

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL SUIT NO. 20 OF 2013
KERICHO TECHNICAL
INSTITUTE.....PLAINTIFF/RESPONDENT
VERSUS

**FINMAX COMMUNITY BASED
GROUP.....1st DEFENDANT/APPLICAN
T**

**CHAIRMAN.....2nd
DEFENDANT/APPLICANT**

**TREASURER.....3rd
DEFENDANT/APPLICANT**

**SECRETARY.....4th
DEFENDANT/APPLICANT**

RULING

1. The Applicants/Defendants have moved this Court by way of a Chamber Summons dated 22nd October 2025 expressed to be brought under Rule 11 and 16 of the Advocates (Remuneration) Order, 2014, Section 91 of the Civil Procedure Act, and all other enabling provisions of the law.

2. The Application seeks the following substantive orders:

(i)Spent.

(ii)Spent.

(iii) THAT this Honorable Court be pleased to set aside the

entire decision of the Honorable Taxing Officer delivered

on 22nd October 2025 as far as the same relates to the

process of execution of the refund of the Security for Costs

held by the Plaintiff/Respondent.

(iv) THAT this Honorable Court be pleased to order that the

process of execution of the Refund of the Security of Costs

held by the Plaintiff/Respondent be undertaken by this

Court or the matter be placed before a different Taxing

Master with appropriate directions thereof.

(v) THAT the costs of this application be provided for.

3. The Application is supported by the affidavit of EVALYNE NGENO-KOKO, the 1st Applicant's Legal Services Manager, sworn on even date, and the grounds on the face of the application.

4. The Application is opposed. The Respondent, through its representative SAMUEL KIPRONO SANG, filed a Replying Affidavit sworn on 1st December 2025.

5. The parties did not file written submissions. The Court has carefully considered the pleadings, the annexures, the history of this matter, and the relevant law.

6. To understand the crux of this dispute, a chronology of events is necessary;

- ***On 24th March 2015 Judgment was entered in favor of the Plaintiff/Respondent against the Defendants/Applicants for the sum of Kshs. 11,261,901.28 together with interest and costs. The decretal sum was later tabulated at Kshs. 15,000,000/=.***
- ***In 2017, the Defendants/Applicants lodged an appeal at the Court of Appeal, Nakuru (Civil Appeal No. 120 of 2017). The High Court directed that the entire decretal sum of Kshs. 15,000,000/= be deposited in Court pending the appeal.***
- ***According to the Applicants, the Plaintiff/Respondent had the said amount released to them despite the pending appeal.***
- ***On 19th February 2021, the Court of Appeal delivered its judgment. The appeal was dismissed. Being a money decree, the Respondents became entitled to restitution under Section 91 of the Civil Procedure Act.***
- ***On 26th February 2025, this Court issued an order directing the Plaintiff/Respondent to immediately refund the sum of Kshs. 15,000,000/= to the Applicants.***

- ***On 11th March 2025, the Applicants commenced execution by way of Notice to Show Cause.***
- ***On 9th July 2025, the Deputy Registrar delivered a ruling. From the record, this ruling directed the Applicants to utilize other means of execution other than committal to civil jail. The ruling considered the health of the Plaintiff's representative, Samuel Kiprono Sang.***
- ***On August 2025, the Applicants attempted to execute by way of attachment of property. A Court Bailiff's report revealed that the Plaintiff/Respondent had allegedly transferred most of his movable and immovable properties to his children and cronies, rendering attachment impossible.***
- ***On 14th August 2025, the Applicants filed an application before the Deputy Registrar under Order 22 Rule 35 of the Civil Procedure Rules, seeking to summon the Plaintiff/Respondent to appear in court to explain how he intended to settle the decree.***
- ***On 1st October 2025, the Deputy Registrar delivered a ruling on the said application. She allowed the application, citing Order 22 Rule 35 and the case of Post Bank Credit Limited (In Liquidation) v Nyamangau Holdings Limited [2015] KEHC 5964 (KLR). She ordered the Plaintiff/Respondent to***

appear in court on 22nd October 2025 to be orally examined as to his assets and means of satisfying the decree.

- ***On 22nd October 2025, the Plaintiff/Respondent appeared in court. According to the Applicants, the Deputy Registrar did not proceed with the oral examination. Instead, she "reverted to her Ruling of 9th July 2025," effectively directing the Applicants to use other means of execution, which had already failed). (This ruling is NOT annexed to any of the pleadings).***

7. It is this ruling of 22nd October 2025 that is the subject of the present Application.

8. The Applicants contend that the Deputy Registrar's ruling of 22nd October 2025 has effectively stalled the execution process and made a mockery of the court orders.

