



REPUBLIC OF KENYA



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**Kinyua v Catholic Diocese of Maralal (Thru' the Registered Trustees) & another
(Cause E044 of 2022) [2026] KEELRC 325 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 325 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E044 OF 2022
AN MWAURE, J
FEBRUARY 6, 2026**

BETWEEN

DAVID GICHINI KINYUA CLAIMANT

AND

**THE CATHOLIC DIOCESE OF MARALAL (THRU' THE REGISTERED
TRUSTEES) 1ST RESPONDENT**

**FR STEVE LEKASUYAN THE ADMINISTRATO CATHOLIC DIOCESE OF
MARALAL 2ND RESPONDENT**

RULING

Introduction

1. The Respondents/Applicants filed a Notice of Motion dated 7th November 2025 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. An interim order of stay of execution and sale do issue restraining the Claimant/Respondent and Pay Day Auctioneers or others claiming through or under them from advertising, disposing, selling, transferring, alienating, or otherwise dealing with the 1st Respondent/Applicant's motor vehicle registration KAH 877V or any other property of the Respondents/Applicants pending the inter-partes hearing and determination of this application.
 3. The Claimant and/or his agents, Pay Day Auctioneers and any other party claiming through them, be and are hereby directed to forthwith and unconditionally release the 1st Respondent/Applicant's motor vehicle registration number KAH 877V pending the hearing and determination of this application.



4. This Honourable Court be pleased to set aside/expunge the warrants of attachment dated 7th October 2025, the full amount owing to the Claimant/Respondent having been settled, and the 1st and 2nd Respondents/Applicants be discharged.
5. The costs of this application be borne by the Claimant/Respondent in any event.
2. The application is brought to be expressed under Rules 44, 45 and 47 of the Employment and Labour Relations Court(Procedure) Rules, 2024 and all other enabling provisions of the law.

Respondent/Applicant's supporting affidavit

3. The application is supported by the affidavit of RT Rev. Bishop Hieronymus E. Joya, the Respondent's Bishop.
4. The deponent avers that he was appointed Bishop of the Catholic Diocese of Maralal in July 2022 and consecrated in October 2022, having previously served as a Consolata Priest.
5. The deponent states that auctioneers, acting on behalf of the Claimant/Respondent, illegally attached the Respondent/Applicant's motor vehicle despite the decretal sum and auctioneer's fees having already been settled.
6. The deponent avers that the court had issued warrants of attachment amounting to Kshs.2,890,574/= against it.
7. The deponent avers that warrants of attachment were issued following a judgment of 15th February 2024, where the Claimant/Applicant was initially awarded Kshs.2,089,350/= plus costs and interest, later reviewed upward to Kshs. 2,221,350/=.
8. The deponent avers that a decree was issued confirming payment subject to statutory deductions, and after taxation of costs and computation of interest, warrants of execution for Kshs.2,890,574/= were issued in October 2025.
9. The deponent avers that it then engaged with the Kenya Revenue Authority to compute statutory deductions totalling Kshs.988,945/=
10. The deponent avers that it was surprised when Pay Day Auctioneers, acting on instructions from the Claimant/Respondent's advocates, impounded the Respondent/Applicant's motor vehicle registration number KAH 877V, alleging non-payment of Kshs.932,966.90/=, despite this amount having already been remitted to the Kenya Revenue Authority as statutory deductions.
11. The deponent avers that since the full decretal sum and auctioneer's fees had been settled, the attachment of the vehicle was irregular, unlawful, and baseless.
12. Consequently, the application has been filed without unreasonable delay, in the interest of justice, the court grants the said interim stay orders to safeguard the Respondent/Applicant's vehicle pending the hearing and determination of the matter.

Claimant/Respondent's replying affidavit

13. The Claimant/Respondent opposed the application vide replying affidavit dated 24th November 2025.
14. The deponent states that the court delivered judgment in his favour on 15th February 2024, and emphasizes that the respondents fully participated in the hearing and were present when the judgment was issued.



