

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL APPEAL NO. E250 OF 2025

COLLINS ODENY ACHOLA T/A

SWEETING BUTTER (K) LIMITED.....
.....APPELLANT

VERSUS

ROSE MERAB AOKO.....
RESPONDENT

RULING

1. The Applicant’s Notice of Motion dated 29th January, 2026 is expressed to be brought under *Section 42(2)* of the *Civil Procedure Act*, *Order 42 Rule 6* and *Order 22 Rule 22(2)* of the *Civil Procedure* and seeks the following orders:

a. *[Spent]*.

b. *[Spent]*.

c. *[Spent]*.

d. THAT this Honourable Court be pleased to issue an order directing the Officer in Charge of the Kisumu Women’s Prison to immediately release the Appellant from civil jail pending the hearing and determination of this appeal.

e. THAT the costs of this application abide the outcome of the appeal.

2. The grounds upon which the Applicant relies are that the Appellant was previously committed to civil jail for 30 days from 5th August, 2024 in respect of the decretal amount arising from the judgment of the lower court, and was subsequently re-committed to civil jail on 29th January, 2026 over the same debt in contravention of *Section 42(2)* of the *Civil Procedure Act*, yet the said provision expressly bars the re-arrest or re-commitment of a judgment debtor under a decree in execution of which he has already served a term of imprisonment.

3. The Applicant contends that the continued incarceration is therefore unlawful and infringes upon his right to freedom under *Article 29* of the *Constitution*, particularly as he is currently in custody and each day spent in detention constitutes an irreparable loss of liberty.

4. The Applicant further relies on the ground that the appeal raises a *bona fide* jurisdictional challenge, namely that the lower court acted without jurisdiction as the dispute between the parties was a shareholder dispute falling within the exclusive jurisdiction of the High Court, rendering the committal order a nullity. He avers that he has been making sporadic payments towards the decretal sum despite a harsh economic environment and the collapse of the business in which he and the Respondent were co-directors due to internal wrangles.

5. The Applicant maintains that the jurisdictional issue merits determination by the High Court and undertakes to abide by such conditions as this Honourable Court may impose.
6. The application is supported by the Applicant's affidavit sworn on 29th January, 2026.
7. The Applicant avers in his supporting affidavit that following judgment in the lower court, he was committed to civil jail for 30 days from 5th August, 2024 and has annexed a copy of the committal warrant. He explains that at the time, he was acting in person and was unaware that shareholder disputes fall within the exclusive jurisdiction of the High Court, as later advised by his advocates.
8. The Applicant states in his affidavit that the dispute between himself and the Respondent arose from their relationship as co-directors of Sweeting Butter (K) Limited, and that despite business challenges occasioned by the harsh economic environment and internal shareholder wrangles, he continued making payments towards the decretal sum. He has annexed to his affidavit the ruling of the trial court.
9. The Applicant further avers that notwithstanding his explanation of the prevailing challenges, the trial court issued a second warrant of arrest which was executed on the night of 27th January, 2026 leading to his arrest in a humiliating

manner in the presence of his wife and children. He states that on 8th January, 2026, his advocate informed the court that he had previously been committed to civil jail over the same debt, but the learned Magistrate indicated that she was *functus officio* and that only the High Court could intervene.

10. In his further depositions, the Appellant states that despite his advocate's protests, he was again committed to civil jail over the same debt in contravention of *Section 42(2)* of the *Civil Procedure Act*, which prohibits the re-arrest of a judgment debtor under a decree for which he has already served a term of imprisonment.

11. The Applicant deposes that his appeal is primarily founded on the ground that the lower court acted without jurisdiction, as the dispute between the parties was a shareholder dispute falling within the exclusive jurisdiction of the High Court, thereby rendering the committal order a nullity. He states that he is currently incarcerated and that each day spent in custody constitutes an irreparable loss of liberty. He further avers, on the advice of counsel, that the jurisdictional challenge raises a *bona fide* issue for determination by the High Court and affirms his willingness to abide by any conditions that this Honourable Court may impose.

