

3. Mr. Ndungu deposes that on 31st July 2025, representatives of Moran Auctioneers visited his private office in Gigiri and served a proclamation notice indicating estimated auctioneers' fees and charges of Kshs. 220,000.00, in addition to an alleged decretal sum of Kshs. 1,983,372.55. He informed them that the decretal sum had already been paid to the advocates acting for the Applicant in 2023 pursuant to court orders issued following a Ruling on setting aside. He states that this was his understanding of the matter, as he rarely received updates from the advocate who had been on record for him.
4. Mr. Ndungu further avers that aside from requesting money from him, the said advocate was primarily engaged by the Applicant's accountant, and as a result, he did not receive most of the correspondence or updates.
5. He states that he only became aware of the alleged non-payment of the decretal sum upon being served with the warrants, which surprised him, given his prompt compliance and respect for court directives, as evidenced by the deposit of the decretal sum in accordance with letters from Wesonga & Masinde Advocates.
6. Mr. Ndungu further explains that due to his limited knowledge of the appeal process, applications for setting aside, and the law generally, he instructed his current advocates to stop the impending sale and clarify the true position.

7. He asserts that, to the best of his knowledge, the advocates for both the Claimant and the Applicant had received the decretal sum pursuant to the court's initial Ruling, which required the funds to be deposited in an interest-earning escrow account or with the court for release upon delivery of judgment. In such circumstances, the Applicant would not be exposed to execution proceedings.
8. Mr. Ndungu deposes that following the proclamation, he attempted to engage Wesonga Masinde & Co. Advocates, who confirmed the true position and indicated that they would address the matter with the Claimant's advocates.
9. He adds that in his communications with the said firm regarding payment of the decretal sum and costs, he consistently reiterated that the funds were to be deposited in an interest-earning account or with the court.
10. Mr. Ndungu states that he approached the Court as a last resort, as the assets in his private office were at risk of attachment despite his consistent compliance with the law.
11. He further asserts that the proclamation is unlawful because the decree being executed is over one year old, having been extracted on 20th March 2024, and

that the execution process therefore contravenes the express provisions of Order 22 Rule 18 of the Civil Procedure Rules.

12. Mr. Ndungu maintains that the Applicant had already deposited the decretal sum in court pursuant to instructions from counsel following the Court's ruling of 3rd May 2023, which set aside the interlocutory judgment entered in default of appearance.

13. He contends that the proclaimed goods do not belong to the Applicant but to a natural person, and therefore the doctrine of separate legal personality applies.

14. He further maintains that counsel for the Claimant is aware that the decretal amount was paid to Wesonga Masinde & Co. Advocates, and that the instructions issued to the auctioneers are thus malicious.

15. In response to the Notice of Motion, the Claimant herein, **Maria Angeline Wanjiru Gatahi**, filed a Replying Affidavit sworn on 4th September 2025 in which she avers that the Applicant has made no effort to settle the decretal sum despite her requests and attempts to execute the decree.

16. She further states that this Court has never issued any orders or directions requiring the decretal amount, or any other monies, to be deposited in court or

in a joint interest-earning account in the names of the parties' advocates. Consequently, no such deposit has been made by the Applicant either in court or in any joint interest-earning account.

17. She deposes, on the advice of her counsel, which she believes to be true, that although Order 22 Rule 18 of the Civil Procedure Rules requires issuance of a notice to show cause where a decree is more than one year old, the decree in this matter is less than one year old. She notes that the decree was issued on 29th October 2024, while judgment was delivered on 24th March 2024.

18. She further avers that on 31st July 2025, a proclamation was made over the Applicant's movable goods by Moran Auctioneers in execution of the decree of this Court, at the Applicant's premises located on LR No. 7558/52, Gigiri, Gigiri Road, Nairobi, which is the Applicant's registered address according to the Registrar of Companies.

19. She asserts that the proclaimed goods belong to the Applicant, as they are located at its registered office according to the records held by the Registrar of Companies, and not to an individual, as claimed by the Applicant.

20. She contends that the Applicant has not produced any evidence before the Court to show that the proclaimed goods belong to any person other than the Applicant.

21. She further deposes, on the advice of counsel which she believes to be true, that although the Applicant alleges having paid part of the decretal sum to Wesonga Masinde & Co. Advocates, who allegedly failed to remit the funds to her or her advocates, the Applicant has made no attempt to seek redress before the Advocates Complaints Tribunal, which has jurisdiction to hear and determine complaints of professional misconduct against advocates.