15. The deponent states that his advocates on record then served the Respondents/Applicants via their advocates a demand letter to settle the judgment on 19th July 2024, which the then advocates for the Respondents/Applicant replied, indicating that the Respondents/Applicants were seeking indulgence of 30 days in order to settle the judgment debt.
16. The deponent states that the Respondents/Applicants consistently ignored all post-judgment proceedings and communications, including applications filed in court, taxation of costs, and multiple formal demands for settlement served through their advocates and copied directly to them.
17. Despite repeated reminders over more than a year, the deponent stated that the Respondents/Applicants made no effort to settle any part of the judgment, prompting the issuance of a decree. Even after the decree and ruling on costs were formally served via email, the Respondents/Applicants maintained complete silence and failed to take any action.
18. Due to the Respondents/Applicants' continued silence and failure to settle the decretal amount, the deponent avers that the court issued warrants of attachment authorizing Pay Day Auctioneers to seize and sell their movable property worth Kshs.2,890,574/=.
19. The deponent states that the auctioneers lawfully proclaimed and attached a vehicle, KAH 877V, among other assets, with authority to sell them to recover the outstanding sum.
20. Despite this, the deponent avers that the Respondents/Applicants have defied court orders for nearly two years and have not satisfied the judgment.
21. The deponent stated that the Respondents/Applicants' alleged partial payment to the Kenya Revenue Authority, which is not a party to the case, was viewed as contemptuous and a clear act of defiance against the court.
22. The deponent argues that if the judgment debtor was dissatisfied with the decree or taxed costs, they should have challenged them in court rather than unilaterally altering figures.
23. The deponent emphasized that only the taxing officer and Deputy Registrar have authority to tax costs and prepare decrees, and by deducting large sums from his salary, the debtor improperly assumed this role without legal basis.
24. The deponent states that he has never made such hefty deductions during his employment, and statutory deductions are limited to PAYE, NSSF, SHIF, and AHL, not arbitrary amounts. Finally, the judgment debtor has no mandate to file returns on his income.
25. The deponent states that the Respondents/Applicant have only paid Kshs.1,957,607/= out of the decree amount of Kshs. 2,890,574/= and has therefore refused/declined to pay the remaining balance of Kshs.932,966/= plus the accumulated interest to date.
26. The deponent states that the Respondents/Applicants are reminded that warrants of attachment are binding court orders that must be obeyed fully, without selective compliance. Once issued, the auctioneer is obligated to recover the decretal amount exactly as stated and cannot alter it.
27. The deponent states that communication from the Respondents/Applicants' advocates to the auctioneer, updating on partial payments and outstanding sums, was lawful and necessary to ensure proper execution of the warrants. The only lawful recourse against such orders is through review or appeal to a higher court, and since no such application or appeal exists, seeking to expunge the warrants would amount to the court improperly overturning its own orders, which is not permitted by law.



28. The deponent states that a decree has already been issued by this Honourable court and that decree is still in force to date. The Respondents/Applicants had enough time to challenge the decree of the court after being served with it on 29th September 2025. The Respondents/Applicants cannot be allowed to create their own procedures by partially complying with the court decree, then decide to challenge the decree without any justifiable reasons.
29. The deponent states that the application is incompetent, unlawful, unprocedural, and an abuse of court process, urging the court to dismiss the application with costs.
30. Parties were directed to put in their respective written submissions.

