

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 79 OF 2017

ROSEMARY WANJIRU KUNG'U.....PLAINTIFF/DECREE
HOLDER

VERSUS

PETER WILLIAM KINYANJUI.....DEFENDANT/JUDGMENT
DEBTOR

RULING

Background

1. The Judgment Debtor, Mr. Peter William Kinyanjui, had moved this court to grant orders lifting and/or setting aside the Warrants of Arrest issued on 17/12.2024. He also sought leave and opportunity to show cause in respect of the execution of the decree in this matter.
2. This Court, through a Ruling delivered on 17/12/2025 lifted the Warrants of arrest issued on 17/12/2024 and issued a Notice to Show Cause to the Judgment Debtor why he should not be arrested and committed to civil jai for failing to pay Kshs 2,000,000 or for otherwise failing to settle the outstanding balance of the decretal sum due to the Decree Holder pursuant to the order made on 27/7/2023.

3. The matter was fixed for hearing on 26/1/2026 for the Notice to Show Cause. On that date, the Judgment Debtor and his counsel did not attend court, notwithstanding that the date was taken in their presence. Counsel for the Decree Holder, Mr. Raballa moved the court, successfully, to issue a warrant of arrest against the Judgment Debtor to show cause why he should not be committed to civil jail.
4. On 16/2/2026, the Judgment Debtor was brought to Court under the warrant of arrest and presented before the Deputy Registrar of this Court. Parties consented to having the Judgment Debtor set free on that date on condition that he paid Kshs 500,000 within that day and to attend court before the Judge on 17/2/2026.
5. When parties appeared before me on 17/2/2026, this Court was informed by Mr. Raballa for the Decree Holder that the Judgment Debtor had paid Kshs 500,000 on 17/2/2026 as agreed by the parties and that he could purge the contempt of court by paying a further Kshs 500,000 on 17/2/2026 after which the parties could negotiate on the settlement of the remaining decretal sum in instalments.

6. Mr. Wachira for the Judgment Debtor told the court that his client was not able to pay Kshs 500,000 on 17/2/2026 and can only do so within 30 days. This offer was not acceptable to the Decree Holder. It is this issue that is pending determination.

Determination

7. I have considered this matter. That the decretal sum has not been settled is not in dispute. It is also not in dispute that parties are open to negotiations on how the payment of the decretal sum can be done in acceptable instalments. What is standing in the way of those negotiations, as submitted, is the settlement of Kshs 2,000,000.

8. I have noted, from the records of this court, that through a ruling dated 27/7/2023, the Judgment Debtor was ordered to pay Kshs 2,000,000 to the Decree Holder within 90 days failure to which execution should issue. This is the amount out of which Kshs 1,500,000 is admitted to have been paid to date. The balance of that amount is the reason the Judgment Debtor is seeking 30 days to settle after which

parties can negotiate on how to settle the outstanding balance of the decretal amount.

9. The Judgment Debtor has pleaded hard economic times as the reason he is not able to settle the amount owed. The Decree Holder, through her counsel had pleaded that the Judgment Debtor is a man of means and is in a position to pay.

10. I have noted that there is no evidence tabled before this Court to persuade it that the Judgment Debtor is not able to settle the balance of Kshs 2,000,000 or the whole balance of the decretal sum. As it were, this matter has taken time to finalize on the same issue of execution. The Decree Holder has a judgment whose fruits she is not able to enjoy because of the actions of the Judgment Debtor.

11. I have considered the proviso to Section 38 of the Civil Procedure Act, which states that:

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he

should not be committed to prison, the court, for reasons to be recorded in writing, is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree—

(i) (ii) is likely to abscond or leave the local limits of the jurisdiction of the court; or

(ii) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which, by or under any law, or custom having the force of law,

for the time being in force, is exempt from attachment in execution of the decree; or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

12. I am satisfied that the Judgment Debtor was afforded an opportunity to show cause why he should not be committed to civil jail and has failed to show that cause. He has not demonstrated, by cogent evidence, that he is unable to pay the amount owed.

13. After carefully considering the issue before the Court, it is my view that this court ought to bring a stop to this endless issue. I have considered that the Decree Holder is willing to pay for the upkeep of the Judgment Debtor while serving his term in civil jail. I am persuaded that an order for committal of the Judgment Debtor to civil jail for non-payment of the balance of Kshs 500,000 is merited. I will allow the Judgment Debtor 15 days from the date of this Ruling, within which to pay this amount owing, failing which

a warrant of committal of the Judgment Debtor to civil jail for a period of 30 days shall issue without recourse to attend court on the same issue.

14. It is so ordered.

Dated, signed and delivered this 24th day of February 2026.

**S. N. MUTUKU
JUDGE**