22. Ms. Gatahi also avers, based on legal advice she believes to be true, that while the Applicant's allegations against Wesonga Masinde & Co. Advocates may amount to criminal culpability, the Applicant has neither lodged a complaint with investigative authorities nor sought redress before a court with jurisdiction over criminal matters.

23. She maintains that the allegations made by the Applicant concerning funds allegedly advanced to its former advocates do not absolve the Applicant of its legal obligation to satisfy the judgment and decree of this Court.

24. In a rejoinder, Mr. Ndung'u filed a Further Affidavit sworn on 9th September 2025 on behalf of the Applicant, in which he avers that the Applicant's former advocate had consistently indicated to him that the decretal sum demanded from him was to be deposited in an escrow or joint account with the firm representing the Applicant. He states that it is therefore shocking that Mullomi & Company Advocates now deny this position.

25. Mr. Ndung'u asserts that the said firm was fully aware of these arrangements and has been further notified of the same through these proceedings. He terms it untenable for the firm to suggest that he never paid the decretal sum, when evidence clearly shows that he made the payment over two years ago. He adds, on the advice of his current advocates, which he believes to be true, that he cannot be vexed twice over the same issue, as this would amount to an abuse of the court process.

26. He maintains that he was unaware of the decree in this matter until he was served with the proclamation notices on 31st July 2025. He explains that he had no cause for concern because he firmly believed, based on correspondence from Wesonga Masinde & Co. Advocates, that he had settled the outstanding sums.

27. He further avers that he was never served with a decree by Mullomi & Co. Advocates, nor was he ever notified by Wesonga Masinde & Co. Advocates of any outstanding decree.

28. He also states that his current advocates have ascertained from the e-filing system that the same auctioneers purported to seek and obtain warrants on 28th April 2025 in respect of a decree dated 22nd June 2022 for Kshs. 2,282,917.55, a decree which is over three years old.

29. Mr. Ndung'u further contends that the premises referred to in the Claimant's Replying Affidavit are his personal property and do not belong to the Applicant, which is a separate legal entity. He adds that the premises constitute his private office and should not form the subject of these proceedings.

30. He asserts that it is the professional duty of auctioneers to attach only property belonging to a judgment debtor, and that attaching third-party property amounts to professional misconduct.

31. Mr. Ndung'u adds that several other companies use his private office address solely for liaison and compliance purposes, but the property within the premises belongs to him personally and not to the Applicant.

32.He further avers that the premises sit on land he personally owns, and all items therein are his personal property and therefore cannot be lawfully proclaimed in an attempt to recover the decretal amount allegedly owed by the Applicant.

33.Mr. Ndung'u explains that he saw no need to report the matter to the police or the Advocates' Complaints Commission, as the documentation he has placed before this Court indicates that the funds were intended to be held in an interest-earning escrow account as per the letter dated 10th May 2023.

34.He maintains that the auctioneers, acting at the Claimant's behest, have abused the court process by attempting to execute a decree issued in 2022, which had already been set aside by the Court.

35.In response to the Applicant's Further Affidavit, the Claimant filed a Supplementary Affidavit sworn on 29th September 2025, in which she avers that neither she nor her advocate is privy to the communications between the Applicant and the firm of Wesonga Masinde & Co. Advocates, as those communications were not copied to them and constitute privileged advocate-client correspondence.

36.She further states that the Applicant, through its advocate, was duly notified of the judgment and decree and has on several occasions promised to settle the decretal amount.

37. Ms. Gatahi asserts that after the Applicant failed to honour repeated promises to pay, she filed an application, through her counsel, seeking warrants of attachment and sale of movable property. She maintains that to date, not a single cent of the decretal sum of Kshs. 1,983,372.55 has been paid by the Applicant, despite its claim that it remitted Kshs. 1,500,000/- to its former advocates.

38. She further avers that multiple attempts were made to execute the warrants through Moran Auctioneers, but these were unsuccessful due to resistance by the Applicant, thereby necessitating the filing of the Notice of Motion dated 28th April 2025 seeking break-in orders.

39. She states that the said application came up for hearing on 14th May 2025 before Hon. Justice Stephen Radido, when counsel for the Applicant informed the Court that interest on the decretal sum had been miscalculated and that the Applicant was willing to settle the decretal sum once the correct computation was made.