9. They argue that the directive to use "other means of execution" is impossible to implement because the Plaintiff has admitted (through the Bailiff's report) to transferring all his assets. The Ruling of 9th July 2025 was rendered moot by these new developments. They also argue that the Deputy Registrar contradicted herself. On 1st October 2025, she found that it was proper to summon the Plaintiff under Order 22 Rule 35. On 22nd October 2025, she failed to follow through on that finding.

10. They contend that the Deputy Registrar failed to make the Plaintiff give a proposal for payment, which was the only issue for determination on that day. They also assert that the Deputy Registrar's actions are causing the parties to go around in circles, with the Plaintiff benefiting from the delays and allege that the Deputy Registrar has demonstrated "open bias and frustration" in having the orders of this Court and the Court of Appeal implemented.

11. They pray that this Court sets aside the ruling of 22nd October 2025 and either takes over the execution process itself or refers the matter to a different Deputy Registrar with appropriate directions.

12. The Respondent, through the Replying Affidavit of Samuel Kiprono Sang sworn on 1st December 2025, opposes the application.

13. His grounds of opposition are;

- ***He confirms and agrees with paragraphs 1 to 6 of the Applicants' Supporting Affidavit, effectively admitting the history of the case up to the Court of Appeal decision.***
- ***He denies transferring assets to escape liability. He claims that if assets were transferred, they were transferred "much earlier in time" before the Applicants began the execution processes.***
- ***He states that he is a "sick old man" and that the Deputy Registrar correctly considered his health in the Ruling of 9th July 2025, hence the prohibition on committal to civil jail. He claims he is still unwell***

and receiving treatment, as evidenced by a Medical Report that is already on record.

- **He argues that the issue of committal to civil jail was already dealt with on 9th July 2025. He claims the Applicants are attempting to relitigate an issue that has already been settled by the Deputy Registrar. He annexes the Ruling of 7th July 2025 as "SKS-01" in support of this contention.**
- **He contends that the Applicants are attempting, "through judicial craft and innovation, to appeal and/or review the decision of this Honourable Court through the instant Application."**
- **He reveals that he has since filed insolvency proceedings. He states he has filed Insolvency Cause No. E001 of 2025 at the High Court in Bomet, and proceedings have already commenced.**

14. Before delving into the merits, the Court must note a significant procedural difficulty. The ruling that is the subject of this Application, the ruling of 22nd October 2025, has not been annexed to any of the pleadings before this Court.

15. The Applicants, in their Supporting Affidavit, have not attached a copy of the impugned ruling. The Respondent, in his Replying Affidavit, has also not attached it. This Court is therefore being asked to set aside a ruling whose contents it has not seen.

16. The evidentiary burden rests on the party challenging a decision to place that decision before the Court. In **Kenya Revenue Authority v Menginya Salim Murgani [2010] eKLR**, the Court of Appeal emphasized that a party challenging a decision must provide the court with the necessary materials to make an informed determination.

17. Without the ruling of 22nd October 2025, this Court cannot;

- ***Know what the Deputy Registrar actually said;***
- ***Determine whether she gave reasons for her decision;***
- ***Assess whether she considered the Applicants' submissions;***
- ***Evaluate whether she properly applied Order 22 Rule 35;***
- ***Ascertain whether she addressed the issue of the Plaintiff's alleged asset transfers.***

18. However, the only account of what transpired on 22nd October 2025 comes from the Applicants' Supporting Affidavit. The Respondent, in his Replying Affidavit, does not deny the Applicants' version of events. He does not state what the Deputy Registrar said or did on that day. He does not explain or justify her actions. He simply raises defenses of health, res judicata, and insolvency.

19. In the absence of a denial, and in the absence of the impugned ruling itself, this Court is inclined to accept the Applicants' account of what transpired. The Respondent had the opportunity to provide the Court with the 22nd October 2025 ruling, but he did not. The inference is that the ruling, if produced, would not support his case.

20. The Court therefore proceeds on the basis that the Applicants' account is accurate; that on 22nd October 2025, the Deputy Registrar failed to conduct the oral examination as ordered on 1st October 2025, and instead reverted to her ruling of 9th July 2025.

21. From the pleadings, the following issues arise for determination;

(a) Whether the Chamber Summons, brought under the Advocates Remuneration Order, is properly before this Court as a challenge against a decision concerning execution.

(b) Whether the Deputy Registrar's ruling of 22nd October 2025 was erroneous in law and principle.

(c) Whether the orders sought in prayers (iii), (iv), and (v) should be granted.

22. The Applicants have invoked the Advocates (Remuneration) Order, specifically Rules 11 and 16. Typically, these provisions govern objections to the taxation of costs. However, the ruling being challenged (22nd October 2025) is not a ruling on taxation of costs; it is a ruling on execution of a decree.

