



GN Thiong’o Advocates v Mailua Estates Limited (Miscellaneous Civil Application E436 of 2022) [2026] KEHC 254 (KLR) (Civ) (20 January 2026) (Ruling)

Neutral citation: [2026] KEHC 254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E436 OF 2022
SN MUTUKU, J
JANUARY 20, 2026**

BETWEEN

GN THIONG’O ADVOCATES APPLICANT

AND

MAILUA ESTATES LIMITED RESPONDENT

RULING

1. For analysis and determination are two (2) applications, the Notice of Motion dated 30.06.2025 (the first application). This Application is brought under Section 3A of the *Civil Procedure Act* (CPA) and Order 22, Rules 48 and 68 of the Civil Procedure Rules (CPR). It was filed by G.N. Thiong’o Advocates (hereafter the Applicant). It is supported by the grounds laid out on its body and in the Supporting Affidavit sworn by Geoffrey Thiong’o. The Application seeks the following orders:
 - i. That the Applicant/Decree Holder be granted leave to levy execution by way of attachment and sale by Public Auction of 39.66 Hectares as properly prayed for in the filed Form 14, Appendix A Order 22 subject to any directions of this court in the immovable property namely Kajiado/Mailua/38000 Kajiado County to satisfy the decree herein and incidental expenses.
 - ii. That pending the hearing and directions herein prohibitory inhibitive orders be issued prohibiting the Judgment Debtor from transferring or charging, or encumbering or alienating the property in any way and prohibiting all persons from taking any benefit from such purported transfer, charges, encumbrances or alienation and that the prohibitory inhibitions be registered against the title herein.
 - iii. That in its absolute discretion the court be pleased to grant the Decree Holder leave to participate in any process of sale of the land in execution of the decretal sum and that



the Judgment Debtor be condemned to pay any incidental costs arising from the intended attachment.

- iv. That costs be provided for.
2. In the supporting affidavit, it is deposed that judgment was entered in favour of the Applicant against Mailua Estates Limited (the Respondent) on 27.05.2025, pursuant to an Advocate-Client Bill of Costs, thereby resulting in issuance of a decree for the sum of Kshs. 973,555/-.
3. The Applicant has stated that a copy of the draft decree had previously been forwarded to the Respondent through her advocates on 27.05.2025 but that the same did not elicit a response.
4. It is the Applicant's assertion that, to date, the Respondent has not settled the decretal amount and that its investigations into ascertaining the Respondent's assets have established that the latter does not own any known assets save for a parcel of land known as Kajiado/Mailua/38000 comprising 39.66 HA (the subject property) which property is sufficient in satisfying the decretal amount.
5. The Respondent has opposed the first application by way of a Replying Affidavit sworn by its advocate, Beatrice Wairimu Kariuki, on 24.10.2025. The Respondent has denied service of the hearing notice or otherwise being notified of the hearing prior to the entry of judgment in the matter.
6. The Respondent has stated that she has since filed an application seeking a stay of execution of the decree pending the hearing of an application for review dated 20.04.2025 in Kajiado ELC No. 504 of 2017-Mailua Estates Ltd v Pushan Miato And 5 Others (the ELC case) and has further sought a stay of execution pending hearing and determination of a reference dated 14.08.2024 lodged in respect of the taxation proceedings.
7. The Applicant, through Mr. Geoffrey Thiong'o, swore a supplementary affidavit on 28.10.2025 in which he has deposed that the relevant notices were served upon the Respondent's advocate and that the said advocate is misleading this court; that the purported application for review in the ELC case has no connection with the present matter; that the outcome thereof would in no way affect the instant proceedings and that no averments have been brought forward to persuade this court to allow the first application.
8. The second application is Notice of Motion dated 14.10.2025. It was filed by the Respondent and is brought under Sections 1A, 1B, 3, 3A and 6 of *Civil Procedure Act* (CPA) and Order 51 Rule 1 of the Civil Procedure Rules (CPR).
9. The second application is supported by grounds found on its body and in the Supporting Affidavit sworn by the Respondent's advocate, Beatrice Wairimu Kariuki. The Respondent is seeking stay of the first application pending the hearing and determination of the second application and pending the hearing and determination of the application dated 20.04.2025 in the ELC case. The Respondent also seeks to have the reference filed herein to be deemed to be properly on record and be fixed for hearing on a priority basis.
10. In her supporting affidavit, the Respondent's advocate has deposed that vide a ruling delivered on 31.07.2024 the court granted the Respondent leave to file its Reference out of time. That the advocate prepared a draft Reference but the same was not filed due to inadvertence on the part of her personal assistant by way of non-compliance with instructions to file the same. That, the supporting affidavit to the Reference was filed in the absence of the application to which the Applicant responded and that, the Respondent's advocate was not aware that the Reference was never filed.