40. The Court thereafter recalculated the interest and issued fresh warrants of attachment and execution on 23rd July 2025.

41. Ms. Gatahi avers that following the proclamation, her advocates received a letter from the Applicant's advocates dated 5th August 2025 requesting to be allowed to settle the decretal amount by 5th September 2025. She states that, to date, no payment whatsoever has been received from the Applicant.

42. She further avers, on the advice of her counsel, which she believes to be true, that although the Applicant alleges paying Kshs. 1,500,000/- to Wesonga Masinde & Co. Advocates, no such funds have been remitted to her or her advocates. She adds that the Applicant has refused to seek redress before the Advocates' Complaints Tribunal, the body vested with jurisdiction to determine complaints of professional misconduct against advocates.

Submissions

43. The Application was canvassed by way of written submissions. The Court has duly considered the parties' respective submissions.

Analysis and Determination

44. Flowing from the record, the Court has isolated the following issues for determination:

a) Whether the decree sought to be executed is more than one year old;

- b) Whether the goods listed in the schedule of movable property in the proclamation notice belong to the Applicant; and*
- c) Whether the Applicant has settled the decretal amount.*

Whether the decree sought to be executed is more than one year old

45. The Applicant has challenged the execution process on the basis that the decree under execution is more than one year old, asserting that it was extracted on 20th March 2024, and therefore offends the provisions of Order 22 Rule 18 of the Civil Procedure Rules.

46. Order 22 Rule 18(1)(a) of the Civil Procedure Rules provides that where an application for execution is made more than one year after the issuance of a decree, the Court must issue a notice to show cause to the person against whom execution is sought.

47. In this case, the record shows that the decree was issued on 29th October 2024, contrary to the Applicant's assertion that it was issued on 20th March 2024. Notably, 20th March 2024, is in fact the date on which judgment was delivered.

48. In light of the foregoing, it is clear that the decree is less than one year old, seeing that the warrants of attachment were issued on 23rd July 2025. Consequently, the execution process does not contravene Order 22 Rule 18 of the Civil Procedure Rules.

Whether the goods listed in the schedule of movable property in the proclamation notice belong to the Applicant

49. Mr. Ndung'u, avers on behalf of the Applicant that the proclaimed goods are his personal property and do not belong to the Applicant, which is a separate legal entity from him.

50. Mr. Ndung'u, who swore affidavits on behalf of the Applicant, has consistently maintained that the premises referenced in the Claimant's Replying Affidavits are his personal property and not that of the Applicant.

51. The Claimant, on the other hand, asserts that the proclamation of the movable goods was carried out by the auctioneers at the Applicant's premises located at L.R. No. 7558/52, Gigiri, Gigiri Road, Nairobi, which is the Applicant's registered address according to records held by the Registrar of Companies.

52. In support of her assertions, the Claimant attached to her Affidavit a copy of the Applicant's CR12, showing its registered address as Gigiri, Gigiri Road Building, L.R. No. 7558/52.

53. It is further noted that the CR12 annexed to Mr. Ndung'u's Further Affidavit indicates that the registered office of a different company, Homes and Commercial Holdings Limited, is situated at Gigiri Road, Building L.R. No. 7258/52. This is clearly distinct from the Applicant's registered office as reflected in its own CR12.

54. In addition to the foregoing, it is instructive to note that neither Mr. Ndung'u nor any other person alleging wrongful attachment instituted objection proceedings as required under Order 22 Rule 51 of the Civil Procedure Rules.

55. It is essential to note that Order 22 Rule 51 obliges an Objector to adduce evidence demonstrating that, at the time of attachment, they held a legal or equitable interest in the attached property.

56. Accordingly, the Court finds that in the present case, there is no evidence to establish that the proclaimed goods listed in the schedule of movable property

in the proclamation notice belong to any other person or entity than the Applicant.

Whether the Applicant has settled the decretal amount

57. The Applicant contends that, pursuant to a Ruling delivered by this Court on 3rd May 2023, it deposited the decretal sum in court in accordance with instructions from its former advocates, Wesonga Masinde & Co. Advocates, who indicated that the funds would be held in a joint interest-earning account in the names of the advocates representing both parties. On this basis, the Applicant maintains that the decretal sum was duly paid. This position, however, has been strongly disputed by the Claimant.

