



**Ndetu v Silver Hawk International Limited (Cause 638 of 2016)
[2025] KEELRC 3106 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3106 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 638 OF 2016
ON MAKAU, J
NOVEMBER 6, 2025**

BETWEEN

STEPHEN NDOU NDETU CLAIMANT

AND

SILVER HAWK INTERNATIONAL LIMITED RESPONDENT

RULING

Introduction

1. The court passed a decree herein dated 17th January 2020 for a sum of Kshs. 1,567,569.25/- plus costs and interest from the date of filing the suit. Thereafter the costs were assessed at Kshs. 110,910/- by the taxing officer of the court. The Respondent never settled the decree plus the costs and the Claimant executed the decree with the assistance of an Auctioneer but realized nothing as the Respondent did not have any movable assets for attachment.
2. Subsequently, the Claimant applied for a Notice to show cause to be issued against the Respondent's Director Mr. Christopher Musau Kamau, to show cause why he had not paid the decretal sum totaling to Kshs. 3,328,881.53/-. On 26th May 2025 the Deputy Registrar issued a Notice to show cause against the said Director to attend court on 21st July 2025 to show cause why he should not be committed to civil jail in execution of the decree herein.
3. The Director filed a Replying Affidavit sworn on 18th July 2025 disputing the sum owed and stating that the outstanding balance should be Kshs. 2,225,948.34/- or Kshs. 564,324.93/-. He further averred that he has a land parcel known as Kajiado/Kaputei North 75408 near UMMA University valued at Kshs. 3,500,000/- which he was willing to give to the Claimant in full and final settlement of the decree or in the alternative to offer the same as security for full settlement of the decree.
4. In view of the foregoing, he averred that committal to civil jail is unwarranted as it should be meted out as a last resort where the judgment debtor has shown a blatant unwillingness to settle the decretal sum.



5. The Claimant also filed an Affidavit dated 29th July 2025 stating that the Respondent has not adduced any evidence or computation supporting assertion that the outstanding decretal sum is Kshs. 2,225,948.34/- or Kshs. 564,324.25/-
6. He further averred that the offer of the said parcel of land is an after thought and a tactical delay mechanism. Further that no valuation report has been adduced to prove the value of Kshs. 3,500,000/-; that the lands liquidity or marketability is questionable; and that he has never expressed interest in land – for – debt settlement, and he cannot be compelled to accept that kind of settlement .
7. He contended that the Respondent has delayed settlement of the decretal sum for too long and therefore his committal to civil jail is justified.
8. Both sides filed written submissions to the Notice to show cause. Having carefully considered the Affidavits and submissions filed, the main issue for determination is whether the Respondent’s director, one Christopher Musau Kamau should be committed to civil jail in execution of the decreed sum.

Analysis

9. The Claimant wants this court to arrest and commit the Director of the Respondent to civil jail for failure to pay the decree passed against the Company. The power to arrest and detain a judgment debtor is provided under section 38(d) and 40 of the *Civil Procedure Act*. The proviso to section 38 states that such power shall not be exercised unless the judgment debtor is first given a chance to show cause why he should be committed to prison, and the court is satisfied that:-
 - “a) 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.”
10. I have perused the Affidavits filed by both sides and I am not satisfied that the above threshold has been met. There is evidence on record that Betabase Auctioneers who was appointed by the court to execute the decree, returned the warrants of attachment unexecuted vide a letter dated 26/11/2024. In the said letter, the Auctioneers stated that they did not trace any attachable assets belonging to the Respondent, meaning that the reason for not settling the decree is because the Company is insolvent.



11. The foregoing notwithstanding, the Director has showed willingness to use his personal asset to settle the Company debt. He has filed copy of the title deed and a certificate of search for his land parcel Kajiado/Kaputei North/75408 which he is offering to the Claimant in full settlement of the decretal sum herein or as security pending payment of the decretal sum.
12. The Claimant is not willing to have the decreed sum settled by way of the said land. He is also not sure about the value of the land parcel or its marketability. The court cannot force the Claimant to take the land in the place of the decreed sum. The court will also not jail a sickly person who is willing to part with his own personal property to settle the judgment debt on behalf of the Respondent Company.
13. In *Elijah Momanyi p/a Anassi Momany & Co. Advocates V. Bartera Maiyo* [2006] eKLR, the High Court held that:-

“in my view, execution by way of arrest and committal to civil jail must be done as the last resort after all the other options have been exhausted. The deprivation of an individuals liberty is not a matter to be treated lightly or in haste. The protection of the right to liberty in my view is the most sacred of the fundamental rights and freedoms of the individual. It must not be taken away easily and particularly in Matters relating to commercial transactions or civil litigation. The circumstances justifying such action are equally established and certain facts and conditions must be shown to exist before an order for committal to civil jail is made on the basis of the failure to satisfy a property decree. Strictly, committal here is not intended to be punishment but a process through which a debtor can be compelled to pay his just debt after all the other usual methods have been exhausted or have failed”.

14. In this case, I find that the Director of the Respondent has shown good cause why he should not be committed to civil jail. As such I give the Director Mr. Christopher Musau Kamau 60 days to sell the land parcel Kajiado/Kaputei North/75408 and pay the proceeds to the Claimant towards settlement of the decree with the assistance of an Auctioneer or land broker. The parties are also given the liberty to negotiate the possibility of the Claimant to take the said land as full or partial settlement of the decree of the court. The Director is also ordered to deposit the original title deed and the certificate of search in this court as security within 7- days of this Ruling.

Disposition

15. The court orders and directs as follows:-
 - a. The Respondent’s Director Mr. Christopher Musau Kamau to sell the land parcel Kajiado/Kaputei North/75408 within 60 days of today and pay all the proceeds to Claimant.
 - b. The Director shall be at liberty to seek assistance from land brokers or Auctioneer to dispose of the said parcel of land.
 - c. In the meanwhile the Director to deposit the original tittle deed and certificate of search in this court within 7 days of this Ruling, as security for the due performance of the decree herein.
 - d. Mention on 18th January 2026 to confirm settlement.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 6TH DAY OF NOVEMBER, 2025.

ONESMUS MAKAU

JUDGE



Appearance:

Alekeen for the Claimant

Kihang'a for the Respondent

