

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO. 193 OF 2007

HUMPHREY NJURU KARANJA

- **APPLICANT**

VS

SUSAN NYOKABI MWANGI

SOLOMON MWANGI KINGORI

[sued as administrators of the estate

Of the late JOHN MWANGI KINGORI

- **1ST RESPONDENT**

COUNTY GOVERNMENT OF NAIROBI

- **2ND**

RESPONDENT

RULING

(In respect of the Appellant's application dated 28/7/25)

1. The motion before me is the one dated 28/7/25, brought under the provisions of Order 22, Rules 48, 55, 55,56, 57 and 59 of the Civil Procedure Rules, seeking orders that the 1st defendant/judgment debtor be granted leave to change the mode of execution from the demolition of the building on LR No **209/4401/717** sandwiched between LR No 209/4401/716 and LR NO 209/4401/718 at the cost of the 1st Defendant to an order for the sale of the building by public auction, to enable the plaintiff/decreed holder to recover the full value of the suit land parcel and mesne profits currently standing at Kshs 82.8 million, plus further costs and interest. Upon granting the said orders, the said building on LR No 209/4401/717 be sold by public auction under an order of the court under the provisions of the Civil Procedure Act, and not limited to Order 22, Rules 48,55, 57, 57 and 59 of the Civil Procedure Rules` and all other enabling provisions of the law.
2. The application is supported by the grounds and the applicant's affidavit, sworn on 28/7/25, which sets out the litigation history of the matter in court. Although the judgment was delivered in 2018, the decree herein has not yet been executed. That 1st Defendant has been

uncooperative in discussing compensation in line with clause 28 d of the judgment. Further, the party and party costs have not been fully paid, 7 years later.

- 3.** He further averred that despite collecting rent of Kshs.900,000/= per month since 2003, the 1st Defendant has refused to pay him mesne profits arising from the said rental income. He has declined to negotiate with the Plaintiff decree holder for alternative compensation to avoid demolition of the building. That he has failed to show cause why the said building should not be demolished in line with the judgment of the court, despite the court accommodating him to put forward his settlement proposals. The frustrations from the 1st Defendant have necessitated the application to change the mode of execution so as to recover both the value of the building and the mesne profits from the 1st Defendant, now standing at Kshs 82.8 Million as per the valuation on record.
- 4.** He added that the 1st Defendant illegally constructed a building on the Plaintiff's property for which the court ordered a demolition of the same at the costs of the 1st Defendant on 6/4/2018.
- 5.** The application is opposed by the vide the Replying Affidavit dated 1/9/2025 sworn by Susan Nyokabi Mwangi, where she deponed that;
 - a.** Following the delivery of the judgment on 6/4/2018, this court is now functus officio. This application seeks to reopen a concluded case.
 - b.** The application seeks to alter the judgment of the court by substituting the order for demolition with an order for sale.
 - c.** The court declined to issue an order for general damages and mesne profits in its judgment.
 - d.** The judgment remains in place and has not been reviewed in respect to the mode of execution.
 - e.** The Plaintiff has cross-appealed against the judgment, which appeal is still pending judgment.

- f.** The Plaintiff has not demonstrated how he arrived at the sum of Kshs 82.8 Million, which was not awarded by the court in its judgment.
 - g.** The multi-storey building extends over the three properties, and it has not been demonstrated how he can sell the said building without selling the other two [lots being parcel 716 and 718], and that the order to sell the building would be illegal and untenable.
 - h.** That she has commissioned a valuer in preparation for negotiation with the Plaintiff
 - g) In preparation of negotiations in the suit, the 1st Defendant valued the property at Kshs.3 Million while the Plaintiff valued it 7.5 Million. That these values should form the basis of any negotiations and not the proposed claim of Kshs.82.8 Million which is without any basis in law.
5. Parties have filed written submissions which I have considered.
6. The key issue for determination is whether the application is merited.
7. It is not in dispute that the court delivered judgment in this case on 6th April, 2018 in the following terms:
- a) It is hereby declared that the Plaintiff, Humprey Njuru Karanja, is the legitimate leasehold proprietor of the 99-year lease in Land Reference Number 209/4401/717 (formerly known as Land Reference Number 209/4401/742) situated in Makadara Estate, Nairobi.
 - b) A permanent injunction is hereby issued restraining the 1st Defendant, together with his agents and servants against dealing in any way or against interfering with the Plaintiff's quiet enjoyment of the suit property.
 - c) The 1st Defendant shall demolish and/or remove all structures erected by him on the suit property. In default, the Plaintiff shall be at liberty to remove them at a cost to be borne by the 1st Defendant.

