



Nzaku & Nzaku Advocates v Chimako Homes Limited & 2 others (Environment and Land Miscellaneous Case 340 of 2014) [2026] KEELC 1354 (KLR) (26 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE 340 OF 2014**

J OMANGE, J

FEBRUARY 26, 2026

BETWEEN

NZAKU & NZAKU ADVOCATES APPLICANT

AND

CHIMAKO HOMES LIMITED RESPONDENT

AND

ESTATE OF FADHILI MBARAK NAMOYA 1ST INTERESTED PARTY

ADMAC (HOLDINGS) LTD 2ND INTERESTED PARTY

RULING

1. This 12 year old matter has a long history in the corridors of justice. On the 26th February 2015 Fredrick Kiluva one of the directors of the Applicant filed an application on behalf of Chimako homes seeking to set aside the taxation of the advocate-client bill of costs dated 5th February 2015. Simultaneously there was before the court an application dated 6th March 2015 seeking that judgement be entered on the certificate of costs. On the 9th September 2016 the court dismissed the reference and entered Judgement on the Certificate of Costs.
2. On the 11th February 2021 the court on application of the Applicant made an order that the Directors of Chimako namely Fadhili Mbarak Namoya and Fredrick Mutumbua Kiluva be orally examined as to means of the company. The directors never attended court and at one point there was a dispute on representation with a counsel appearing for each Director. Summons issued to the Directors to clarify the issue went unheeded.
3. On the 5th November 2021 yet another application was made by one of the Directors Fredrick Kiluva seeking to set aside the Ruling issued on 11th February 2021. This application was dismissed by this



- court. Subsequently, a consent backdated to the year 2021 was recorded before this Court on 1st July 2024 by counsel for the Applicant and Respondent.
4. The consent provided that an apartment registered in the name of a separate company Admac Holdings in which the directors of the Judgment Debtor allegedly held 50% shareholding be sold and the proceeds applied toward satisfaction of the decretal sum.
 5. The present application dated 2nd October 2024 seeks the following orders;
 - a. That this Honourable court on the 1st of July 2024, adopted a consent dated 15th of April 2021 with the said consent being obtained by fraud, and or collusion contrary to the policy of court;
 - b. That there exist no minutes and board resolution in Admac (holdings) Ltd authorizing the Respondents herein, to enter into a consent and or authorizing the issuance of instructions to the Law Firm of Mungala & Company Advocates To dispose of Apartment Number A1 203 Block A1 Mezzanine Floor erected on Land Reference Number 1/357 (original number 1/390) Nairobi, owned by Admac (holdings) Ltd, not a party to this suit, further be sold off for settlement of a third party debts;
 - c. That, contrary to the terms of the consent agreement, the Director in Trust, Fred Mutumba Kiluva, holds only 1 share out of the total 5000 shares in Admac (holdings) Ltd as per the current CR 12;
 - d. That, contrary to the terms of the consent agreement, the Director in Trust, Fred Mutumba Kiluva, on the 15th December 2015, signed a Deed of Trust declaring that he holds the 1 ordinary share in Admac (holdings) Ltd, in trust and on behalf of Fadhili Mbarak Namoya (Deceased) which states “the Trustee will use as the Beneficiary lawfully directs all voting and other rights conferred upon the Trustee as holder of the shareholding” and therefore was not authorized in any capacity to instruct the firm of mungala & company advocates to represent Admac (holdings) Ltd, a stranger to this suit, in this matter nor to enter into a consent involving Admac (holdings) Ltd;
 - e. That, if the consent order is not reviewed and set aside, the Interested Party/Applicant stands to suffer severe prejudice by loss of 50% of the shares in Admac (holdings) Ltd, other properties held by Admac (holdings) Ltd which information was fraudulently withheld from this Court and Apartment Number A1 203 Block A1 Mezzanine Floor erected on Land Reference Number 1/357 (Original Number 1/390) Nairobi, owned by Admac (holdings) Ltd, not a party to this suit;
 - f. That no prejudice will be suffered by the Respondents of this Application if the orders sought are granted as prayed.
 6. The 2nd Interested Party contends that the consent had been fraudulently backdated so as to conceal the fact that by the time it was signed the majority shareholder had died. That the trustee director who gave instructions on its execution held only one share and lacked authority to issue such instructions. That the property which is to be sold belongs to a separate corporate entity who is not party to the suit.
 7. The Respondent opposes the application through grounds of opposition arguing that the Applicant, as administrator of the estate of the deceased majority shareholder, is bound by the consent.
 8. The Court frames the following issues for determination; Whether the consent should be set aside Whether the 1st and 2nd Interested Party should be enjoined to the application Whether the court should set aside all previous determinations



9. The law regarding consent judgments is settled. in the case of Flora N. Wasike vs Destimo Wamboko [1988] eKLR Hancox JA cited Setton on Judgments and orders (7th edition) Vol 1 page 124, and reiterated that;

“Any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and those claiming under them... and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court...; or if the consent was given without sufficient material facts, or in general for a reason which would enable a court set aside an agreement.”

10. In the instant case, the consent was backdated to a date when the deceased majority share holder was alive. This was not disclosed to the court and on its own this amounts to fraudulent concealment which is sufficient reason for the court to set aside the consent. Of equal concern is that the consent was authorized by a director who did not have the 50 per cent shareholding in the company he consented to sale of the property. The apartment subject of the consent is registered in the name of a separate company. There was no demonstrated lawful mandate to dispose of the property.

11. As to whether the Interested Party should be enjoined as an interested party, the jurisdiction to join a party to a case post judgment is exercised only in exceptional and justifiable circumstances. One such exception is where a case has been determined and adverse orders have been issued against a party who was neither given notice of the case nor heard on the issue in dispute.

12. In Mary Beach Limited –v Attorney General and 18 others (2018) eKLR the Court of Appeal outlined the relevant principle as follows: -“However there are exceptional circumstances that could justify a court to enjoin a party even after judgment has been passed. One such exception is where a matter has been determined and adverse orders have been issued against a party who was neither given notice of the suit nor heard on the issue in dispute. Enjoining such a party a court would also have to set aside the judgement entered to give him/her an opportunity to be heard”.

13. In the instant case the consent has been set aside. The interested party represented by the administrator of the estate who has now identified himself as Mbarak Fadhili Namoya is a necessary party in the execution proceedings. Given his position he is the only one who can shed light on the issues the court has grappled with for years and which have hindered conclusion of this matter.

14. On the blanket orders sought for the court to set aside all the proceedings herein, I find that no good reasons have been given that would enable the court exercise discretion to set aside the proceedings. The Judgement Debtor Chimako Homes was all along represented in all the three applications which were heard and determined by the court. For avoidance of doubt it is clarified that the interested party will join the proceedings at the point they were before recording of the consent on 1st July 2024.

15. In the end the court issues the following orders;

- a. The consent dated 15th April 2021 and recorded on 1st July 2024 is hereby set aside in its entirety.
- b. The Interested Party Mbarak Fadhili Namoya is enjoined to the Proceedings as administrator of Estate of Fadhili Mbarak Namoya
- c. The prayer to set aside earlier proceedings fails
- d. Costs shall be in the cause



DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF FEBRUARY 2026.

JUDY OMANGE

JUDGE.

In the presence of:

Mr. Ochieng for Applicant.

Mr. Mungala for Mr. Odipo for 2nd Interested Party.

Peter – Court Assistant.