12. The Respondent avers in her affidavit sworn on 5th February, 2026 in opposition to the application that judgment

was entered in her favour on 17th July, 2023 in the sum of Kshs. 1,400,000/- together with costs and interest, with costs assessed at Kshs. 178,700/-. She deposes that as at 13th November, 2025 the total decretal amount stood at Kshs. 1,857,333/- and remains wholly unpaid.

13. While confirming that the Applicant was initially committed to civil jail for 30 days from 5th August, 2024, the Respondent states that he was released by consent after undertaking to pay a lump sum of Kshs. 100,000/- and monthly instalments of Kshs. 50,000/- until payment in full, but failed to honour those terms.

14. The Respondent further avers that despite being served with a notice to show cause and subsequent court orders allowing him to liquidate the debt by instalments, the Applicant defaulted, including issuing a cheque of Kshs. 50,000/- which was dishonoured for an inactive account, thereby necessitating the issuance of a further warrant of arrest and his committal to civil jail for a second time on 28th January, 2026.

15. The Respondent contends that the Applicant's committal is lawful and in compliance with *Sections 38, 40 and 42* of the *Civil Procedure Act*, as he did not serve the maximum six-month period during his earlier detention. She asserts that it has been over two and a half years since judgment was

delivered and she has been denied the fruits of her judgment due to the Applicant's persistent non-compliance and repeated applications, which she characterizes as frivolous and intended to frustrate execution.

16. The Respondent denies that she is or was a co-shareholder of the Applicant and disputes the existence of any valid appeal raising triable issues, terming the purported jurisdictional challenge an afterthought designed to evade payment. She further maintains that the Applicant is a person of means, operating a business known as "Sweeting Butter," and has deliberately disobeyed court orders.

17. The Respondent deposes that *Section 42(1)* of the *Civil Procedure Act* allows detention in execution of a decree for a period not exceeding six months. She states that the provision sets the maximum limit of detention to six months, whether it is done by way of one sentence or several sentences, aggregating to a maximum of six months.

18. The Respondent urges in her affidavit that if the Court is inclined to allow the application, it should impose strict conditions, including payment of at least Kshs. 1,000,000/- towards the decretal sum and deposit of the balance in court as security, or in the further alternative, deposit of the entire decretal amount of Kshs. 1,857,333/- as security for due performance of the decree and costs.

19. The Respondent avers that she has suffered substantial loss and expense in pursuing execution and urges the Court not to allow its process to be used to defeat justice.
20. The application was canvassed by way of oral arguments and the parties restated and expounded on their respective positions as set out in the two affidavits.
21. The Applicant relied on the following authorities:
- **Silvance Ojwang Odero v Enock Kiptoo [2014] eKLR**
 - **Henry Shikhonga Wamukoya (Suing as the administrator/legal representative of estate of the late Elphas Wakhule Wamukoya (Deceased) v Makokha Sylvester [2019] KEHC 4506 (KLR).**
22. The Respondent placed reliance on the following decisions:
- **Munyui Kahuha v Ng'ang'a Kahuha [2007] eKLR.**
 - **Innocent G. Ondieki v Julius Nakaya Kabole [2019] KEHC 7647 (KLR).**
 - **Judicial Service Commission v Maxwell Miyawa & 7 others [2018] eKLR.**
 - **New Wide Garments EPZ (K) Limited v Ruth Kanini Kioko [2019] eKLR.**
23. From the foregoing pleadings, depositions and submissions, the issues that arise for determination are as follows:

1. Whether the Applicant's re-committal to civil jail on 28th/29th January, 2026 in respect of the same decree for which he had previously served a 30-day term is contrary to *Section 42(2)* of the *Civil Procedure Act* and whether, in light of *Sections 38, 40 and 42* of the *Civil Procedure Act*, the law permits successive or aggregated periods of detention in civil jail up to a maximum of six months under the same decree.
2. Whether the appeal raises a *bona fide* and arguable jurisdictional issue, namely whether the dispute before the lower court was a shareholder dispute falling within the exclusive jurisdiction of the High Court, and if so, the effect of that finding on the validity of the committal order.
3. Whether the Applicant has satisfied the legal threshold for the grant of an order for release from civil jail pending the hearing and determination of the appeal under *Order 42 Rule 6* and *Order 22 Rule 22(2)* of the *Civil Procedure Rules*.
4. Whether the Applicant's continued incarceration amounts to an unlawful infringement of his constitutional right to liberty under *Article 29* of the *Constitution*.

