



Muiruri t/a Mururi Auto Parts & 5 others v Kihumo Property Developers (K) Ltd (Environment and Land Case 945 of 2016) [2025] KEELC 8397 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8397 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 945 OF 2016
CA OCHIENG, J
DECEMBER 3, 2025**

BETWEEN

JOHN KAGECHU MUIRURI T/A MURURI AUTO PARTS 1ST PLAINTIFF

**RICHARD KIMANI WAHINYA T/A MARKHAN ENTERPRISES 2ND
PLAINTIFF**

ROYAL TYRES LTD 3RD PLAINTIFF

WAMBUA MUSA KANYEGE T/A SAVULAI TYRES 4TH PLAINTIFF

PETER KIOKO MAKAU T/A KIKO AUTO TYRES 5TH PLAINTIFF

PATEL AUTOMOBILE HOUSE LIMITED 6TH PLAINTIFF

AND

KIHUMO PROPERTY DEVELOPERS (K) LTD DEFENDANT

RULING

1. Judgement was entered for the Defendant in this matter on 28th September, 2023. It appears that the Defendant had even commenced execution proceedings when the 5th Plaintiff filed the Notice of Motion application dated 2nd April 2025 which is for determination. He seeks the following Orders:
 1. Spent.
 2. Spent.
 3. That the judgement and decree herein be set aside and this case be heard de-novo.
 4. That in the alternative to (3) above, the decree herein be rectified to correctly compute the interest and costs payable by the 5th Plaintiff.
 5. That costs of this application be provided for.



2. The application is premised on grounds on its face and on the 5th Plaintiff's supporting affidavit. He avers that on 18th March 2025, he got a call from a representative of Nextgen Auctioneers who informed him that he had Warrants of Attachment to execute against him and he proceeded to proclaim his motor vehicle registration Number KCA 413U. Subsequently, he instructed messrs Robert Muthama & Associates Advocates who discovered there's a judgement in this matter yet he did not file this suit and had not been served with hearing notices, notice of entry of judgement, Bill of Costs, Taxation notice or any other pleading and was not aware of the matter at all.
3. He contends that the Decree herein is defective as the interest has been erroneously computed at Kshs. 139,229/= instead of Kshs. 28,000/= as per the Defendant's application for execution. Further, that the Decree is also defective for reason that it purports to erroneously recover the taxed costs of kshs.681,161/= from each of the Plaintiffs whereas the same ought to be apportioned equally amongst them.
4. The application is opposed by the Defendants who filed Grounds of Opposition and a replying affidavit sworn by its Director, Francis Maina Mwangi. He avers that all the Plaintiffs including the 5th Plaintiff filed this suit through their advocates Messrs Wabuyabo Lukoba & Co Advocates and at paragraph 5 of their Plaint dated 26th July 2016, the 5th Plaintiff indicated that his address for service is of care of Wabuyabo Lukoba & Co Advocates, which address the Defendant has served all documents appertaining this matter thus his lack of attendance cannot be pinned on the Defendant.
5. He asserts that warrants of attachment were legally procured in Court as per its Decree derived from the judgement thus it has no errors as claimed. Further, that the instant application lacks merit and is an attempt to waste Court's judicial time and deny the Defendant justice.
6. The 1st to 4th Plaintiffs and the 6th Plaintiff did not participate and the 5th Plaintiff and the Defendant did not file written submissions.

