

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

COMMERCIAL & TAX DIVISION

HCCA NO. E086 OF 2022

KK **TRANSPORTERS**
LIMITED.....APPELLAN
T

VERSUS

SAL CONSTRUCTION & CONSULTANTS
LIMITED...RESPONDENT

RULING

1.A set off has been requested by the appellant in the notice of motion dated 28.2.2025 primarily under **Order 22 Rule 14 of the Civil Procedure Rules.**

2.More specifically, the appellant seeks an order that that the taxed costs in the sum of **Kshs. 191,640/-** due to the respondent pursuant to

the taxation ruling delivered on **6th February 2025** be set off against the outstanding decretal sum due and owing in **MCCC No. 2899 of 2020 KK Transporters Limited v SAL Construction & Consultants Ltd.**

3.The application is supported by the affidavit sworn by **Kenneth Kinuthia** on 28.2.2025 and written submissions dated 23.6.2025.

4.The gist of the application is that the respondent owes the appellant the decretal sum awarded in **MCCC No. E2899 of 2020** between the two parties. The appellant highlighted its attempts to execute the decree which has been mostly unsuccessful with only Kshs. 30,000/- being recovered from the sale of the respondent's property that was attached.

Response

5.The respondent opposed the application through a replying affidavit sworn by **Samuel Murigi Waigwa** on 17.3.2025. Its main contention is that a decree and or certificate of costs issued in a different court cannot be applied as set-off in another court and this court has no jurisdiction to

issue orders in a matter that is not before it and or in a matter that is not consolidated.

6.The respondent asserted that this court's jurisdiction is only limited to issuance of stay orders on execution, proceedings and or transfer of matters and not to make substantial orders on matters not before it as it will result into legal and procedural anarchy.

7.The respondent underlined that the value of attached goods surpasses the lower court decretal amount by over 7,000,000/-. It asserted that the lower court decree was executed wholly as the auctioneers seized the defendant's goods with a sum of Kshs. 9,307,640 against a mere principal sum of Kshs. 6,000,000/-.

Analysis and Determination

8.While penning the ruling, the court observed that the appellant's application is premature because it seeks to set off the taxed costs in the sum of **Kshs. 191,640/-** due to the respondent pursuant to the taxation ruling delivered on **6th February 2025**.

9. Order 22 Rule 14 of the Civil Procedure

Rules provides that: -

***“14. Execution in case of cross-decrees
[Order 22, rule 14]***

(1) Where applications are made to a court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then— (a) if the two sums are equal, satisfaction shall be entered upon both decrees; and (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.”

10. In Kenya Commercial Bank v Commissioner of Police & 2 Others [2012] KEHC 488 (KLR)

the court held that: -

“...this rule allows a decree holder of a larger sum of money to apply to court of the satisfaction of a smaller sum of money. For this to happen, there must be two definite decrees that can be satisfied at the same time.”

11. The rule relates to 'the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time'. The decrees may be for equal or unequal amounts. A set off is allowed to reduce the sum a person owes to the creditor by the sum the creditor owes them. Satisfaction is thereafter entered for the to the extent of the set off. If the amounts are equal, satisfaction is entered in full settlement of the debts. If the amounts are unequal, satisfaction is entered for the amount equal to the set off leaving the balance of the unequal thereof to execution by the holder of decree for the larger sum. Satisfaction is the full fulfilment of an obligation, completely discharging the debt or legal liability.

12.The application of this rule results into settlement of debts resulting into a single net payment and execution of one decree for the larger sum.

13.However, for the rule to apply, there must be two or more decrees between the same parties which are 'capable of execution at the same time'.

Procedural anarchy

14.Before I close, I do note the argument by the respondent that a decree and or certificate of costs issued in a different court cannot be applied as set-off in another court and this court has no jurisdiction to issue orders in a matter that is not before it and or in a matter that is not consolidated.

15.The respondent reinforced its position and asserted that this court's jurisdiction is only limited to issuance of stay orders on execution, proceedings and or transfer of matters and not to make substantial orders on matters not before it as it will result into legal and procedural anarchy.

16.Procedural anarchy must always be averted. But, the manner prescribed in effecting set off 'where applications are made to a court for the execution of cross-decrees in separate suits', does not envisage or mean a consolidation of the suits. The framing and application of consolidation of suits may present procedural dilemmas of its kind.

17.The ideal situation is for the court to settle set off in the two suits at the application for execution stage. However, as issues may emerge, it would be appropriate and acceptable procedure to annex both decrees in the application for set off under the rule.

Lack of decree

18.Coming back to this case, is taxed costs in the sum of **Kshs. 191,640/-** in the ruling of 6.2.2026. These being party and party costs, and in light of the law on and procedures applicable to taxation, set off would be properly appropriated under the rule if such costs are expressed in a decree which can be executed.

19. Therefore, the appellant's application dated 28.2.2025 is premature. It ought to be considered after the decree has been issued.

**Dated, signed and delivered at Nairobi through
Microsoft Teams online application this 26th
day of February, 2026**

**F. Gikonyo M
Judge**

In the presence of: -

Muthoni for Respondent

Njuru for Appellant

CA- Ivan/Aggrey