11. It is further deposed that a proper Reference has since been filed, hence the prayer to the court to deem the Reference to be properly on record and that the Reference be equally determined before the first application.
12. It is the advocate's assertion that the Respondent has filed an application for review dated 20.04.2025 in the ELC case, the outcome of which will have a bearing on the taxation proceedings in this matter and that parties were scheduled to attend the ELC on 8.12.2025 for purposes of taking a ruling date on the said application. The Respondent has urged this court to allow the first application be stayed pending determination of both the Reference and the application for review.
13. In opposing the second application, the Applicant, through Mr. Geoffrey Thiong'o, swore a replying affidavit on 21.10.2025 on behalf of the Applicant, in which he has deposed that the Respondent fully participated in the taxation proceedings herein; that following the ruling on taxation, a Certificate of Taxation was duly issued followed by entry of judgment; that even after the Respondent was granted leave by the court on 31.07.2025 to file a Reference within 14 days thereof, this was not done; that the question of extension of time within which to file a Reference cannot be re-litigated before this court at this juncture and that there has been a delay of over one (1) year since leave was granted for the Respondent to file a Reference out of time.
14. The Applicant has maintained that there is no nexus between the application for review before the ELC and these proceedings and that it has not been demonstrated that the two (2) proceedings are related in any manner.

Written Submissions

15. The two (2) applications were canvassed simultaneously, by way of written submissions. Submitting in support of the first application, the Applicant has reiterated that the Respondent has all along been aware of the existence of the decree by virtue of having been served, but has failed to satisfy the same. The Applicant relied on the case of *Muyuma v Kaveva & another* [2025] KEELC 680 (KLR) where it was held that execution ought to derive from a valid decree. The Applicant also relied on the case of *Regional Container Freight Station Limited & 2 others v Zum Zum Investment Limited* [2023] KEHC 20196 (KLR) where the court held the same view as in the *Muyuma* case, that in order for a sale of property to be effected, there must be in existence a valid decree.
16. It is the Applicant's submission that it has fully complied with the law pertaining to attachment of immovable property and that in the absence of any contrary material, the court ought to exercise its discretion in allowing the first application as prayed.
17. In opposing the first application, the Respondent has anchored its submissions on Order 42, Rule 6 of the CPR on a stay of execution pending appeal coupled with the principles for granting a stay of execution as laid out in the case of *Antoine Ndiaye v African Virtual University* [2015] KEHC 6783 (KLR). The Respondent has reiterated the averments that it was unaware of entry of judgment in this matter and that if the first application is allowed rather than stayed, the Respondent stands to lose the subject property and may not be able to recover it from the Applicant upon its sale and that, the Respondent is willing to deposit the decretal sum as security, pending hearing and determination of her relevant applications.
18. Regarding the second application, the Respondent has contended that the omission to file a Reference within the timelines given by the court was purely the fault or mistake on the part of its advocate, for which the Respondent should not be punished. The Respondent cited the decision in *Patriotic Guards Ltd v James Kipchirchir Sambu* [2018] KECA 799 (KLR) where the court reasoned that an honest



inadvertence on the part of counsel should not hinder the exercise of judicial discretion in favour of a party and that in the present case, it has not been demonstrated that any mistake on the part of the Respondent's advocate was intended to delay or defeat justice.