Respondents/Applicants' written submissions

31. The Respondents/Applicants submitted that the court clarified that the decretal sum awarded to the Claimant/Respondent was expressly subject to statutory deductions, as stated both in the judgment and the decree. The Claimant/Respondent's argument that the full amount should have been paid because the warrants of attachment were silent on deductions was deemed erroneous.
32. The Respondents/Applicants submitted that they are legally obligated to deduct statutory amounts such as PAYE, NSSF, SHIF, and AHL from the award and remit them to the Kenya Revenue Authority, which they duly did. Therefore, the Respondents/Applicants submitted that they did not "tax off" the award arbitrarily but complied with the court's clear directive.
33. The Respondent/Applicant submitted that it complied with the judgment and decree by seeking guidance from the Kenya Revenue Authority (KRA) and remitting statutory deductions amounting to Kshs.932,966.97/=, which the Claimant/Respondent now wrongly seeks to recover. Since the decree expressly required statutory deductions, any dispute over them should be directed to KRA, the legally mandated body for tax collection. Section 49(2) of the *Employment Act* makes clear that remedies for unfair termination are subject to statutory deductions, a position affirmed in *Peris Njeri Kinyanjui v Kobo Safaris Ltd [2016] KEELRC 1204(KLR)*. Given that the deductions were lawfully remitted to KRA and evidence provided, the amount deposited in court should be refunded to the Respondents/Applicants.
34. The Respondents/Applicants submitted that under section 27(1) of the *Civil Procedure Act*, costs are discretionary, though they generally follow the event. The applicant showed it was justified in withholding statutory deductions and remitting them to KRA in compliance with the judgment. Since it was the Claimant/Respondent's actions that necessitated the application, the Respondents/Applicants argued that the Claimant/Respondent should bear the costs of the proceedings.
35. The Respondents/Applicants urged the court to allow the application as prayed.

Claimant/Respondent's written submissions

36. The Claimant/Respondent submitted that the application is unlawful and unprocedural for failing to comply with Order 9 Rule 9 of the Civil Procedure Rules, which requires either leave of the court or a consent between outgoing and incoming advocates when changing representation after judgment. The Claimant/Respondent argued that the motion was improperly filed by Githara & Associates Advocates while Chege Kibathi & Co. Advocates LLP remains properly on record, making the filing irregular. Since compliance with Order 9 Rule 9 is mandatory and not a mere technicality, the pleadings by Githara & Associate Advocates are deemed incompetent, and the court is urged to strike out the application for lack of merit.



37. In *Symposia Consult Limited V George Gikere Kaburu and 2 118 (KLR)*, the Court of Appeal held that failure to comply with procedural rules, specifically Order 9 Rule 9 of the Civil Procedure Rules on change of advocates, was fatal to the application. It emphasized that adherence to established procedure is mandatory, likening it to the principle that every game must follow its rules. The court noted that the Respondents/Applicants had previously been represented by another counsel, and since Mr. Mwaniki Njuguna failed to comply with Order 9 Rule 9 of the Civil Procedure Rules on properly coming on record, his representation was invalid. Consequently, the motion was dismissed with costs awarded to the Respondent.
38. The Claimant/Respondent submitted that jurisprudence consistently affirms that compliance with Order 9 Rule 9 of the Civil Procedure Rules is mandatory where a change of advocates occurs after judgment. Courts in cases such as *Monica Moraa V Kenindia Assurance Co. Ltd [2012] KEHC 5510 (KLR)*, *Equator Bottlers Limited v Achieng [2025] KEHC 17882 (KLR)*, *Kithinga & another v Kithinga & Another [2024] KEHC 13672 (KLR)*, *Kenya Petroleum Refineries Limited v Ngoa & 53 Others [2025] KEELC 4241 (KLR)*, and *Eliud Wanjau Mureithi t/a The Job Aqua Drillers v Geoffrey Kilosa Mulwa [2021] KEHC 9731 (KLR)* have struck out applications filed by advocates who came on record without leave of court or consent from outgoing counsel, holding that such firms lack locus standi and their pleadings are fatally defective. The courts have emphasized that Article 159 and the “oxygen principles” cannot be invoked to circumvent procedural rules, as adherence ensures fairness, certainty, and orderly adjudication. In the instant case, since Githara & Associates Advocates neither sought leave nor filed consent to come on record, their notice of motion dated 7th November 2025 is defective and should be struck out with costs.
39. The Claimant/Respondent submitted that the auctioneer acted lawfully in attaching the applicants’ motor vehicle since it had already been proclaimed and the redemption period had lapsed. The Respondent/Applicants, as judgment debtors, were in contempt of court for failing to comply fully with the decree and warrants of attachment, having only made partial payment. Compliance with court orders is mandatory, and if aggrieved, the applicants should have sought a stay or review under Order 45 Rule 1 of the Civil Procedure Rules rather than refusing compliance. The auctioneer followed due process by serving warrants and proclamation notices, and upon continued default, proceeded with attachment. The Respondents/Applicants had been awarded damages and costs for unfair termination, and the Deputy Registrar lawfully taxed the bill, fixing the decretal amount at Kshs. 2,890,574/=, which the applicants were obliged to pay in full. Their claim of paying Kshs.932,966.90/= as tax is unsubstantiated, lacking any breakdown or proof of communication with the Kenya Revenue Authority. Since taxation of costs is the sole preserve of the Deputy Registrar, the applicants’ reliance on alleged tax deductions is baseless. The process of attachment was transparent and lawful, and the motion by the applicants should therefore be dismissed for lack of merit.
40. The Claimant/Respondents relied on section 27 of the *Civil Procedure Act* and the principle that costs follow the event, noting that the applicants’ motion was filed by advocates lacking locus standi and arose solely from the Respondents/Applicants’ failure to comply with warrants of attachment or seek review of court orders.
41. The Claimant/Respondent argued that the vehicle’s attachment and the incompetent application would have been avoided had the applicants adhered to court processes. Accordingly, they pray that the costs of the application be borne jointly and severally by the applicants, and upon dismissal of the motion, that the sum of Kshs. 932,966.90/= deposited in court be released to the respondent through his advocates.



