



**Ngunyi v Mohammed (Commercial Case E083 of 2022 &
Commercial Arbitration Cause E023 of 2023 (Consolidated))
[2026] KEHC 2736 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E083 OF 2022 & COMMERCIAL
ARBITRATION CAUSE E023 OF 2023 (CONSOLIDATED)**

AA VISRAM, J

FEBRUARY 26, 2026

BETWEEN

HARRISON NYOTA NGUNYI APPLICANT

AND

ALI YUSUF MOHAMMED RESPONDENT

RULING

Background

1. This ruling concerns the Notice of Motion dated 22nd July, 2025. Interim orders of stay of execution were granted at the time of filing and were subsequently extended by consent. What remains for determination are prayers seeking, first, the recall of warrants of attachment and sale issued in execution and, second, a declaration that the decree has been fully satisfied and that the Applicant stands discharged from any further liability.
2. The application is supported by the affidavit of the Applicant sworn on 22nd July, 2025, and a supplementary affidavit sworn on 7th January, 2026. It is opposed through grounds of opposition and a replying affidavit sworn on 3rd October, 2025, together with written submissions.
3. The factual background is largely common ground. An arbitral award delivered on 24th February, 2022, was recognised and adopted as a decree of this Court on 25th October, 2022. The Applicant's attempt to set aside the award failed. An application to pay by instalments was also declined. It is not disputed that the Applicant thereafter paid Kshs. 500,000/- to the Respondent and transferred land parcel number Kajiado/Kisaju/21149 to the Respondent. It is also not disputed that party and party costs have not been taxed.



4. Two principal issues arise for determination:-
 - a. Whether the execution undertaken by the Respondent, prior to taxation of costs and without leave, offended Section 94 of the *Civil Procedure Act*.
 - b. Whether, on the evidence, the decree was fully satisfied by the payment of Kshs. 500,000/- and the transfer of the said parcel of land, thereby disentitling the Respondent from further execution.

Issue One: Section 94 of the *Civil Procedure Act*

5. Section 94 of the *Civil Procedure Act* permits execution of a decree before costs are ascertained only with leave of the Court. The purpose of the provision has been explained repeatedly by Kenyan courts as a safeguard against piecemeal and vexatious execution.
6. In *Bullion Bank Ltd v James Kinyanjui & Another* [2006] eKLR, the High Court held that execution before taxation, without leave, is irregular. The same principle was reaffirmed in *Quality Centre Ltd v Uchumi Supermarkets (T) Ltd* [2017] eKLR, where the Court emphasized that the object of Section 94 is to prevent a Judgment Debtor from being harassed by multiple executions.
7. The Respondent accepts that no leave under Section 94 was sought or obtained and that costs remain untaxed. The argument advanced is that execution was confined to the decretal sum and did not relate to costs. That submission, however, does not answer the statutory requirement. Section 94 does not distinguish between execution for the decretal sum and execution for costs. It regulates the timing of execution of a High Court decree before costs are ascertained. Leave is the statutory control.
8. I am persuaded that, in the absence of leave, the execution process culminating in the issuance of warrants of attachment was procedurally irregular. The Court cannot lend its aid to a process that is undertaken in clear disregard of an express statutory requirement. This position accords with the long-standing principle, articulated in Kenyan jurisprudence, that courts will not sanction acts founded on illegality.
9. Accordingly, the impugned execution cannot stand.

Issue Two: Whether the Decree Was Fully Satisfied

10. This issue falls within Section 34(1) of the *Civil Procedure Act*, which vests the executing court with jurisdiction to determine all questions relating to execution, discharge or satisfaction of a decree.
11. The Applicant's case is that the Respondent agreed to accept Kshs. 500,000/- together with the transfer of land parcel number Kajiado/Kisaju/21149 in full settlement. A valuation report dated 13th December, 2023, placed the value of the land at Kshs. 8,500,000/-. The Respondent accepted the transfer and, within a short period, sold the property for Kshs. 6,000,000/-. The Applicant contends that, having accepted the valuation and the transfer, the Respondent is estopped from asserting that the property was only worth Kshs. 2,500,000/- or that the decree remains unsatisfied.
12. The Respondent's position is that there was an oral agreement for the transfer of two properties, each allegedly valued at Kshs. 2,500,000/-, and that the transfer of one property only partially settled the decree.
13. Having considered both versions of events, the court notes, first, that neither party has provided this Court with the substance of the disputed oral agreement. Based on the material before me, the evidence shows that the Respondent voluntarily accepted the transfer of the property after it had been valued.



There is no evidence that he objected to the valuation at the material time or that he accepted the transfer on a “without prejudice” basis pending further settlement.

14. However, on the other hand, the Applicant has not demonstrated, on a balance of probabilities, that the decretal sum was fully satisfied by payment of Kshs. 500,000/-, and the transfer of land valued and accepted as settlement. The Respondent submitted that the decretal sum had since ballooned by way of interest accrued beyond the original amount to approximately Kshs. 9,000,000/- due to him. The Applicant on the other hand admitted that he had only paid the sum of Kshs. 6,500,000/- .
15. Because the terms of the oral agreement are not available to this Court, and because it is simply not clear what, if any, was the agreed rate of interest, I am inclined to apply Section 26 of the Civil Procedure Act. I therefore use my discretion and apply the court rate of 14% per annum from the date of filing the suit until payment in full.
16. It would not be appropriate for this Court to attempt to calculate the specific amount due to the Respondent, if any. I therefore refer the parties to mediation to determine the amount, if any, that remains owing to the Respondent.

Disposition

17. For these reasons, I find as follows:-
 - a. The execution proceedings undertaken without leave of the Court prior to taxation of costs were irregular and are hereby set aside.
 - b. The warrants of attachment and sale issued pursuant thereto are recalled.
 - c. The parties are referred to mediation on the issue stated in the ruling. Mention before the Mediation DR for further directions on 17th March, 2026.
 - d. Each of the parties shall bear their own costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 26TH DAY OF FEBRUARY, 2026

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Godfrey

.....for Applicant

.....for Respondent