Analysis and Determination

7. Upon consideration of the instant Notice of Motion application including the respective affidavits and Grounds of Opposition, the only issue for determination is whether the judgement issued herein should be set aside and this case be heard de-novo or in the alternative if the Decree herein ought to be rectified to correctly compute the interest as well as costs payable by the 5th Plaintiff.
8. On the first issue, the 5th Plaintiff claims that he was not aware of the suit until auctioneers sought him to execute a Decree issued against the Plaintiffs, thus the judgement entered herein ought to be set aside to allow him to participate. The Defendant opposed the instant application arguing that the Plaintiffs jointly filed this suit and were represented by one advocate who was served with all documents concerning the suit.
9. This Court has discretion to set aside judgement but has to consider sufficient reasons proffered before doing so. In *Anjeli Limited v Kenga Simba & 12 others; Chengo Omar & 19 others (Intended Interested Parties)* [2021] eKLR, it was held that:

“If a party is properly served and opts not to come to court, he can have nobody but himself to blame when judgment is entered against him. Nobody should shun a court proceeding thinking that they will automatically get an order for setting aside the judgment.”
10. In this instance, I note the Plaintiffs who were tenants in the Defendant's building jointly sued the Defendant vide the Plaint dated the 26th July, 2016. The Defendant filed a Defence and Counterclaim



seeking orders of vacant possession, eviction and mesne profits. The Court after hearing the matter entered Judgement in favour of the Defendant as against the Plaintiffs on the 28th September, 2023.

11. The 5th Plaintiff has denied knowledge of this suit but has not proffered any affidavit from their Advocate confirming that he did not instruct him. I note the other Plaintiffs did not participate in the instant application. From the judgement I note each Plaintiff was directed to pay a particular amount to the Defendant. It is my considered view that the 5th Plaintiff who was ably represented by an Advocate now seeks to evade settling his portion of the decretal sum and now claims he did not have knowledge of the instant suit. In the foregoing, I find that the 5th Plaintiff has not tendered plausible reason to warrant the setting aside of a regular judgement and will decline to do so.
12. On the alternative prayer, the 5th Plaintiff seeks for the rectification of the Decree on the basis that interest sought against him has been erroneously computed at Kshs. 139,229/= instead of kshs. 28,000/= and that the Decree purports to erroneously recover the taxed costs of kshs.681, 161/= from each of the Plaintiffs whereas the same ought to be apportioned equally amongst them. On this issue, the Defendant maintains that the Decree is drawn as per the judgement of this Court.
13. This Court has power to correct clerical or arithmetical mistakes in a Decree pursuant to Section 99 of the Civil Procedure Act. In *Nguruman Limited v Attorney General & Another* 2021|eKLR, the court cited the holding in *Vallabhadas Karsandas Kaniga Vs. Mansukhlal Jivraj and Others* [1965] EA 780, where the East African Court of Appeal held that:

“Section 3 (2) of the Appellate Jurisdiction Act confers on the Court of Appeal the same jurisdiction to amend judgments, decrees and orders that the High Court has under section 99 of the Civil Procedure Act, making it unnecessary to look to the inherent powers of the court. The words at any time” in section 99 clearly allow the Power of amendment to be exercised after the issue of a formal order...“Slip orders” made to rectify omissions resulting from the failure of counsel to ask for costs and other matters to which their clients are entitled.....A court will only apply the slip rules where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention...”
14. On perusal of the application for execution of the Decree, I note that the decretal sum against the 5th Plaintiff is apportioned as follows: Kshs. 200,000/= with interest @ 12% from 3rd January, 2024 to 21st November 2024 amounting to Kshs. 28,000/=. However, from the Warrant of Attachment against the 5th Plaintiff, the figure is indicated as Kshs. 1,023,390.65. I find that the figure awarded in the Judgement and the Warrant of Attachment including the Application for execution of Decree do not tally. In that regard while associating myself with the decision cited, I proceed to set aside the Warrant of Attachment of Decree dated the 18th March, 2025, addressed to the 5th Plaintiff and direct that the same be re issued with the correct decretal sum.
15. In the foregoing, I find the instant Notice of Motion application partially successful and will allow prayer (4) only and direct that the Decree herein be rectified to correctly compute the interest and costs payable by the 5th Plaintiff.
16. Costs will be in the cause

DATED SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF DECEMBER, 2025

CHRISTINE OCHIENG



JUDGE

In the presence of:

Parties absent

Court assistant: Joan