23. The Deputy Registrar, in exercising jurisdiction over execution matters, acts as a judicial officer under the Civil Procedure Act and Rules, not strictly as a Taxing Master under the Advocates Act.

24. The Court of Appeal in **Maseno University Council v Tony Kwena Odera t/a Odera & Associates [2016] eKLR** drew a distinction between the appellate jurisdiction of the High Court over subordinate courts and the supervisory jurisdiction over

registrars. The court stated that the Deputy Registrar of the High Court is not a subordinate court but an officer of the High Court, and her decisions are subject to the supervisory jurisdiction of the High Court.

25. In ***Rachuonyo & Ababu Advocates v National Bank of Kenya Limited [2019] eKLR***, the court held that where a Deputy Registrar makes a decision on taxation, the proper avenue for challenge is a Reference under Rule 11 of the Advocates Remuneration Order. However, where the decision relates to execution, the proper avenue is by way of an application to the High Court in the exercise of supervisory jurisdiction.

26. In the instant case, the impugned decision relates to execution. The proper characterization of this Application is therefore not a "Reference" under the Advocates Remuneration Order, but rather an invocation of this Court's supervisory jurisdiction over the decisions of its registrars.

27. This Court, in the exercise of its inherent power and supervisory role, has the jurisdiction to examine whether a Deputy Registrar has acted within her powers, followed due process, and arrived at a decision that is legally sound. This jurisdiction is derived from Section 5 of the Judicature Act, the inherent power of the court under Section 3A of the Civil Procedure Act, and the supervisory role of the High Court under Article 165(6) of the Constitution.

28. Any procedural defect in citing the Advocates Remuneration Order is hereby cured under Article 159(2)(d) of the Constitution, as it does not go to the substance of the grievance or prejudice the Respondent. The Application is deemed properly before this Court.

29. Having accepted the Applicants' account, the Court must now determine whether the Deputy Registrar's actions amounted to an error of principle warranting intervention.

30. The applicable law is Order 22 Rule 35 of the Civil Procedure Rules, which provides;

"(1) Where a decree is for the payment of money, the court may, on the application of the decree-holder, order that the judgment-debtor... be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree; and the court may further order that any books or documents in the possession of the judgment-debtor and relating to the property or means aforesaid be produced and that any witnesses be summoned."

31. The purpose of this rule is to assist a decree-holder in discovering the assets of a judgment-debtor when other modes of execution have failed or are likely to fail. In ***Post Bank Credit Limited (In Liquidation) v Nyamangau Holdings Limited [2015] KEHC 5964 (KLR)***, the court held:

"The main reason for the application is to call upon the Defendant Company's directors to be orally

examined as to whether any or what debts are owing to the company, and whether the judgment-debtor has any and what property or means of satisfying the decree herein."

32. On 1st October 2025, the Deputy Registrar correctly applied this principle. She found;

- o The Applicants had demonstrated that attachment was impossible because the Plaintiff had allegedly transferred his assets.*
- o Even the Plaintiff's claim of insolvency was unproven and, in any case, did not bar an order for examination under Rule 35 (as per the Post Bank case).*
- o She allowed the application and ordered the Plaintiff to appear on 22nd October 2025 to be examined.*

31. On 22nd October 2025, according to the Applicants' uncontroverted account, the Deputy Registrar did not conduct the examination. Instead, she "reverted to her Ruling of 9th July 2025," which directed the Applicants to use other means of execution.

32. This Court finds that this was an error of principle for the following reasons;

First, the Deputy Registrar failed to appreciate that her ruling of 9th July 2025 had been rendered moot by subsequent events. That ruling contemplated execution by attachment. The Applicants attempted attachment, and it failed because the Plaintiff had allegedly transferred his assets. The very purpose of the August 2025 application was to address this new reality.

Secondly, the Deputy Registrar contradicted her own ruling of 1st October 2025 without any explanation. In that ruling, she had

carefully considered the law and facts and determined that an examination under Order 22 Rule 35 was appropriate. To simply "revert" to the July ruling on 22nd October 2025, without setting aside the October ruling or providing reasons, was arbitrary and amounted to an abuse of judicial discretion.

Thirdly, the Deputy Registrar frustrated the purpose of Order 22 Rule 35. This provision exists precisely to assist decree-holders when other modes of execution have failed. By refusing to conduct the examination, the Deputy Registrar denied the Applicants the only remaining avenue to discover the Plaintiff's assets and facilitate execution.

Fourthly, the Deputy Registrar's actions have resulted in the Applicants being taken in circles. They obtained an order for restitution in 26th February 2025. They have been attempting to execute since March 2025. They have tried NTSC, attachment, and now examination. Each time they encounter a procedural roadblock. This is not what the administration of justice contemplates.