19. The Respondent has urged this court to consider the overriding objective under the CPA and to exercise its discretion in allowing the second application, as prayed.
20. In opposing the second application, the Applicant has contended that the Respondent did not comply with the timelines set by the court on 31.07.2024 requiring it to file a Reference within 14 days thereof, which prompted the Applicant to file an application dated 30.06.2025 seeking entry of judgment. That the Respondent did not respond to the said application or participate in the hearing thereof, despite service. That in the circumstances, the Respondent cannot be heard to seek a further extension over one (1) year later, to enable it file its Reference out of time.
21. It is the Applicant's contention that the Respondent herein has not shown sufficient cause to warrant the exercise of this court's discretion in its favour. The Applicant relied on *Sujal Construction Ltd v Medicross Kenya Ltd* [2025] KEHC 4478 (KLR) where the court held that the term 'sufficient cause' ought to be considered in tandem with judicial principles.
22. The Applicant submitted that no connection exists between the review application filed in the ELC case and this matter, warranting the order sought. For those reasons, the Applicant has urged that the second application should do succeed and the first application should be dismissed with costs.

Analysis and Determination

23. I have considered the two (2) applications and the grounds advanced in support of each application. I will determine the second application first. The arguments by the Respondent in respect of the second application is that its outcome will impact the taxation proceedings herein and that unless the orders sought are granted, the application for review and the Reference herein will be rendered nugatory. The Applicant has, on the other hand, maintained that there is no correlation between the two (2) matters and hence there is no basis upon which to stay the proceedings in respect of the first application.
24. I have perused the record of the court file. I have not come across any material indicating that the application for review filed in the ELC would have a bearing or effect on the present matter, especially given the fact that the taxation proceedings have concluded and judgment was entered on the taxed costs, which judgment has not been set aside.
25. It is my considered view, therefore, that the Respondent has not demonstrated, by way of any cogent evidence, the manner in which the outcome of the application for review would necessarily impact the proceedings of this matter at this stage, in order to necessitate a stay of the first application which seeks to execute the decree issued herein.
26. Having fully considered the arguments of both parties in respect of the second application and the material presented before this court as well as my reading of the record of the court, it is my finding that the Respondent has not demonstrated that it deserves the order for stay of the first application.
27. The second prayer in the second application seeks an order that the Reference filed in this matter be deemed to be properly on record and be fixed for hearing on a priority basis.
28. I have considered the arguments by the Respondent that the inadvertence on the part of its advocate and/or her employees, led to non-filing of the Reference and that the absence of such Reference was only later discovered. I have also considered the argument by the Applicant who has faulted the Respondent for its non-compliance with the court order to file the Reference within 14 days.



