



REPUBLIC OF KENYA



KENYA LAW
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**Kibowen v Ruto & 15 others (Land Case 174 of 2015)
[2026] KEELC 1856 (KLR) (27 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1856 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
LAND CASE 174 OF 2015
MAO ODENY, J
MARCH 27, 2026**

BETWEEN

STEPHEN KIBOWEN PLAINTIFF

AND

**SIMON RUTO 1ST DEFENDANT
KIPKORIR RUTO 2ND DEFENDANT
KIPROP RUTO 3RD DEFENDANT
KIPCHUMBA RUTO 4TH DEFENDANT
CHEPCHIRCHIR RUTO 5TH DEFENDANT
CHEPKOECH RUTO 6TH DEFENDANT
LOICE YATOR 7TH DEFENDANT
SIMON RUTO 8TH DEFENDANT
JANE RUTO 9TH DEFENDANT
WILLY RUTO 10TH DEFENDANT
ALEX RUTO 11TH DEFENDANT
BENSON RUTO 12TH DEFENDANT
VALARY RUTO 13TH DEFENDANT
FRIDA RUTO 14TH DEFENDANT
GILBERT RUTO 15TH DEFENDANT
NANCY RUTO 16TH DEFENDANT**



RULING

1. This ruling is in respect of the Defendant's Notice of Motion dated 5th February, 2026, seeking the following orders:
 - a. Spent.
 - b. That this Honourable Court be pleased to suspend the Warrant of Arrest and/or other Consequential Orders arising from the Ruling/ Order made on 22nd January, 2026, by Hon. Priscah Wamucii Nyotah pending the hearing and determination of this application.
 - c. That this Honorable Court be pleased to set aside, suspend and/or discharge the said Warrant of Arrest made on 22nd January, 2026 pending the inter-partes hearing of this Application.
2. The Application was supported by the annexed affidavit of Simon Ruto the 1st Applicant, sworn on 5th February 2026, where he deponed that the issuance of a warrant of arrest and committal to civil jail is draconian and will infringe the right to liberty.
3. He further deponed that they filed an appeal against the judgment vide Court of Appeal Civil Appeal No. E026/2025, Simon Ruto Vs Stephen Kibowen, which has high chances of success and it is only fair and just to be allowed to prosecute the same without being committed to civil jail.
4. The Applicant stated that the Notice to Show cause is an attempt to assume the jurisdiction of the Court of Appeal in respect of the pending appeal and urged the court to allow the application as prayed.
5. The Respondent filed a replying affidavit sworn on 9th February 2026, by Githui John, Advocate who deponed that the Applicant has proceeded on a wrong legal and factual premise that the execution is for the taxed costs of Kshs. 1,128,003/ but the correct position is that the Deputy Registrar issued a warrant of arrest for failure to pay the decretal sum of Kshs. 33,456,366/ together with costs.
6. Counsel deponed that the application is an abuse of the court process as upon delivery of the judgment, the Applicant filed an application for stay of execution dated 7th November 2024, under certificate of urgency, whereby the court gave directions on the disposal of the application.
7. Mr. Githui further stated that the application came up on 5th February 2025, and the same was dismissed and directed the plaintiff to proceed with execution.
8. It was counsel's disposition that the Applicants filed another application for stay of execution in the Court of Appeal and on 19th November 2025, the Court of Appeal directed that the Applicants pay the sum of Kshs. 15,000,000/= within 30 days failure to which the stay would lapse.
9. That the Applicants did not pay the stipulated sum within 30 days therefore the stay of execution lapsed. Counsel further deponed that the matter had been listed for Notice to show cause on 22nd January 2026 and on that date neither the Applicants nor their counsel appeared in court, there the Deputy Registrar issued warrants of arrest.
10. Counsel urged the court to dismiss the application with costs.



