



**REPUBLIC OF KENYA**

**IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU**

**CIVIL CASE NO 96 OF 2015**

**JOHN MAINGI SILA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**PETER MAWEU KISANGAU.....DEFENDANT/APPLICANT**

**RULING**

**THE APPLICATION**

Before me is an application dated 19/9/2025 brought by Peter Maweu Kisangau (hereinafter referred to as the applicant) under a certificate of urgency. The other prayers have been spent save for the following:

- 1) That this Honourable court do review and/or set aside the notice to show cause dated 4/8/2025;
- 2) That costs be in the cause.

The application is supported by an affidavit sworn by the defendant/applicant and is premised on the following general grounds:

- a) That the defendant has already paid the sum of Ksh. 100,000/= on the notice to show cause dated 8/7/2024;
- b) The notice to show cause dated 4/8/2025 relates to the same issue;

- c) There is an apparent error on the face of the record to issue two decrees in the same suit;
- d) Should the plaintiff execute the notice to show cause, the defendant stands to suffer irreparable damage and loss since there is no discount of the sum paid;
- e) The application is made in good faith and is not meant to dent or embarrass either the court or the plaintiff;
- f) The applicant is ready and willing to settle the decretal sum;
- g) It is only fair and just that the orders sought be granted.

In the affidavit in support of the application the defendant/applicant reiterated the grounds on the face of the application.

#### **THE PLAINTIFF'S RESPONSE**

The plaintiff opposed the application by a Replying affidavit sworn on 26/9/2025. He gave the litigation history of the matter and stated that the sum of Ksh. 100,000/= that was paid by the plaintiff was discounted already and is not part of what is being claimed in the current notice to show cause. The plaintiff also argued that the outstanding sum has been attracting interest and that the application is meant to frustrate the process. That the application is vexatious, an afterthought and an abuse of the court process.

#### **MAIN ISSUES FOR DETERMINATION**

In my opinion, the main issues for determination are as follows:

- i. Whether the court should set aside the notice to show cause dated 4/8/2025;
- ii. Who should bear the costs of this application?

#### **THE DEFENDANT/APPLICANT'S SUBMISSIONS**

I have perused the submissions by the applicant. The submissions do not even address the instant application. The applicant has raised issues that were already determined in the earlier application dated 26/7/2024 in which the court delivered a ruling on 23/1/2025. The applicant has cleverly revisited the issues that were already determined in the earlier application. I will thus disregard the submissions.

**THE PLAINTIFF/RESPONDENT'S SUBMISSIONS**

No submissions were filed by the plaintiff/respondent.

**ANALYSIS AND DETERMINATION**

I have carefully considered the application. I fully agree with the plaintiff that the application is made in bad faith and meant to frustrate the plaintiff from enjoying the fruits of his judgment. As already indicated, the issues being raised in the instant application were already settled vide the ruling delivered by this court on 23/1/2025. In any event, the issues would have been the judgment-debtor's response to the notice to show cause. He did not have to file an application to counter the notice to show cause. This appears to have been a calculated move by the applicant to delay or derail the process of execution. The applicant alleges that there are two decrees. That is completely false. A notice to show cause is not a decree. The objective of the application is not even clear.

What happens when the notice to show cause is set aside? Does it mean that the applicant will now be exempted from paying what is due from him? The applicant alleges that he is ready and willing to pay the decretal sum but has not made any effort to pay anything even in the intervening period and after the court ordered him to be paying Ksh. 20,000/= per month in the interim. It is clear to me that the applicant is not keen on settling the decretal sum and is out to trifle with the court process. I agree with the plaintiff that the application is frivolous, vexatious and an abuse of the court process. If it is an issue of accounts, the same can be canvassed at the time of hearing the notice to show cause.

**DISPOSITION**

In view of the foregoing, I make the following orders:

- a) The application dated 19/9/2025 is hereby dismissed;
- b) The defendant/judgment debtor shall be condemned to pay costs of the application, in addition to what is due and owing from him;
- c) The matter shall be fixed for hearing of the notice to show cause. The judgment-debtor can raise his arguments at the hearing;

- d) The Judgment-debtor is hereby warned against filing frivolous applications in a bid to frustrate the execution process.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 17<sup>TH</sup> DAY OF  
FEBRUARY, 2026.**

**Y.A SHIKANDA**

**SENIOR PRINCIPAL MAGISTRATE.**