they have no bona fide defence to the debts as held in **Mumo Matemu v Trusted Society [2015] eKLR.**

q. The objector's actions, being identical to those nullified in the **Kuria Kiarie** case (supra), constitute a flagrant violation of Article 159(2)(c) of the Constitution, which provides that justice shall not be delayed or defeated by procedural technicalities. The objector's assertion that it was unaware of these proceedings until after judgment was entered is false and an afterthought intended to evade liability. This Court has already made a finding that the objector knew of the cases during their early stages but deliberately failed to participate.

3. The objector's replying affidavit was sworn on 15.08.2025 by Donald Mwaura and filed through Kang'ari Ngandu & Company Advocates. They opposed the decree holders' application dated 17.07.2025 and urged as follows:

(i) The jurat of the affidavit in support of the instant motion application indicates that it was sworn at Nairobi but

commissioned in Eldoret. The deponent could not have executed the affidavit at Nairobi before a commissioner for oaths at Eldoret; it is trite law that the two events can only happen at one place at the same time. Therefore, the said affidavit is defective for having been sworn and commissioned in different places, and cannot be remedied under Article 159(2) (d) of the Constitution, as was held in **Estate Dominicus Odhiambo (Deceased) [2020] eKLR.**

The Court should subsequently expunge the affidavit for not being properly commissioned, meaning the application cannot stand.

- (ii) This Honourable Court lacks jurisdiction with respect to the execution of decrees relating to the consolidated *Milimani Chief Magistrates Employment Case Nos. 525-530 of 2018*, and *Nairobi ELRC Nos. 1015, 1016, 1017 and 1021 of 2018*. This Court cannot issue orders relating to the execution of decrees that were issued in a different court. Further, the subject suits have never been consolidated in the present suit, and being independent suits, enforcement of those

decrees should be pursued separately. The applicant herein has failed to comply with Section 34 of the Civil Procedure Act, which bars the filing of separate proceedings to determine issues that emanate from the execution of decrees in a suit. Consequently, this Court cannot entertain an application for the execution of a decree that was not passed before it and has not been formally transferred to it.

(iii) No approval by the CAK was required for the objector's purchase of the suit property from the judgment debtor because the transaction was not a merger or an acquisition as defined under Section 42 of the Competition Act. Even if the transaction were to be construed as a merger, the value of the entire property as per the sale agreement was less than Kshs. 100 million and under the Competition (General) Rules, a merger with a value below the prescribed threshold is not subject to mandatory notification to the CAK.

(iv) The objector was not a party to the suit, specifically *Nairobi ELRC Cause No. 348 of 2018* consolidated with other related Employment Cases, out of which a decree was

issued against the judgment debtor/2nd respondent (Athi River Marble & Granite Limited). The objector has never been in any contractual, employee, or employer relationship with the decree holder, and its purchasing of the judgment debtor's property was a legitimate, arms-length transaction limited to the land, buildings and machinery.

(v) Further, the objector is a limited liability company without any nexus with the judgment debtor, and holds the property known as Kajiado /Noonkopir Township/28 in its own account and right. Considering the doctrine of separate legal entity, there is therefore no legal basis to target the objector or its directors in the execution of a decree against the judgment debtor. The applicant has neither demonstrated that the judgment debtor held the property at the time of attachment nor has it shown that the objector's ownership is a fraudulent attempt to evade execution.

(vi) The objector's only relationship with Prime Bank is that the bank financed the purchase of the subject property, which was charged to it. The objector entered into a loan

agreement with Prime Bank, paid the requisite stamp duty and took over ownership of the subject property. The objector is still servicing the loan whose repayment runs until 2028, and the property is co-owned by the objector and Prime Bank. Notably, it is trite law that a co-owned property is not available for attachment and sale in execution of a court decree. The decree holder ought therefore to find other assets singly owned by the judgment debtor, or adopt other available modes of execution of a decree.