Applicant's Submissions

11. Counsel filed submissions dated 27th February 2026, and submitted that the proceedings for committal to civil jail on 22nd January, 2026 were not properly heard and as such were not in strict adherence to Article 50 of *the Constitution* and Section 38 of the *Civil Procedure Act*.
12. Counsel relied on the case of Kipsang & another v Mbarwa (Civil Appeal E001 of 2023) [2025] KEHC 18845 (KLR), where the court held that before committing one to civil jail, the parties must be accorded a proper hearing and a ruling in compliance with the proviso in Section 38.
13. Counsel faulted the process of committal to civil jail and submitted that it was flawed and arbitrary as the Applicants' fundamental right to be heard was trampled upon.
14. Counsel relied on the principles for the grant of stay of execution and urged the court to allow the application as prayed.

Plaintiff/respondent's Submissions

15. Counsel for the Plaintiff/Respondent filed submissions and stated that the application is res judicata and an abuse of the court process. Counsel restated the facts as captured in the replying affidavit. The contents have been enumerated above; hence no need to reproduce it here.
16. Mr. Githui submitted that the Applicants have a misconception of the execution of orders and decrees of the Court of Appeal. The Applicants claimed that the orders issued by the Deputy Registrar (Hon. Dr. P. Nyota) usurp the powers of the Court of Appeal, which directed the applicants to pay a sum of Kshs. 15 million and in default, execution of the decree to proceed.
17. Section 4 of the *Appellate Jurisdiction Act*, provides that:

“ Any judgment of the Court of Appeal given in exercise of its jurisdiction under this Act may be executed and enforced as if it were a judgment of the High Court.”
18. Counsel urged the court to find that the application is res judicata and an abuse of the court process. Mr. Githui submitted that abuse of the court process could manifest itself in many ways, like filing multiplicity of cases in search of the same relief as was held in the cases of Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] eKLR, and Nancy Musili v Joyce Mbete Katisi [2018] e-KLR.
19. On the issue of whether the warrants of arrest can be set aside, counsel submitted that issuance of warrants of arrest is one mode of execution of the decree set out under section 38 of the *Civil Procedure Act*. It is a mode of limitation of personal liberty provided under the law and in execution of a lawful decree of the court and the Applicants' submission that the same is draconian lacks any legal basis, and urged the court to dismiss the application with costs.

Analysis And Determination

20. The issues for determination is whether the Applicants have met the threshold for stay of execution of the warrants of arrest issued by the Deputy Registrar in execution of a decree, and whether the application for stay of execution is res judicata.
21. The brief background to this case is that the Applicants upon delivery of the judgment filed an application for stay of execution dated 7th November 2024, under certificate of urgency, whereby the



court gave directions on the disposal of the application, which was dismissed on 5th February 2025, and the court directed the plaintiff to proceed with execution.

22. It is on record that the Applicants filed another application for stay of execution in the Court of Appeal and on 19th November 2025, vide Nakuru Court of Appeal Civil Appeal No. E026 of 2025, whereby the Court of Appeal directed the Applicants to pay a sum of Kshs. 15,000,000/= within 30 days failure to which the stay would lapse. The court order stated as follows:

“ There shall be a stay of execution of the judgment dated 24th October 2024 on condition that the applicant shall pay the respondent a sum of Kshs 15 million within 30 days in default the stay shall lapse.”

23. The Applicants did not pay the stipulated sum within 30 days; therefore, the stay of execution lapsed. Meanwhile, the matter had been listed for Notice to show cause on 22nd January 2026, and on that date neither the Applicants nor their counsel appeared in court, therefore, the Deputy Registrar issued warrants of arrest, which the Applicants term as draconian hence the current application.
24. The Applicant had already applied for stay of execution in this court and the Court of Appeal. The warrants of arrest arose from the non-compliance with the conditional stay of execution order of the Court of Appeal. The Applicants cannot make multiple applications seeking the same orders. This amounts to abuse of the court process as was held in the case of Agnes Muthoni Nyanjui & 2 others v Annah Nyambura Kioi & 3 others [2015] KEHC 1595 (KLR).
25. The Applicants had an opportunity to respond to the Notice to Show cause but never showed up. The Applicants still have a chance to appear before the executing court to redeem themselves.
26. I find that the application lacks merit and is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF MARCH 2026.

M. A. ODENY

JUDGE

