



**Chege v Mbugua; Githeiya (Interested Party) (Civil Appeal 368 of 2019)
[2025] KECA 1932 (KLR) (21 November 2025) (Judgment)**

Neutral citation: [2025] KECA 1932 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 368 OF 2019
SG KAIRU, M NGUGI & WK KORIR, JJA
NOVEMBER 21, 2025**

BETWEEN

CYRUS KOMO CHEGE APPELLANT

AND

MINEAH WAIRIGU MBUGUA RESPONDENT

AND

DAVID NDIRANGU GITHEIYA INTERESTED PARTY

*(An appeal from the Judgment of the High Court of Kenya at Nairobi
(R. Ougo, J.) dated 19th December 2014 in HCCA No. 25 of 2009)*

JUDGMENT

1. This appeal arises from the judgment of the High Court at Nairobi (R. Ougo, J.) delivered on 19th December 2014 dismissing the appellant's first appeal from a ruling of the Magistrate's Court given on 2nd December 2008. In that ruling, the Magistrate's Court allowed an application by the respondent, Mineh Wairagu Mbugua, dated 29th September 2008 to compel the appellant, Cyrus Komo Chege, to comply with a consent order recorded by the parties.
2. Although the record of appeal before us does not contain the originating pleadings and is jumbled up, what we gather from the scanty material available is that the appellant instituted Civil Case No. 155 of 2006 against the respondent before the Magistrate's Court at Kiambu. It appears that in that suit, the appellant sought an order of eviction of the respondent from Plot Number Ndumberi/Rabai/2234 as well as mesne profits on the basis that he was the registered owner of the same having purchased it at a public auction. The respondent in her statement of defence contested the appellant's claim.



3. The suit was however compromised through a letter dated 29th November 2007 addressed to the court and jointly signed by the advocates for both parties, requesting the court to record an order by consent in the following terms:
 - “ 1. By consent the suit land be and has been subdivided into 2 equal portions namely Ndumberi/Riabai/3502 and Ndumberi/Riabai/3503.
 2. By Consent the Plaintiff herein do transfer to the defendant’s husband David Ndirangu the portion known as Ndumberi/Riabai/3502 which contains the residential house and the Defendant do pay to the Plaintiff a sum of Kshs. 1,200,000/= as follows: o Kshs.800,000/= on or before 30th November 2007. o The balance of Kshs.400,000/= to be paid in monthly instalments of Kshs.100,000/= with effect from 10th January 2008 and on the 10th day of each succeeding month thereafter until payment in full.
 3. By Consent the Plaintiff and the Defendant to execute an agreement to reflect the consent herein upon payment of the said Kshs.800,000/=.
 3. By further Consent the defendant to meet all expenses incurred in the subdivision, registration and transfer herein.
 4. That in default of any one of the terms of this Consent the Plaintiff be at liberty to evict the Defendant and all those claiming under her from the suit land without further notice.”
4. That consent was duly adopted by the Magistrate’s Court and an order to that effect made on 30th November 2007. The implementation of the terms of the consent does not appear to have been smooth. There was, for instance, a unilateral attempt by the appellant to vary the purchase price from Kshs. 1,200,000 as provided in the consent, to Kshs.2,500,000 which the respondent resisted. The respondent on her part appears to have had difficulties in securing funding from Equity Bank for the purpose of completing the agreed payments.
5. The respondent moved the court by her application dated 29th September 2008 under Order XX1 Rule 22 of the Civil Procedure Rules seeking orders that any form of execution be stayed until the appellant complies with the consent. The respondent also sought an order directing the appellant to release a copy of the title of the suit property with the sale agreement within 14 days and in default the Executive Officer of the court be authorized to execute all instruments of sale and transfer and upon such transfer, loan proceeds from Equity Bank be paid directly to the appellant.
6. Upon hearing that application, the learned magistrate (R. Mutoka (CM)) delivered her ruling on 2nd December 2008 allowing the application, having found that the appellant had failed to comply with earlier orders of the court to release title documents to the respondent for onward transmission to Equity Bank to enable the respondent to obtain a loan. Subsequently, the respondent applied for and obtained a court order made on 28th January 2009 re-affirming the purchase price of Kshs. 1.2 million in terms of the consent and overruled attempts by the appellant to unilaterally vary the price.
7. Aggrieved by the ruling delivered on 2nd December 2008, the appellant appealed to the High Court on, among other grounds, that in fixing the price at Kshs.1.2 million, the learned magistrate failed to consider the market price or value of the land and failing to appreciate that the consent of 30th November 2007 had lapsed on account of the respondent’s failure to comply with its terms. In her judgment, the subject of this appeal, delivered on 19th December 2014 dismissing the appeal, the



learned Judge noted that the appellant had abandoned his other complaints against the ruling of the Magistrate's Court and the only issue that remained for determination in the appeal "is whether the learned magistrate varied the terms of consent that the parties had." The learned Judge held that the appellant failed to show how the orders of the trial magistrate had varied the consent; that the consent had specific terms that the parties needed to comply with, and the consent had neither been varied or set aside by the parties; and that the appellant's actions frustrated the respondent and made it difficult for her to comply with the terms of the consent.

