



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NUMBER 2 OF 2017

**WANYORORO FARMERS CO. LTD. -----
PLAINTIFF**

VERSUS

**EZEKIEL EVANS WAFULA SIMIYU T/A
E. WAFULA ASSOCIATES ADVOCATES -----
DEFENDANT**

RULING

1. This Ruling follows the Defendant's Notice of Motion dated 7th April 2025 for the following reliefs;
 1. **Spent.**
 2. **Spent.**
 3. **Spent.**
 4. **THAT pending the hearing and determination of this application *inter partes* and or until further orders of the Court, this Honourable Court be pleased to stay the execution of the Order of Committal to Civil Jail and warrants of arrest issued against the Defendant/Judgement Debtor to prison. (*sic*)**

5. **THAT the order for the arrest and committal of the Defendant/Judgement Debtor to prison herein be set aside ex-debitio justitiae.**

6. **THAT this Honourable Court be at liberty to issue any further orders in the interests of justice.**

7. **THAT the costs of the Application be provided for.**

2. The Defendant swore an affidavit supporting the Application stating that he had been served with Notice to Show Cause dated 15th November 2024 requiring him to show cause why he should not be committed to civil jail for failure to settle the decretal sum herein. He thereafter and through his legal representative personally attended court for hearing on various occasions. The Defendant further avers that he also filed an affidavit on 6th March 2024 showing cause as directed.

3. The Defendant continues to aver that on 3rd April 2025 in his absence due to indisposition, his advocate showed sufficient cause to the Court as to why he ought not to be committed to civil jail. He denies any attempt to obstruct or delay execution proceedings herein. Stating that he is an Advocate of the High Court, he laments that he has not been

able to optimally engage in legal practice since the decree herein was issued against him. Much of his time has been expended in defending himself herein as well in a **Nakuru Criminal Case No. 3254 of 2018** where he is the accused person.

4. The Defendant in the premises pleads that he is unable to satisfy the entire decretal sum owing to his poor financial position. He states that he has at least paid a sum of Kshs. 500,000/= towards satisfaction of the Decree. His offer of a parcel of land belonging to his spouse in further part satisfaction of the Decree was rejected by the Plaintiff.
5. For the stated reasons *inter alia*, the Defendant urges the court not to imprison him purely because of his financial inability to settle the Decree.
6. The Plaintiff company opposes the Application vide an affidavit in reply sworn by its Director (Geoffrey Mutahi Ndegwa). He contends *inter alia* that the Application is misconceived, incompetent and bad in law. According to the Plaintiff's witness, the Deputy Registrar of the Court properly and lawfully issued the order of arrest of the Defendant for failure to satisfy the judgement debt. He

complains that the Defendant had received the funds in issue in a fiduciary capacity and refused to reply the same. His offer of land belonging to his spouse was not accepted since its title was not in his name and the land had not been offered for sale to liquidate the decretal sum.

7. The Plaintiff refutes the claim that the Defendant is a man of straw but he deliberately kept his wealth out of the reach of the Plaintiff to frustrate execution proceedings.
8. The Defendant has not put in Submissions. The Plaintiff's Advocates' brief submissions principally rely on the provisions of **Section 38(c) of the Civil Procedure Act**. This statutory provision allows committal to civil jail of a Judgement Debtor where the debt in issue arises from a fiduciary duty owed to the Judgement Creditor. This relationship of the parties is not in dispute.
9. There is no basis to challenge or set aside the Deputy Registrar's decision dated 3rd April 2025 committing the Defendant to civil jail. Established principles guiding setting aside of orders have not been satisfied. In any event, this is not an Appeal or Reference from the Deputy

Registrar's decision, and so the Court does not have jurisdiction to interfere.

10. In the premises, the Application is dismissed with costs to the Plaintiff/Judgement Creditor.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 18th of November, 2025.

In the presence of:

The Plaintiff's Advocate, Ms Wangari for Mr. Waiganjo

The Defendant's Advocate, Mr. Mulasha Advocate for Mr.

Bwire

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.