29. I have noted from the record, that there is no dispute that following delivery of the ruling on 22.05.2023 in respect of the Applicant’s Advocate-Client Bill of Costs dated 1.07.2022 in this matter, a Certificate of Taxation was issued on 6.06.2023 for the taxed costs of Kshs. 973,555/-. The Applicant moved the court by way of an application dated 3.07.2023 seeking entry of judgment in respect of the taxed costs. Upon service thereof, the Respondent filed an application dated 11.10.2023 seeking inter alia an enlargement of time to enable it file a reference out of time. The application was opposed by the Applicant. Upon consideration thereof, the court, through a ruling delivered on 31.07.2024, granted the Respondent leave to file its Reference out of time and directed that the same be filed within 14 days from that day.
30. From the record, the Respondent did not comply with the above directives. The record shows that the Respondent filed a supporting affidavit sworn by its Managing Director, Stephen Waigwa Murage on 13.08.2024. In the absence of any Reference, the supporting affidavit could not be sustained.
31. Going by the record, it is apparent that the Respondent did not comply with the timelines set by the court to file a Reference within 14 days. The Respondent filed a Reference on or about 14.10.2025 alongside the second application. It seems to me that this action by the Respondent and/or its advocate was only prompted by the execution proceedings here.
32. In my view, while it is a legal principle that the inadvertence of an advocate ought not to be visited upon the client, it cannot be overlooked that there is a span of over one (1) year between the time the Respondent was granted leave to file a Reference out of time and the filing of the second application. There is also nothing on the record to indicate any exercise of diligence or any efforts made on the part of the Respondent and/or its advocate, in complying with the directions given on 31.07.2024 or at all during the one (1) year period. I am not persuaded by the explanation given for non-compliance or the delay in filing the Reference.
33. To my mind, the actions by the Respondent and/or its advocate of filing the Reference this late constitute an afterthought and an abuse of the court process, which should not be condoned by this court. I refer to Section 3A of the CPA which reserves the inherent power of the court “to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court.”
34. I also refer to the Court of Appeal decision in *Rose Njoki King’au & Another v Shaba Trustees Limited & Another* [2018] eKLR where the Court stated that:
- “ Also cited was Section 3A of the *Civil Procedure Act* which enshrines the inherent power of the Court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court. In *Equity Bank Ltd versus West Link Mbo Limited* [2013], eKLR, Musinga, JA stated inter alia, that, by “inherent power” it means that
- “Courts of law exist to administer justice and in so doing, they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure that the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without its being derived from *the Constitution* or statute. Such power enables the judiciary to deliver on their constitutional mandate.....inherent power is therefore the natural or essential power conferred upon the court irrespective of any conferment of discretion.”
35. In the absence of any sufficient cause therefore, I decline to exercise my discretion in favour of the Respondent. The prayer seeking to regularize the Reference dated 13.08.2025 and filed on 14.10.2025 is similarly declined.



36. Consequently, the second application is hereby dismissed with costs to the Applicant.
37. In respect to the first application, the Applicant has argued that the Respondent was served with the requisite documents and despite being aware of the existence of the decree, has not satisfied the same to date. The Applicant has further stated that the sole asset known to belong to the Respondent is the subject property, which the former now seeks to sell. The above was denied by the Respondent, in the manner earlier set out.
38. From my reading of the court record, I have noted that the Respondent participated in the taxation proceedings at all material times and was further granted leave by the court on 31.07.2024 to file a Reference but did not comply with the directions of the court.
39. Court record shows that the Applicant pursued its application dated 3.07.2023 seeking entry of judgment. The Applicant has availed various affidavits of service sworn by process server Justus Kilima on 12.03.2025 (Annexure “GT 1”); 30.04.2025 (Annexure “GT 2”); 24.07.2025 (Annexure “GT 3”), annexed to the supplementary affidavit of Geoffrey Thiong’o, supporting the assertions that the Respondent was served with the various notices pertaining to the matter, through its advocate, and was therefore notified as and when the matter came up in court.
40. Court record further shows that this court entered judgment in favour of the Applicant on 28.05.2025 on the taxed costs of Kshs. 973,555/- thereby resulting in a decree. It is also apparent from the record that the Respondent’s advocate was served with a copy of the draft decree through her email address and vide a letter dated 27.05.2025 but that correspondence did not elicit a response. The referenced letter accompanied by the draft decree are annexed to the supporting affidavit of Geoffrey Thiong’o as Annexure “GT 1.” In the circumstances, I am satisfied that the Respondent was adequately notified and cannot therefore purport that it was not served with notices before entry of judgment and issuance of the decree.
41. Order 22, Rules 48 and 68 of the CPR, which are the key provisions under which the first application rides. Order 22, Rule 48 provides as follows:
- (1) Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.
 - (2) A copy of the order shall be affixed on a conspicuous part of the property.
42. Order 22, Rule 68 expresses that orders authorizing the attachment of immovable property in execution of a decree may be issued by any court.
43. Upon my consideration of the above provisions, I wish to consider the principles for consideration in determining whether to grant an order for the sale of immovable property, as set out in the case of *Regional Container Freight Station Limited & 2 others v Zum Zum Investment Limited* [2023] KEHC 20196 (KLR) cited in the Applicant’s submissions, thus:

“In a nutshell, there can be no sale without:-

- a. An order given by the court for attachment of property, pursuant to Order 22 Rule 48,
- b. An order of the court supervising the sale,



- c. An order for sale of immovable property,
- d. Safeguards to the judgment debtor and third parties.
- e. Existence of a valid decree.”

44. On the question of a valid decree, I have already established the existence of a valid decree as mentioned hereinabove. There is also nothing to indicate that the Respondent has satisfied the decree whether in part or in full, which goes to show that the decretal amount is still owing.
45. Further to the foregoing, and on the subject of Order 22, Rule 48 which provides for inhibition and prohibitory orders, it is apparent that the Applicant has sought a prohibitory order or an inhibition as pertains to the subject property.
46. Suffice it to say that, it is clear from the foregoing principles that the process of sale of immovable property ought to be supervised by the court and that the judgment debtor and third parties (if any) ought to have their interest safeguarded through the process.
47. In the present instance, I noted that no material was tendered to ascertain the true value of the subject property, even though the Applicant has stated that the same is sufficient to satisfy the decretal amount.
48. Courts have previously held that a valuation is a necessary and crucial process in the attachment process of immovable property. This position was restated by the court in the case of *Data Guard Distributors Limited v Virginia Njeri Kigo & 3 others* [2019] KEHC 8053 (KLR) cited in *Regional Container Freight Station Limited & 2 others v Zum Zum Investment Limited*, above in which the court stated as follows:

“I have considered these provisions of law and I find that indeed under Rule 68 referred to above, an immovable property may be sold by an order of the court in execution of a decree. However, this sale must be under the supervision of the court. The general conduct of a sale would require that, the property be first valued to ascertain whether it is viable to order for a sale taking into account the amount of the decree.

The Applicants have sought that the Honourable court do issue the prohibitory order issued over property known as Nairobi Block 76/516 Buruburu. They have then sought that the court sets a date for sale of that property alongside two others known as Nyandarua/Tulaga/1893, LR No 12715/8854 Syokimau. However, they depose that any property that a prohibitory order was issued against was Nairobi Block 76/516 Buruburu. In that case, the only property that can become a subject of attachment is the one against which the prohibitory order was issued.

In that regard, I allow the application herein in terms of prayer (1) and order that the property Nairobi Block 76/516 Buru Buru be subjected to evaluation by each party independently and/or jointly to enable the court give further orders as to, the manner of the sale and the dates thereof.”

49. In the absence of any indication as to the actual value of the subject property, I am hesitant to grant any orders permitting sale of the subject property at this juncture. Consequently, I find that the first application partially succeeds and the following orders are issued:
- i. The Notice of Motion dated 14.10.2025 is hereby dismissed with costs.



- ii. The Notice of Motion dated 30.06.2025 is hereby allowed in terms of prayer (ii) and a prohibitory inhibitive order be and is hereby issued prohibiting the Respondent from transferring or charging, or encumbering or alienating the property known as Kajiado/Mailua/38000 comprising 39.66 hectares in any way and prohibiting all persons from taking any benefit from such purported transfer, charges, encumbrances or alienation and that the prohibitory inhibition be registered against the title herein.
- iii. The property known as Kajiado/Mailua/38000 comprising 39.66 hectares shall be subjected to valuation by each party either independently or jointly to enable the court to issue orders and directions on the manner and process of the sale.
- iv. The Respondent shall pay the costs of both applications to the Applicant.

50. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF JANUARY 2026.

S. N. MUTUKU

JUDGE

In the presence of:

Mr. Siagi for the Applicant

Ms Kariuki for the Respondent