8. The appellant has challenged the decision of the High Court on the grounds set out in the Memorandum of Appeal which were canvassed before us on 13th May 2025. In the appellant's written submissions on which learned counsel Miss. Waweru relied, it was submitted that the respondent failed to honour the terms of the consent and that the appellant was therefore justified to rescind it and to return the deposit of Kshs. 800,000 that the respondent had paid; and that the Judge failed to appreciate that the appellant was no longer bound by the consent because the respondent had breached it and had failed to make payment in terms of the consent.
9. It was submitted that a court will not interfere with a consent order except in circumstances as would provide for varying or rescinding a contract between parties. Cited in support is the decision of this Court in the case of Housing Company of East Africa Limited vs. Board of Trustees National Social Security Fund & 2 Others [2018] eKLR; and a decision of the Environment and Land Court in the case of John Katiku Wambua vs. Joshua Mbandu Mukii [2017] eKLR.
10. It was submitted further that the learned Judge failed to consider that the value of the suit property continued to appreciate and the initial price had to change; and that since the appellant was no longer bound by the consent, he was at liberty to offer the property at a price to be agreed.
11. Learned counsel for the respondent Miss. Ochieng, holding brief for Mr. Orange, associated with and relied upon submissions made on behalf of the interested party. On behalf of the interested party, David Ndirangu Githeya, learned counsel Mr. Cherongis in his written submissions which he orally highlighted urged that the decision of the High Court should be upheld; that the learned Judge correctly found that the appellant made it difficult and frustrated the respondent in complying with the terms of the consent; that the respondent did not breach the terms of the consent; that the consent provided for a purchase price of Kshs.1.2 million but the appellant tried to "change goal posts by demanding a sum of Kshs. 2.5 million as the purchase price" when the consent had neither been set aside nor varied. It was submitted that the object of the present appeal is "technically meant to set-aside the consent letter dated 29/11/07" through the back door and to shield the appellant from fulfilling his obligations.
12. We have considered the appeal and the submissions. This being a second appeal, the mandate of the Court is confined to matters of law. In our view, the sole issue for determination is whether the learned Judge erred in upholding the decision of the learned Magistrate to the effect that the parties remained bound by the terms of the consent.
13. We have already reproduced above the consent entered into by the parties and recorded as an order of the court. It provided for the sub-division of the suit land into two portions namely Ndumberi/Riabai/3502 and 3503. The appellant was to transfer parcel 3502 to the interested party, who is the respondent's husband. The agreed purchase price was Kshs. 1,200,000 which was clearly stated in the consent, including the mode of payment. The parties agreed to execute a sale agreement to reflect the terms of the consent. A provision was included providing that the appellant would be at liberty to evict the respondent if there was default on any one of the terms of the consent, and it would appear the



appellant had threatened to do so prompting the respondent to move the magistrate#s court to stay execution.

14. There is material in the record before us showing that the appellant attempted to renege from the consent and considered himself no longer bound by it. For instance, in a letter dated 15th December 2008, the appellant#s advocates informed the respondent#s advocates that the appellant was “not bound by the said consent since it lapsed on the 29th November 2007” and that the respondent could be „indulged# to pay a purchase price of Kshs. 2.5 million within ninety days, and went ahead to forward a sale agreement with that price to the respondent#s advocates. The respondent#s advocates protested, maintaining, in a letter dated 6th January 2009 that “the purchase price was agreed at Kshs. 1.2 million and the same formally recorded as an order of the court” stating further that “the said consent order has never been set aside or vacated. It still stands as an order of the court and the same has not lapsed...” They requested the appellant#s advocates to forward “a sale agreement for the agreed purchase price of Kshs.1.2 million.” That did not happen, and the respondent was constrained to move the Magistrate#s court by an application filed on 13th January 2009 seeking “an order does issue confirming the purchase price of the suit property (Ndumberi/Riabai/3502) as Kshs. 1.2 million in terms of the consent recorded and given on 30/11/2007.” Based on that application, the court issued an order on 28th January 2009 (page 52 of the record) ordering that “the purchase price of the suit property is Kshs. 1.2 million in terms of the consent recorded and given on 30/11/07” and the respondent condemned to meet the costs of that application.
15. Based on the foregoing, the conclusion by the learned Judge that the appellant#s action frustrated and made it difficult for the respondent to comply with the terms of the consent is well founded. There is merit in the submissions by counsel for the respondent that this appeal is yet another attempt by the appellant to escape his obligations under the terms of the consent.
16. The appeal lacks merit. It is dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2025.

S. GATEMBU KAIRU, FCIArb, C.Arb.

.....
JUDGE OF APPEAL MUMBI NGUGI

.....
JUDGE OF APPEAL

W. KORIR

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