33. The Respondent's defenses, as raised in the Replying Affidavit, do not salvage the Deputy Registrar's ruling;

- ***The examination under Order 22 Rule 35 is not a punishment. It is an information-gathering exercise. It can be conducted at the Respondent's home or in a manner sensitive to his health. The Deputy Registrar could have given appropriate directions,***

but she did not. The Respondent's health does not exempt him from being examined; it merely requires that the examination be conducted in a manner that accommodates his condition.

- ***The Respondent argues that the issue of committal to civil jail was dealt with on 9th July 2025. However, the Application before the Deputy Registrar on 14th August 2025 was not about committal to civil jail. It was about discovery of assets under Order 22 Rule 35. That issue was heard and determined on 1st October 2025 (in favor of the Applicants). Therefore, the issue of whether the Plaintiff should be summoned for examination is not res judicata; it was actually allowed. The doctrine of res judicata does not apply to separate and distinct applications.***
- ***The Respondent claims to have filed Insolvency Cause No. E001 of 2025 at Bomet. He has not provided any evidence of this, no petition, no court order, no document from that file. A mere allegation of insolvency, without proof, cannot defeat execution. Even if insolvency proceedings exist, they do not automatically stay execution, and as held in the Post Bank case, an examination under Rule 35 can still proceed to ascertain the assets of the debtor for the benefit of all creditors.***

34. Having found an error of principle, this Court is entitled to intervene and set aside the impugned ruling.

35. The Court now turns to the specific prayers sought by the Applicants.

36. For the reasons extensively set out above, the Deputy Registrar's ruling of 22nd October 2025 was erroneous in principle. It contradicted her own previous ruling of 1st October 2025 without explanation, failed to give effect to Order 22 Rule 35, and has resulted in the Applicants being taken in circles in their attempt to execute a valid court decree.

37. Accordingly, prayer (iii) is merited and is hereby granted. The ruling of the Deputy Registrar delivered on 22nd October 2025 is set aside.

38. The Applicants have two alternative prayers; that this Court takes over the execution process itself, or that the matter be placed before a different Deputy Registrar with appropriate directions.

39. The Applicants have raised serious concerns about the conduct of the current Deputy Registrar. They allege "open bias and frustration." While this Court makes no finding of bias (as the Deputy Registrar has not been given an opportunity to respond to these allegations), the perception of justice is paramount. The Applicants have lost confidence in the current Deputy Registrar's ability to handle this matter impartially and effectively.

40. In ***Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR***, the Court of Appeal emphasized that justice must not only be done but must manifestly be seen to be done. In the circumstances of this case, it would be in the interest of justice to have the matter handled by a different judicial officer.

41. The Court, however, declines to take over the execution process itself. Execution is primarily an administrative and judicial function best handled by the Registrar in the first instance, subject to supervision by the Court. To take over execution would be inappropriate and would set a dangerous precedent.

42. The proper course is to remit the matter to a different Deputy Registrar with clear directions to ensure that the examination under Order 22 Rule 35 proceeds expeditiously and meaningfully.

43. The Applicants have successfully demonstrated that the Deputy Registrar's ruling of 22nd October 2025 was erroneous and has frustrated legitimate efforts to execute a valid court decree.

44. In the end, the Summons dated 22nd October, 2025 is allowed giving rise to issuance of the following Orders:-

(a) The Ruling of the Honorable Deputy Registrar delivered on

22nd October 2025, and all consequential orders arising therefrom, are hereby set aside.

(b) This matter should be placed before a different Deputy

Registrar at the Kericho High Court other than Hon F. Nekesa

for the purposes of conducting the oral examination of the

Plaintiff/Respondent namely: SAMUEL KIPRONO SANG, in

accordance with Order 22 Rule 35 of the Civil Procedure Rules.

(c) For the avoidance of doubt, the orders issued by the Deputy

Registrar on 1st October 2025, allowing the Applicants' application dated 14th August 2025 under Order 22 Rule 35,

are hereby reinstated. The Deputy Registrar shall proceed

with the oral examination of the Plaintiff/Respondent on a

date to be fixed by the Deputy Registrar.

(d) The matter to be placed before the Deputy Registrar to give

such directions as are necessary to facilitate the conducting of the examination at a venue sensitive to the

Respondent's health, provided that the examination is meaningful and aims to discover the Respondent's assets

and means of satisfying the decree.

(e) Costs of the application shall be borne by the Respondent.

**Dated, signed and delivered at Kericho this 26th day
of February, 2026.**

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**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Mwita for the Defendant/Applicant

Adero for the Plaintiff