58. The record bears that the matter initially proceeded before Hon. Justice Nzioki wa Makau in the absence of the Applicant, who had not yet entered an appearance or filed a defence at the time. Subsequently, on 22nd June 2022, the Court delivered judgment in favour of the Claimant, awarding Kshs. 1,529,259.55, together with the costs of the suit and interest.

59. Subsequently, the Applicant filed a Notice of Motion dated 29th November 2022, seeking to set aside the Court's judgment and all consequential orders, and also prayed for leave to file a defence.

60. In a Ruling delivered on 3rd May 2023, the Court allowed the Applicant's application as follows:

“The court grants the stay sought and sets aside its judgment entered on 22nd June 2022, as well as all subsequent decrees and warrants issued. The costs of this application and the ensuing costs on execution will abide the outcome of the hearing to be held before another court. The property of the Respondent subject of any attachment be released immediately and unconditionally.”

61. As can be discerned from the Court's Ruling delivered on 3rd May 2023, the Court did not direct the parties to deposit the decretal sum into a joint interest-earning account. More importantly, the Court did not impose any condition for the Applicant to be permitted to defend the matter. Consequently, the assertions made by the Applicant in its affidavits are unsupported by the Court record.

62. To support its claims, the Applicant attached to Mr. Ndung'u's Affidavits copies of correspondence exchanged between the Applicant and its former advocates, Wesonga Masinde & Co. Advocates.

63. In a letter whose date is unclear, the said Advocates addressed the Applicant, advising that the Court had allowed their application dated 29th November 2022 in a Ruling delivered on 10th May 2023 and ordered that:

“1.....

2. The Respondent shall, within fourteen (14) days from the date hereof, furnish or cause to be furnished the decretal sum, in an interest earning account to be opened in a reputable bank in the Republic of Kenya in the joint names of the advocates on record pending the hearing and determination of this case.

3. That in default of 2, the Claimant be at liberty to execute the decree in Milimani ELRC No. E484 of 2020.”

64. The Court has no record of any Ruling delivered on 10th May 2023. Indeed, the Judiciary’s Case Tracking System reflects no activity by the Court on that date.

65. In another letter annexed to Mr. Ndung’u’s affidavit, the Applicant’s former Advocates requested the Applicant to remit the decretal sum of Kshs 1,529,999.00 to their account. In the same letter, the Advocates gave a professional undertaking to hold the funds on behalf of the Applicant pending the hearing and determination of the case, while awaiting the opening of a joint account in the names of the Advocates on record for both parties.

66. It is therefore unclear to the Court on what basis the Applicant's former Advocates advised it to deposit the decretal sum into a joint interest-earning account.

67. From the Claimant's standpoint, neither she nor her Advocate has ever received any portion of the decretal amount from the Applicant or its former Advocates.

68. What's more, there is no evidence on record that the sum of Kshs 1,529,999.00 was transmitted to the Claimant or her Advocate.

69. Further annexed to Mr. Ndung'u's Affidavit is a letter dated 17th October 2024 from the Applicant's former Advocate, V. Masinde, advising that, pursuant to the judgment delivered by the Court on 20th June 2024 (sic), the costs were assessed at Kshs 163,471/-, bringing the total amount due to the Claimant's Advocates to Kshs 1,692,730/-. To this end, the Advocate requested the Applicant to remit an additional sum of Kshs 192,471/-, together with the balance of the Advocate's legal fees, noting that Kshs 1,500,000/- (sic) had already been deposited in Court.

70. Again, there is no evidence on record that the additional sum requested by the Applicant's former Advocates was transmitted to the Claimant or her Advocates.

71. All in all, there is no evidence on record confirming that any part of the decretal sum due to the Claimant was paid by the Applicant either directly or through its Advocates.

72. It is also worth noting that any claim concerning the alleged deposit of Kshs 1,529,259.55 in a joint interest-earning account constitutes a separate matter between the Applicant and its former Advocate.

73. In the interest of equity and justice, and having considered the correspondence from the Applicant's former Advocates regarding the alleged deposit of Kshs 1,529,259.55 in a joint interest-earning account, the Court is inclined to stay execution for 30 days from today. In default execution shall issue.

74. There will be no orders as to costs with respect to this application.

DATED, SIGNED and DELIVERED at NAIROBI this 1st day of December 2025

.....
STELLA RUTTO

JUDGE

In the presence of:

Mr. Mullomi for the Claimant/Respondent
No appearance for the Respondent/Applicant
Mohammed Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective

which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL