

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CIVIL CASE NO. E321 OF 2022

SARONERA

LIMITED.....PLAINTIFF

VERSUS

MOHAMED ABDI WERE.....1ST

DEFENDANT

HUSSEIN HASSAN AMIN.....2ND

DEFENDANT

JOSEPH NAMADA SIMONI.....3RD

DEFENDANT

RULING

1. What is before the Court for determination is the 2nd Defendant's Notice of Motion application dated 20th June 2025 where he seeks the following Orders;

a) Spent.

b) Spent.

c) Spent.

d) The Honourable Court issues an Order setting aside/lifting the Warrants of arrest and detention issued by this Court on 7th November 2023 against the 2nd Defendant/Applicant.

e) The Honourable Court issues any other ancillary Orders as it may deem fit and just in the circumstances.

f) That the Plaintiff/Respondent bears the costs of this Application.

2. The application is premised on grounds on its face and on the 2nd Defendant's supporting affidavit. He avers that the Plaintiff secured warrants of arrest and detention against him, which were issued on 7th November 2023 requiring him to pay Kshs. 13,500,000.00 or risk being committed to civil jail. He contends that the said warrants are defective as they contain deliberate misrepresentation regarding the judgement debt owned, as it stands at Kshs. 7.5 million and that the Court was misled that he has no known assets

capable of being attached through Warrants of Attachment and Sale.

3. He claims that he informed the Plaintiff and this Court that he is the registered proprietor of Properties known as **Kajiado /Ildamat/11438, Kajiado/Ildamat/11439, Kajiado/ Ildamat/ 11440, and Kajiado/Ildamat/ 11441** valued at a forced market value of Ksh 11,900,000.00 and therefore capable of satisfying the decree. He avers that he also disclosed to the Plaintiff that there exists a decree in his favour issued by the Chief Magistrate's Court in **Civil Case No. E278 of 2021** for the payment of Kshs. 11,650,285.00, which is capable of attachment in satisfaction of these proceedings.

4. He insists that despite demonstrating to this Court that there are assets in his name capable of satisfying the Judgement Debt, the Warrants of Attachment and Detention remain in force thus his liberty is in jeopardy and this has caused him including his family immense emotional distress as he may be arrested any time.

5. He contends that arrest and detention is a last resort where all other efforts have failed thus the Plaintiff should first exhaust the available alternatives.
6. He admits that he has not yet secured money capable of satisfying the debt and that his liberty ought not be jeopardized when there are other avenues of satisfying the judgement debt.

Response

7. The application is opposed by the Plaintiff vide a replying affidavit sworn by its director, STEPHEN NJOROGE GIKERA who provides a background of the dispute and highlights the various proceedings herein. He confirms that a balance of kshs.7, 500, 000/= remains unpaid by the 2nd Defendant in satisfaction of the Decree issued herein. Further, that the Plaintiff applied for warrants of attachment but the 2nd Defendant's assets could not be traced for sale in satisfaction

of the debt thus the Plaintiff applied for warrants of arrest and in any case, a Decree holder is at liberty to elect any mode of execution.

8. He contends that the warrants of arrest have expired and cannot be acted on unless renewed. Further, that the 2nd Defendant would have filed an appeal or seek review of the Ruling. He reiterates that instead of paying the Decretal sum, the 2nd Defendant has filed multiple applications. He insists that the application is frivolous and vexatious.
9. The 1st and 3rd Defendants did not file responses to the instant application.
10. The application was canvassed by way of written submissions.

Submissions

11. The Plaintiff submits that the 2nd Defendant/Applicant has failed to demonstrate any legal or factual basis for setting aside or staying the Warrants of Arrest and Detention issued

on 7th November 2023 thus the application appears solely intended to delay and frustrate the enforcement of the Decree.