Analysis and determination

42. The court has considered the application, supporting affidavits and rival submissions by both counsel; and court has to determine whether the application is merited.
43. Order 9 Rule 9 of the Civil Procedure Rules provides as follows:
- “When there is a change of advocate, or when a party decides to act in person, having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
- (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
44. In the case of *Kithinga & Another v Kithinga & Another* (Supra) the court held as follows:
- “It must be remembered that the provisions of Order 9 Rule 9 of the Civil Procedure Rules do not impede the right of a party to be represented by an Advocate of his/her choice, but set out the procedure to be adhered to when a party wants to change counsel after judgment has been delivered, so as to avert any undercutting and or chaos. Thus, a party so wishing to change his counsel must notify the Court and other parties.”
45. In *Monica Moraa V Kenindia Assurance Co. Ltd*(supra), the court held as follows:
- “In my view the firm of M/s Kibichiy & Co. Advocates should have sought this courts leave to come on record as acting for the applicant. Order 9 Rule 9 at the Civil Procedure Rules provides as follows:-
- “When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court:-
- a) Upon an application with notice to all the parties; or
 - b) Upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.” [Emphasis is mine].
20. From the above order 9 at rule 9, it is mandatory after judgment has been entered for a new firm of advocates to seek leave to act for a party or file a consent to that effect after delivery of judgment.
21. The firm of M/s Kibichiy & Co. Advocates has not complied with the rules and instead, have just gone ahead and filed a Notice of Appointment without following the laid down procedure. The issue of representation is a vital component of the civil practice, and the courts cannot turn a blind eye to situations where the rules are flagrantly breached.
22. The mischief order 9 of the Civil Procedure Rules intended to address was to protect advocates or firms of advocates being replaced without Notice and without their legal fees being settled.”



46. In this instant case, the initial advocates on record were Chege Kibathi & Co. Advocates, who represented the Respondents/Applicants until judgment was delivered. The firm of Githara & Associates Advocates has filed the present application before seeking orders of the court to come on record and or without consent of the former law firm to take over the case from the said former law firm.
47. The court holds that the firm of Githara & Associates Advocates are not properly on record, as it neither sought leave nor filed a consent to come on record, and it is mandatory after judgment that the incoming advocate should file an application seeking to come on record or file a consent with the outgoing advocates to allow them to represent the party that wants change of representation.
48. In view of this fundamental breach of the Applicant's advocates in contravention of Order 9 rule 9 of the Civil Procedure Rules, the court finds no grounds of dealing with the main application of stay of execution and the other orders prayed. The court's hands are tied by the mandatory proviso of Order 9 Rule 9 of the Civil Procedure Rules. The decisional laws cited hereinbefore also fortify this fact that the court cannot entertain an advocate who is a stranger to the case unfortunately.
49. Having considered the pleadings, submissions and case laws the court is unable to grant the prayers as per the applications hereto dated 7th November 2025. The same is therefore dismissed.
50. Each party will meet the costs of this application.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 6TH DAY OF FEBRUARY, 2026.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

