



Diversity Microcredit Limited & another v Michuki & 3 others (Civil Appeal E028 & E045 of 2023 (Consolidated)) [2025] KEHC 19072 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19072 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E028 & E045 OF 2023 (CONSOLIDATED)
FN MUCHEMI, J
DECEMBER 18, 2025**

BETWEEN

DIVERSITY MICROCREDIT LIMITED APPELLANT

AND

ESTHER NJOKI MICHUKI 1ST RESPONDENT

BRAIFUS AUCTIONEERS 2ND RESPONDENT

MOSES MICHUKI NJOKI 3RD RESPONDENT

**AS CONSOLIDATED WITH
CIVIL APPEAL E045 OF 2023**

BETWEEN

BRAIFUS AUCTIONEERS APPELLANT

AND

ESTHER NJOKI MICHUKI 1ST RESPONDENT

DIVERSITY MICROFINANCE LTD 2ND RESPONDENT

MOSES MICHUKI 3RD RESPONDENT

RULING

1. The application for determination dated 11th August 2025 seeks for orders of stay of execution in respect of the judgment delivered by this court on 24th April 2025 as well as for orders of setting aside the warrants of sale of property in execution of decree dated 30th July 2025 pending disposal of this application. Prayers 1, 2 and 3 are spent. The applicant further seeks for orders of amendment of the



decree in Civil Case No. 55 of 2020 before the Chief Magistrate's Court at Thika to conform with the judgment dated 24th April 2025 or in the alternative the release of Kshs. 400,000/- of the security already deposited with the court to satisfy the award of the said judgment and the balance to be released to them.

2. The respondents opposed the application but filed submissions instead of replying affidavits.

Applicant's Case

3. The applicant states that it filed a substantive appeal upon which the Honourable Court granted stay of execution on condition security of Kshs. 600,000/- being deposited with the court. The appeal was heard and determined and the Honourable Court substituted the lower court award of Kshs. 1,200,000/- to Kshs. 400,000/- in favour of the 1st respondent vide its judgment on 24th April 2025. The applicant states that it is on the verge of being auctioned pursuant to a Warrant of Sale of Property in execution of decree for money dated 30th July 2025 and a proclamation notice dated 4th August 2025. Furthermore, the said proclamation notice is issued on the basis of an erroneous warrant of sale of property which computes the decretal sum at Kshs. 555,347/-.
4. The applicant argues that the security deposited is sufficient to meet the amount awarded and hence the involvement of an auctioneer is unnecessary and unwarranted. No prejudice shall be occasioned to the respondents if the orders sought are granted.
5. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

6. The applicant submits that an order issue for the release of Kshs. 400,000/- to the 1st respondent and the balance to be paid out to it through the firm of M/s Kirubi Mwangi Ben & Co. Advocates.

The 1st & 3rd Respondent's Submissions

7. The 1st and 3rd respondents submit that the firm of Mwangi Nduati & Co. Advocates is improperly on record as the 1st appellant was always represented by the firm of M/s Kirubi Mwangi Ben & Co. Advocates.

The Law

Whether the application has merit.

8. The appeal herein emanates from the judgment in Thika Chief Magistrate Court Civil Case No. 55 of 2020 delivered on 8/11/2023. The two appeals, Civil Appeal No. E028 of 2023 and No. E045 of 2023 were consolidated and the court rendered its judgment on 24th April 2025. As I have already stated, prayers 1, 2 and 3 have been spent. The court proceeds with determination of prayers 4, 5, 6 and 7 of the application.
9. Concerning prayer 5 for amendment of the decree of the lower court following the judgment of the appeal, the Deputy Registrar is hereby directed to deal with the issue which is rather an administrative one rather than one of determination.
10. The court on appeal reduced the award of general damages from KSh.1,200,000/= to Ksh.400,000/=. The 1st appellant had deposited Ksh.600,000/= as security for costs in court before the appeal was heard. Due to the change of the amount of general damages payable, it is right and fitting the



Ksh.400,000/= be released to the 1st respondent to settle the decree while the balance of Ksh.200,000 be released to the 1st appellant.

11. I find this application successful and make the following orders:-

- a. That Ksh.400,000/= from the deposit of security made in this appeal be released to the 1st respondent.
- b. That Ksh.200,000/= be released to the 1st appellant through its advocates M/s Kirubi Mwangi Ben & Co. Advocates.
- c. That each party to meet their own costs of this application.

12. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 18TH DAY OF DECEMBER 2025.

F. MUCHEMI

JUDGE