5. In the event the Court is inclined to grant the orders sought, what conditions, if any, ought to be imposed to secure the due performance of the decree and balance the parties' respective rights.

24. The first issue for determination is whether the Applicant's re-committal to civil jail on 28th/29th January, 2026, in respect of the same decree for which he had previously served a thirty-day term, is contrary to *Section 42(2)* of the *Civil Procedure Act* and whether, in light of *Sections 38, 40 and 42* of the *Civil Procedure Act*, the law permits successive or aggregated periods of detention in civil jail up to a maximum of six months under the same decree.

25. *Section 42(2)* provides as follows:

"A judgment-debtor who has been released from detention under this section shall not, by reason only of such release, be liable to be rearrested under the decree."

26. The Applicant contends that his re-committal contravenes this provision because he had already served thirty days of detention in August 2024.

27. The Respondent argues that the re-committal is lawful, relying on *Section 42(1)* and *Section 43(4)* of the *Civil Procedure Act*, which permit cumulative detention under the same decree up to a maximum of six months in the aggregate.

She further relies on the binding effect of the parties' consent, whereby the Applicant bound himself to pay the decretal amount by instalments.

28. In analyzing the authorities cited by the parties, the Court observes that the Applicant relied on **Silvance Ojwang Odero v Enock Kiptoo [2014] eKLR** and **Henry Shikhonga Wamukoya v Makokha Sylvester [2019] KEHC 4506**. These cases, however, are distinguishable as they did not address the issue of detention in civil jail but generally deal with the issue of security for costs under *Order 42 Rule 14*. They are not relevant, to that extent, to the application before this court.

29. The Respondent cited **Munyui Kahuha v Ng'ang'a Kahuha [2007] eKLR**, **Innocent G. Ondieki v Julius Nakaya Kabole [2019] KEHC 7647**, **Judicial Service Commission v Maxwell Miyawa & 7 others [2018] eKLR** and **New Wide Garments EPZ (K) Limited v Ruth Kanini Kioko [2019] eKLR**, which collectively affirm that committal to civil jail in enforcement of a decree is lawful so long as the detention does not exceed six months in the aggregate and the underlying decree remains unsatisfied. These cases support the principle that successive committals under the same decree are permissible until the maximum statutory period is reached.

30. In *Munyui Kahuha* the Court held that successive committals are lawful if the aggregate period does not exceed six months. The Court stated as follows in that case:

“A judgment-debtor may be detained in civil jail for successive periods under the same decree, so long as the aggregate detention does not exceed the statutory maximum. Partial service of the detention term does not immunize the debtor from lawful recommittal.”

31. Similarly, in *New Wide Garments EPZ* the Court reiterated that partial detention under a decree does not preclude further committal until the statutory ceiling is reached.

32. *Section 42(1)* of the *Civil Procedure Act* expressly provides that a judgment-debtor may be detained for a period not exceeding six months. *Section 43(4)* clarifies that where multiple periods of detention are served, the aggregate term cannot exceed six months. The provision’s text is as follows:

“43(4). A judgment-debtor released under this section may be rearrested, but the period of his detention in prison shall not in the aggregate exceed that prescribed by Section 42 of this Act.”

33. In the present case, the Applicant had served only thirty days in 2024. The recommittal in January, 2026 for one month

would bring his total detention to approximately two months, which is well within the statutory maximum of six months.

34. Noting further that the parties herein had earlier entered into a consent by which the Applicant undertook to liquidate the decretal sum by way of instalments, which he defaulted on, the Court considers the principle in **Flora Wasike v Destimo Wamboko [1985] KECA 149**, which holds that parties are bound by consent judgments or orders and cannot resile from them absent fraud, misrepresentation or mistake. In that case, the Court of Appeal stated:

“Where a party has voluntarily entered into a consent judgment, the Court will enforce the terms agreed upon. Such a party is bound by the consent and cannot later seek to repudiate it unless there is evidence of fraud, misrepresentation or mistake.”

