

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI**  
**ELC CASE NO. 321 OF 2015**

FRANCIS  
MWANGI.....PLAINTIFF/RESPONDENT

THUKU

VERSUS

KAIRU                      KIMANI.....1<sup>ST</sup>  
DEFENDANT

TERESIA                      WANGUI                      NG'ANG'A.....2<sup>ND</sup>  
DEFENDANT/APPLICANT

ALICE                      WAMBUI                      NG'ANG'A.....3<sup>RD</sup>  
DEFENDANT

COUNTY LAND REGISTRAR,  
NAIROBI                      COUNTY.....4<sup>TH</sup>  
DEFENDANT

**RULING**

1. Before this court for determination is the notice of motion dated 24<sup>th</sup> September, 2025 filed by the 2<sup>nd</sup> defendant/applicant and it is expressed to be brought under **Sections 1A, 1B,3, and 3A** of the **Civil Procedure Act, Order 22 Rule 22, and Order 51 Rule 1** of the **Civil Procedure Rules** seeking the following orders:-

***1. Spent.***

***2. This honourable court be pleased to grant a temporary order of stay of execution of the judgment and/or decree herein and all consequential orders arising therefrom pending the hearing and determination of this application inter partes.***

- 3. That pending the inter-partes hearing and determination of this application, this honourable court do issue an order of stay of execution of the proclamation notice, attachment notice, warrants of attachment dated 21<sup>st</sup> July, 2025 and ruling of the honourable court dated 11<sup>th</sup> July, 2025.**
  - 4. That this honourable court do issue an order of stay of the execution of the ruling dated 11<sup>th</sup> July, 2025 pending the hearing and determination of the application.**
  - 5. This honourable court be pleased to grant an order of stay of all consequential orders arising therefrom pending the hearing and determination of the application to set aside/dismiss the consented judgment and the plaint in entirety.**
  - 6. The honourable court be pleased to grant an order declaring the suit to begin de novo if orders 4 and 5 are not available before court.**
2. The application is premised on the grounds *inter alia* that the plaintiff/respondent produced forged documents before the court to selfishly enrich himself, and she only learnt of the present suit when she was served with a decree and warrants of attachment.

3. The application was further supported by the affidavit of the 2<sup>nd</sup> defendant/applicant sworn on even date. The 2<sup>nd</sup> defendant/applicant deposed that she was served with the proclamation notice, attachment notice, warrants of attachment dated 21<sup>st</sup> July, 2025 and the ruling delivered by this court on 11<sup>th</sup> July, 2025 which will result in irreparable damage and loss. Further, the properties attached include personal items as well as those of her school going children and she is apprehensive that her children might be traumatized if the execution takes place.
4. The application was opposed vide the replying affidavit of the plaintiff/respondent sworn on 22<sup>nd</sup> October, 2025. He deposed that the 2<sup>nd</sup> defendant/applicant through her former advocate freely entered a written consent agreeing to settle the decretal sum of Kshs.1,900,000/- in full. Further, and pursuant to the said consent, the 2<sup>nd</sup> defendant/applicant issued three cheques of Kshs.900,000/-, and Kshs.500,000/- each. The cheque dated 16<sup>th</sup> May, 2024 for Kshs.900,000/- was honoured, and the rest were dishonoured. The plaintiff/respondent deposed that despite several indulgences, the 2<sup>nd</sup> defendant/applicant failed to settle the balance of Kshs.1,000,000/- thus breaching the consent.

5. The plaintiff/respondent deposed that the claim for lack of service or alleged forgery is an afterthought and a desperate attempt to evade lawful execution since she participated in the negotiations leading to consent through her former advocates and even proceeded to partially satisfy the decree and consent.
6. The application was canvassed through written submissions. The plaintiff/respondent filed his written submissions dated 25<sup>th</sup> November, 2025. The 2<sup>nd</sup> defendant/applicant did not file her written submissions. Be that as it may, I have considered the application, the replying affidavit filed by the plaintiff/respondent including the written submissions.
7. The issue for determination is ***whether the consent order dated 17<sup>th</sup> May, 2024 which was issued on 18th December 2024 ought to be set aside, and whether the suit should commence de novo.***
8. The 2<sup>nd</sup> defendant/applicant contended that the plaintiff/respondent forged documents to enrich himself, and she only learnt about this suit when she was served with the decree and the warrants of attachment. However, the record in this file bears witness to the contrary. The 2<sup>nd</sup> defendant/applicant participated all along in these proceedings including as a witness

in her own defence. On this ground, I do agree with the plaintiff/respondent that this application is meant to delay the lawful execution process.

9. Secondly, the 2nd defendant/applicant sought to have the consent set aside. However, she did provide grounds or evidence to support the setting aside of the consent. In **Kenya Commercial Bank Ltd versus Specialised Engineering Co. Ltd [1982] KLR 485**, Harris, J correctly held inter alia, that:-

***“1. A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.***

***2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”***

10. Also, in **Hirani versus Kassam [1952] 19 EACA, 131** the Court of Appeal held:-

***“It is now well settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out.”***

11. While applying the above principles to the instant case, the 2<sup>nd</sup> defendant/applicant has not demonstrated whether there was any fraud, collusion or undue influence in the consent dated 17<sup>th</sup> May, 2024. In fact, she settled part of the decretal sum by paying Kshs.900,000/- which is an indication that she knew very well the implications of complying or otherwise with the said consent.
12. From the above, I find the notice of motion dated 24<sup>th</sup> September, 2025 a gross abuse of the court process which is only but a tactic to prevent the plaintiff/respondent from realizing the fruits of the judgment. The same is hereby dismissed with costs to the plaintiff/respondent.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 23<sup>RD</sup> DAY OF MARCH, 2026.**

**HON. MBOGO C.G.  
JUDGE  
23/03/2026.**

**In the presence of:**

*Ms. Benson Agunga - Court assistant*

*Ms. Njoroge for the Plaintiff/Respondent*

*No appearance for the 2<sup>nd</sup> Defendant/Applicant*

ORIGINAL