12. Further, that since warrants of arrest are lawful instruments of execution designed to ensure compliance with Court orders, the discretion to set them aside must be exercised judiciously. On whether the Warrants of Arrest and Detention should be stayed, he submitted that the Plaintiff does not meet the threshold for stay under Order 42 Rule 6(2) of the Civil Procedure (Amendment) Rules, 2020. To buttress its averments, the Plaintiff relied on the following decisions: **Innocent G. Ondieki v Julius Nakaya Kabole [2019] eKLR** and **Chege v Kamau Kinga & Co. Advocates [2025] KEHC 5930 (KLR)**.

13. The 2nd Defendant did not file written submissions.

Analysis and Determination

- 14.** Upon consideration of the instant Notice of Motion application including the respective affidavits and Plaintiff's submissions, the only issue for determination is whether the 2nd Defendant has demonstrated grounds for setting aside or lifting the warrants of arrest issued against him on 7th November 2023.
- 15.** From the record, the Plaintiff and the Defendants entered into a Consent dated 11th May, 2023, by which it was agreed that the Defendants would refund the Plaintiff, Kshs. 20 million by 30th June 2023. The record further indicates that the 2nd Defendant unsuccessfully tried to have the said consent judgment reviewed and warrants of arrest against him stayed.
- 16.** The 2nd Defendant contends that he has disclosed attachable properties and a Decree in his favour capable of attachment and argues that his arrest and detention will not satisfy the Decree herein but it will only take away his liberty.

17. The Plaintiff, on the other hand, contends that it chose to execute the Decree herein by way of warrants of arrest because attempts to trace the 2nd Defendant's assets were unsuccessful and that it is entitled to elect the mode of execution.

18. Execution by way of warrants of arrest is provided for under Section 38 (d) of the Civil Procedure Act , which provides that:

“Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree; (d) by arrest and detention in prison of any person;”

19. This provision further contemplates that where the Decree is for payment of money, execution by detention in prison is not allowed unless the court is satisfied that there is bad faith, deliberate refusal to pay despite ability to do so, or breach of fiduciary duty. In the instant case, the 2nd Defendant is yet to pay the decretal sum or demonstrate how he intends to settle the same, yet he seeks the warrants against him to be lifted.

20.In the case of **Innocent G. Ondiek v Julius Nakaya Kabole [2019] eKLR**, it was held that:

“... the only viable ground of setting aside an order for committal to civil jail, is when the respondent challenges the mode or manner in which the said orders were obtained...”

21.Further, in **Jedida Chepkoech Mutai (Suing as The Legal Representative of the Estate of Julius Kipkorir Mutai (Deceased) v Cherono Beatrice [2018] eKLR**, it was stated that:

“[33] The deprivation of liberty sanctioned by sections 38 and 40 of the Civil Procedure Act is permissible and is not in violation of either the Constitution or ICCPR. The caveat, however, which has been emphasized in all the cases set out above is that before a person can be committed to civil jail for non-payment of a debt, there must be strict adherence to the procedures laid down in the Civil Procedure Act and Rules, which provide the due process safeguards essential to making limitation of the right to

liberty permitted in this case acceptable in a free and democratic society.”

22. Based on the facts before me while relying on the legal provisions cited and associating myself with the decisions quoted, I opine that the 2nd Defendant has not demonstrated good faith to warrant the lifting of the Warrants of arrest against him. I note the Warrants of arrest were issued in November, 2023 yet the 2nd Defendant has not made attempts to settle the remaining decretal sum but instead seems to be filing a myriad of applications to delay the execution process. Further, that the Plaintiff applied for warrants of attachment but the 2nd Defendant's assets could not be traced for sale in satisfaction of the debt thus the Plaintiff applied for warrants of arrest. I opine that in any case, a Decree holder is at liberty to elect any mode of execution. I note the warrants of arrest have since expired and cannot be acted upon unless renewed. Even if the 2nd Defendant has informed parties of the properties he owns, in my view he should have proceeded to dispose of them to settle the said decretal sum.

23. In the foregoing, I find the instant Notice of Motion application unmerited and will dismiss it with costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT
NAIROBI THIS 26TH DAY OF FEBRUARY, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Lilian Opondo for Plaintiff

Ms. Nganga for 2nd Defendant

Wanyagu for Namada for 1st and 3rd Defendants

Court Assistant: Joan