35. In the present matter, the Applicant voluntarily consented to pay the decretal sum by instalments but defaulted, thereby justifying the issuance of a subsequent warrant of arrest. His re-committal is therefore consistent with the law and the binding nature of the consent.

36. This principle directly supports the Respondent’s position that the Applicant’s recommittal in January, 2026 is lawful.

37. On the first issue, I reach the finding that the re-committal of the Applicant for a further period of thirty days is lawful and does not contravene *Section 42(2)* of the *Civil Procedure Act* as the aggregate period of detention remains well below six months.
38. The second issue for determination is whether the Applicant's contention that the lower court acted without jurisdiction because the dispute arises from a shareholder matter within the exclusive jurisdiction of the High Court renders the committal order invalid.
39. The Applicant asserts that the lower court had no jurisdiction over disputes between co-directors and co-shareholders and that this constitutes a *bona fide* jurisdictional challenge justifying his release from civil jail.
40. The Respondent, in opposition, denies that she is a co-shareholder and disputes the characterization of the matter as a shareholder dispute. She maintains that the decree arose from a contractual obligation, enforceable by the lower court and that the Applicant's jurisdictional objection is merely an afterthought intended to delay enforcement.
41. The law is settled that a party raising a jurisdictional challenge must demonstrate a *prima facie* case that the court lacked jurisdiction and that such challenge is not frivolous or

designed to frustrate execution. In ***Republic v Mohamed Ibrahim Abdalla & 2 others [2012] eKLR***, the Court held

“Jurisdictional objections must be bona fide and supported by evidence. A claim of lack of jurisdiction cannot be used as a shield to evade compliance with a valid decree.”

42. The persuasion I have is that while jurisdictional issues are of serious consequence, their mere assertion does not automatically suspend the enforcement of a validly issued court order.

43. In the present matter, the Applicant’s assertion is that the dispute is a shareholder matter under the *Companies Act* and thus exclusively triable by the High Court.

44. However, the Respondent’s affidavit asserts that the underlying dispute concerns the payment of a debt arising from a contractual obligation and does not involve the determination of shareholder rights or corporate governance issues. The decree is therefore enforceable in the lower court as a monetary judgment.

45. The principle established in ***Flora Wasike*** is also relevant. As I have stated above, the Court of Appeal emphasized that parties are bound by consent agreements. My view is that a subsequent claim of jurisdictional defect cannot be a means of

non-satisfaction of a decree and execution of a valid monetary decree may proceed even where the debtor raises a jurisdictional objection. The issue of jurisdiction is one, in the present case, to be addressed on appeal as the alleged shareholder element is collateral and does not affect the validity of the committal order at this stage.

46. It follows that the Applicant's jurisdictional challenge does not entitle him to release from civil jail pending determination of the appeal. The committal order remains valid and lawful and the statutory provisions permitting successive detention up to six months apply notwithstanding the jurisdictional contention.

47. The third issue for determination is whether the Applicant has satisfied the legal threshold for an order of release from civil jail pending the hearing and determination of his appeal under *Order 42 Rule 6* and *Order 22 Rule 22(2)* of the *Civil Procedure Rules*.

48. *Order 42 Rule 6* provides that the Court may grant temporary relief or stay of execution pending appeal, where it considers it just and equitable, and where appropriate conditions are imposed to protect the interests of the decree-holder.

49. Similarly, *Order 22 Rule 22(2)* allows for the release of a person detained under a committal order pending appeal, subject to conditions that ensure compliance with the decree.

50. Once a Judgement Debtor is committed to civil jail, the threshold for release from civil jail pending appeal is high. The Applicant must demonstrate a *bona fide* appeal with a substantial prospect of success, willingness and ability to comply with conditions that protect the decree-holder, that the release will not prejudice the decree-holder or render the decree ineffectual.