(vii) The fact that the objector purchased the subject property, for which the Court later entered a judgment against the judgment debtor, does not make the objector liable for the liabilities of the judgment debtor. No evidence has been adduced to suggest that the transaction was a sham intended to defeat the applicant's claim, thereby warranting its setting aside. Further, no valuation conducted by an independent valuer has been filed in this Court to demonstrate that the suit property was undervalued when the objector purchased the property.

- (viii) The applicant's invocation of the repealed Section 32 of the Bankruptcy Act and Section 399 of the Insolvency Act, 2015, is also without merit, as these provisions relate to transactions at an undervalue or preferences given to creditors in the run-up to insolvency.
- (ix) The applicant seeks to attach the assets of Prime Bank, without affording the bank an opportunity to respond to the application. The bank is being condemned unheard, and any order issued under such circumstances would be a nullity, in violation of a party's constitutional right to a fair hearing. Further, the applicant's request to wind up Prime Bank without its knowledge, and to have the directors of Prime Bank compelled to personally settle the decree, is contrary to the law.
- (x) The fundamental prerequisite for a garnishee order is the existence of a debt owed by the garnishee to the judgment debtor. In this case, the objector does not owe the judgment debtor any debt to compel this Court to order Prime Bank to release any funds that might be in the objector's account to

the applicant. The objector's account is a separate legal entity from the judgment debtor, and its account cannot therefore be garnished to settle the decree against a third party.

(xi) The applicant has failed to provide any evidence to show that their appointed auctioneers conducted a proclamation on the objector's property to claim that the objector moved proclaimed goods. The absence of this crucial step means there were no goods legally identified for attachment, and therefore, no goods could have been moved in disobedience of a court order.

4. Thereafter, the decree holders/applicants filed a further supporting affidavit and a second further supporting affidavit, sworn by Wambua Katumbi on 30.09.2025 and 23.10.2025, respectively.

They argued that:

a. The allegation that their supporting affidavit was sworn in Nairobi but commissioned in Eldoret is speculative and unfounded. There is no such discrepancy in the supporting affidavit, as the jurat expressly shows that the affidavit was

sworn at and commissioned in Nairobi. The commissioner's stamp bearing an Eldoret postal address is not similar to showing two different places of swearing and commissioning. The address on a commissioner's stamp only serves as an administrative detail and does not determine the location of commissioning.

- b. Whereas none of the subject suits were consolidated into the present suit, they all relate to the same judgment debtor herein, arising from the same employment relationship, and all the decrees remain unsatisfied. This Honourable Court has jurisdiction under section 34 of the Civil Procedure Act to supervise and enforce execution of decrees and to determine all questions arising therefrom.
- c. The only live issue for determination before this Court in the present application is execution against the immovable subject land property, as the movable assets of the judgment debtor were clandestinely removed contrary to subsisting court orders.
- d. Under Section 2 of the Competition Act, a merger includes any acquisition of assets that results in a change of control of a

business or its property. The transfer of parcel Kajiado/Noonkopir Township/28, together with the movables, clearly effected such a change. The said transaction was an orchestrated transfer of both immovable and movable assets of the judgment debtor with the effect of frustrating execution and altering the structure of the business to the detriment of the decree holders. This falls within the regulatory purview of the CAK under Section 42 of the Competition Act, as it amounted to a transfer of control.

- e. This Honourable Court in appellate decisions arising from the objector's earlier applications found that "the sale of the Judgment Debtor's property was done in order to defeat the claim and in the process occasion a miscarriage of justice." Therefore, the objector cannot rely on its non-party status as a shield against liability when its acquisition of assets has consistently been found to be part of a stratagem to obstruct execution.
- f. It is imperative that the determination of this application binds all related decrees across the consolidated causes to avoid a

multiplicity of execution proceedings. This Court has inherent jurisdiction to direct that its ruling applies across the board, especially given the objector's repeated attempts to re-litigate identical issues in piecemeal objections by introducing a different document at every stage, which have all been dismissed.