8. The Plaintiff laments that the 1st Defendant has not been cooperating in the execution of the judgment of the court hence the need to change the mode of execution.
9. The Plaintiff is seeking to sell the building to recover Kshs.82.8 Million being the value of the land and mesne profits which have accrued to the 1st Defendant for the last 7 years.
10. It is not clear to the court how the sum of Kshs.82.8 Million was arrived at. The 1st Defendant led unchallenged affidavit evidence that the subject building was valued at Kshs.7.5 Million and Kshs.3.0 Million by the Plaintiff and the 1st Defendant respectively. In any event the question of sale of the building was to be between the Plaintiff and the 1st Defendant which proposal lapsed within 120 days.
11. It is to be noted that the rights of the parties were determined by the Court in the Judgment of 6th April 2018 in terms of (a) - (c) of the said judgment. The Court ordered that the building be demolished at the cost of the 1st Defendant. Evidently, the recovery of the value of the land and mesne profits in the sum of Kshs.82.8 Million was not part of the said judgment.
12. I concur with the 1st Defendant that the Judgment has not been reviewed to include the Plaintiff's claim. Needless to state that the Plaintiff's claim appears to be a substantive claim brought through an interlocutory application.
13. Further my reading of the judgment at paragraph 27 declined to grant the Plaintiff general and exemplary damages and mesne profits. The Judgment read as follows;

"I now turn to the issue as to what remedies the plaintiff is entitled to. The plaintiff prayed for declaratory, prohibitory and mandatory orders. In addition, he sought general and exemplary damages and mesne profits. While the court's findings on the key question in this suit would entitle the plaintiff to the declaratory, prohibitory and mandatory orders contemplated in prayers (a) (b) and (c) of the Re-Amended Plaint. I do not consider it appropriate to award general

damages, exemplary damages and mesne profits in the circumstances of this case. I say so because there inordinate and unexplained delay on part of the plaintiff in processing title to the suit property. Similarly, there was inordinate delay in taking steps to develop the suit property. It is this delay which made it possible for the 1st Defendant to procure the irregular letter from 2nd Defendant in 1996. The irregular allotment letter culminated in the 1st Defendant encroachment on the suit property. Besides, the first act of encroachment happened in 1997. It thereafter took the Plaintiff ten years to bring this suit. Because of the above indolence on part of the Plaintiff, the Court will not award damages and mesne profits as sought by the Plaintiff.”

14. In my respectful view the suit having been heard and determined to conclusion, this suit cannot be reopened.
15. The Court notes that the parties are before the Court of Appeal on appeal. It is not clear if there is stay of Judgment of the trial court. If the judgment was stayed, the application before Court would be circumventing the stay of execution of judgment.
16. All in all, I have said enough to demonstrate that the application is unmerited. It is dismissed with costs to the 1st Defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS
5TH DAY OF MARCH 2026 VIA MICROSOFT TEAMS.**

**J G KEMEI
JUDGE**

Delivered online in the presence of;

1. Mr. Gaturu for Plaintiff

2. Mr. Mwangi Chege for 1st Defendant
3. N/A for 2nd Defendant
4. C/A - Ms. Yvette Njoroge

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