51. This principle was articulated in **Republic v Mohamed Ibrahim Abdalla & 2 others [2012] eKLR**, where the Court held:

“A person seeking release pending appeal must demonstrate that the appeal raises a real issue for determination and that release will not prejudice the decree-holder.”

52. In the present case, the Applicant merely contends that the appeal raises a jurisdictional issue, namely that the dispute between himself and the Respondent is a shareholder matter falling within the exclusive jurisdiction of the High Court.

53. However, as found above, the Court is satisfied that the lower court had jurisdiction to issue the monetary decree and

the alleged shareholder issue is collateral. The appeal therefore does not raise a *bona fide* issue likely to result in the overturning of the committal order.

54. Further, the Respondent has demonstrated that the Applicant has defaulted repeatedly on payments under the consent order. Despite being served with notices and court orders, he has failed to honour instalment payments, including issuing a dishonoured cheque. His conduct shows a pattern of non-compliance and deliberate delay, which undermines his claim for release pending appeal.

55. We have seen above in **Flora Wasike** that a party who voluntarily enters into a consent is bound by it and cannot rely on subsequent claims or objections to evade enforcement unless fraud, misrepresentation or mistake is demonstrated. In this matter, the Applicant has not shown any of these exceptional circumstances.

56. The Court further observes that release from civil jail pending appeal is not a matter of right. It is discretionary and discretion is exercised in light of the need to protect the decree-holder's rights.

57. The Court must weigh the Applicant's right to liberty against the potential prejudice to the decree-holder. Here, unconditional release would undermine the enforcement of a

valid decree, given the Applicant's history of non-compliance despite entering into a consent arrangement.

58. The Applicant has also not offered satisfactory security or payment towards the decretal sum that would mitigate the risk of prejudice to the Respondent. The Respondent has demanded either substantial upfront payment or deposit of the balance in court, reflecting the reality that the decree remains largely unpaid and the Applicant's repeated defaults necessitate strict measures to protect the Respondent's rights.

59. The fourth issue for determination is whether the Applicant's continued incarceration amounts to an unlawful infringement of his constitutional right to liberty under *Article 29 of the Constitution*.

60. While *Article 29* protects every person from arbitrary deprivation of freedom, the right is not absolute and may be limited in accordance with the law. The *Civil Procedure Act*, particularly *Sections 38, 40 and 42*, expressly authorizes committal to civil jail as a lawful mode of execution of a monetary decree, subject to procedural safeguards and a statutory maximum period of detention.

61. In the present case, the Applicant was committed pursuant to a valid court order, after due process and for a period well within the statutory ceiling of six months in the aggregate. His

detention therefore arises from lawful judicial process rather than arbitrary state action.

62. Further, *Article 24* of the *Constitution* permits the limitation of rights and fundamental freedoms where such limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The enforcement of court decrees is a legitimate objective aimed at upholding the rule of law and protecting the rights of successful litigants to enjoy the fruits of their judgments.

63. Committal to civil jail, when exercised within statutory limits and subject to judicial oversight, constitutes a constitutionally permissible limitation of liberty. Accordingly, the Applicant's continued incarceration, being grounded in valid statutory authority and judicial process, does not contravene *Article 29* of the *Constitution*.

64. In the result, I reach the persuasion that the Applicant has not demonstrated that he meets the legal threshold for release from civil jail pending appeal.

65. All said, the application dated 29th January, 2026 lacks merit and is dismissed. The Applicant shall remain in lawful custody for the 30-day period as re-committed until such time as the decretal sum is paid or further lawful orders are made by the Court.

66. Costs of this application shall abide the outcome of the appeal, as the parties are contesting substantive rights under the decree.

DELIVERED (virtually), DATED & SIGNED this 13th day of February, 2026.

JOE M. OMIDO.
JUDGE

FOR APPLICANT: **Mr. Jeji.**

FOR RESPONDENT: **Mr. Wangoda.**

COURT ASSISTANTS: **Mr. Ngoge & Mr. Juma.**

Court: The appeal to be mentioned on 26th February, 2026 before the Deputy Registrar.