- g. Execution against a charged property is permissible subject to satisfaction of the charge. Section 44(1)(ii) of the Civil Procedure Act expressly allows attachment of immovable property belonging to the judgment debtor even if subject to a charge. Therefore, the objector cannot hide behind Prime Bank to shield assets from execution, particularly where the financing itself is disputed and was contemporaneous with the fraudulent transfer. Further, Prime Bank's involvement in financing and securing the disputed transfer cannot be insulated under the corporate veil when it was instrumental in shielding the judgment debtor's assets from lawful execution.
- h. The garnishee relief is sought in the alternative to ensure that the decretal sums are satisfied without further delay, consistent

with the equitable duty of the Court to prevent abuse of legal entities. Notably, the judgment debtor has been banking with Prime Bank, which mediated at the initial stage and had even promised to pay the decree holders. The Bank later abandoned that position and secretly charged the property through a proxy, the objector herein, as confirmed in the Court's Ruling in *ELRC Appeal No. E151 of 2024*.

- i. Similar to most of the issues herein, the lack of a valuation report was extensively canvassed and conclusively determined in earlier objection proceedings by three different courts of competent jurisdiction. The courts dismissed the objector's applications, and the issues are therefore *res judicata* and cannot be relitigated.
- j. Further, This Court should be pleased to: (i) grant leave for the cross-examination of Donald Kiboro Mwaura, the Commissioner for Oaths, and the Registrar of Companies or their designated officer; (ii) find that the objector's supplementary affidavit and annexed CR12 are fraudulent and should be expunged from the record; (iii) order that the subject

land property be made available for execution to satisfy the decretal sums; (iv) referring the advocate, Simon Kangari Ngandu, to the LSK for investigation into potential ethics violations and directing the matter to the DCI for a criminal probe into the alleged forgery and uttering of false documents.

5. The objector then filed a supplementary affidavit and a further supplementary affidavit, sworn by Donald Mwaura on 29.08.2025 and 03.11.2025, respectively. They further argued that:
 - a. The applicants have failed to prove the malicious allegations that Donald Mwaura was out of the country and did not appear before a commissioner of oaths.
 - b. The judgment debtor's CR12 certificate was legitimately obtained and verifiable as shown by the copy of the letter dated 11.08.2025 written to the Registrar of Companies requesting such information, and a copy of the payment receipt with a reference number that was also indicated in the issued CR12 certificate.
 - c. The applicant introduced new issues and prayers in the second further affidavit in an attempt to amend the application without

leave of the Court. It is trite law that an affidavit must be limited to providing evidence in support of the prayers contained in the substantive notice of motion. Introducing new, substantive prayers or relief not sought in the main application is prejudicial to the objector and constitutes an abuse of the court process.

6. The decree holder/applicant and the objector filed their respective submissions. The Court has considered the parties' respective positions and material on record and returns as follows:

a) In absence of evidence that the Commissioner for Oaths indeed commissioned the affidavit at Nairobi, the fact that the Commissioner's stamp states an Eldoret address does not by itself defeat the validity of the supporting affidavit. The applicant's case in that regard is upheld.

b) The objector and the judgment debtor are indeed separate companies and therefore separate legal entities. There is no material placed before the Court to hold the objector as though it was the judgment debtor herein. The Court upholds the objector's case in that regard.

- c) In the circumstances, garnishee proceedings are not sustainable as against the objector and the bank as urged for the applicant. In any event, the bank is not a party to the instant application and it would offend rules of natural justice if an order was to be issued against the bank without its being heard.
- d) The land subject of the application has since been transferred from the judgment debtor to the objector in circumstances that the land is charged to the bank which facilitated the objector's purchase price. The applicant alleges fraud in that transaction. It is the view of the Court that the alleged fraud is with respect to a transaction involving a title to land. The Court considers that the same constitutes a new cause of action way beyond the instant application and which alleged fraud can only be established in a proper suit before a Court of competent jurisdiction.
- e) The Court has considered the history of the dispute and there will be no orders on costs.

In conclusion the application is hereby dismissed with no orders on

COSTS.

Signed, dated and delivered by video-link and in court at Nairobi

this Thursday 13th November, 2025.

**BYRAM ONGAYA
PRINCIPAL JUDGE**