



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyamuhanga v Muiruri & 2 others (Civil Case 84 of 2011)  
[2026] KEHC 4724 (KLR) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4724 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL CASE 84 OF 2011  
RN NYAKUNDI, J  
APRIL 13, 2026**

**BETWEEN**

**ROBERT NYAMUHANGA ..... APPELLANT**

**AND**

**FRANCIS MUIRURI ..... 1<sup>ST</sup> RESPONDENT**

**LUCY WANJIRU ..... 2<sup>ND</sup> RESPONDENT**

**JOHN NJOROGE KARIUKI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this Court is a notice of motion under certificate of urgency dated 23<sup>rd</sup> December 2025 brought pursuant to Order 12 Rule 7, Order 10 Rule 11 and Section 3A and 63(c) of the *Civil Procedure Act* and Section ..... of LAA). The application is seeking for the following orders:
  - a. Spent
  - b. That there be a stay of execution of the warrants of arrest issued on 5/12/2025 pending the hearing and determination of this application inter-partes.
  - c. The honorable Court be pleased to lift and or set aside the warrants and a determination as to validity of the execution process thereof in view of Statute bar on limitation of period of execution.
  - d. That the costs of the application be provided for.
2. The application is made on the following grounds:
  - a. The Plaintiff obtained judgment against the Defendant on 28/4/2009 in Eldoret CMCC No. 1053 of 2002.



- b. The Plaintiff filed this appeal on 21/4/2015.
  - c. The judgment dismissing the appeal was delivered on 28/3/2019.
  - d. That the execution of a claim is Statute-barred by Limitation of Actions Act Cap 22(p).
  - e. That warrants are not valid.
  - f. The period of validity of execution of the decree has not been extended by a Court of law.
3. The application is supported by an affidavit sworn by the Applicant who deposed as follows:
- a. That the suit was filed in the year 2002 and judgment was delivered on 28/2/2002 against the defendant.
  - b. That I was not satisfied with the judgment of the Court and I lodged appeal Eldoret HCCA No. 21 2011.
  - c. The Plaintiff did not execute the decree although the decree although the process was open to the decree holder.
  - d. That judgment on appeal was delivered on 28/3/2019 when the court dismissed the appeal such costs.
  - e. That I intended to show cause why the decree herein has been time barred and that execution by way of arrest is permissible under the law but the Deputy Registrar does not have powers to consider my objection hence this application.
  - f. That I now apply that the warrants issued against me be lifted and pray that this honorable Court does consider the law on limitation of action which was run against the decree issued on 28/4/2009 which is now 17 years.
  - g. That limitation period has also run against the decree in this appeal as period of limitation lapsed on 27/3/2025.
  - h. That I pray that the warrants be cancelled and for orders that limitation of action has run against the decree, hence invalidating the attempted execution.
  - i. That unless stay of further execution of the warrants is granted I am bound to suffer prejudice and grave detriment.
  - j. That there is need to stay execution in this suit and to also set aside the judgment and the respondent be allowed unconditional leave to defend the suit.
4. In response to the application the Respondent filed grounds of opposition dated 23<sup>rd</sup> December 2025 raising objection on the following issues:
- a. That the Defendant/Applicant's application is brought in bad faith and should be struck out in the first instance.
  - b. That the application is an abuse of Court process.
  - c. That the application seeks to rewrite the agreement while the terms of the agreement are express.
  - d. That the application is a misapprehension of the law and miscomputation of time.
  - e. That it is in the interest of justice that this application be dismissed with costs.



## Decision

6. The Applicant seeks orders of stay of warrant of arrest of the Judgment Debtor as premised on Order 42 Rule 6 of the Civil Procedure Rules which provides as follows:

6.

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) No order for stay of execution shall be made under sub-rule (1) unless-
  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

7. The law of limitation prescribes the time limit for different suits or claims within which an aggrieved party, petitioner, claimant, appellant, defendant etc. can approach the court for redress or justice. The suit or claim or petition if filed after the expiration of the time limit is struck out by the law of limitation. It is basically met to protect the long and establish user and indirectly punish persons who go into a long slumber over their rights. The court in *Chepkwony v Chetambe & Another Civil Suit 15 of 1995 [2022] KEHC 13862(KLR)* who succinctly observed that:

“On the prayer to declare the decree stale and incapable of enforcement, I interpret the provisions of Section 4(4) of the *Limitation of Actions Act* to say that a decree to become incapable of enforcement, no steps must have been taken towards its enforcement for a continuous period of twelve (12) years. If like in all limitations, a step is taken within 12 years, the period of computation terminates and commences afresh. It is the commencement of the process of execution which determines the date the computation of time under Section 4(4)”

8. The law of limitation in Kenya is a subject of paramount importance in a legal system. It deals with the rules and provisions limiting or restricting the time in which a litigant can bring an action in court. Therefore, in any litigation once the prescribed limitation period sets in a litigant may be left without a legal remedy as his/her cause of action is said to be statute barred. The main of the law of limitation was promulgated by the legislature to discourage litigants from sleeping on their rights and importantly to have an end to litigation, it is usually to broad considerations. First the presumption that a right not exercised for a long time is non-existence. The second consideration that a legal right should not be left too long in a state of uncertainty, doubt or suspense.

9. It is of vital importance to appreciate the historical litigation of this matter that for 17 years the judgment creditor has never taken any procedural step to enforce the judgement. The reason behind



it are not very clear. I do not agree with the Respondent that the said agreement should be give legal effect even if it is in violation of the law.

10. The arrest and detention of a Judgement debtor as a mode of execution is provided for under Section 38, 40 & 41 of the *Civil Procedure Act*. This power is however expressly subject to the condition precedents outlined in the Act. The executing court is required in the first instance to grant to the Judgement debtor an opportunity to show cause as why he or she cannot be committed to prison. Consequent on receipt of response from the Judgement debtor to the said show cause notice, the court has to be satisfied that one or more of the exigencies envisaged by the law exist to warrant further orders against the Judgement debtor. The clauses in the above cited provisions envisages that the judgement debtor being likely to abscond or to leave the local limits of the jurisdiction of the court or dishonestly transferring, concealing or removing any part of his or her property or committing any other bad faith in relation to his property, with the object or effect of obstructing or delaying the execution of the decree. The clause envisages a situation in which the judgement debtor despite being possessed of the means to pay the amount of the decree or a substantial part thereof refuses or neglects to do so. The other clause contemplates a situation in which the decree is for a sum for which the Judgment Debtor was bound to account in a judiciary capacity. As can be seen from the law, it is clearly very rigid protocol before enforcing execution of a money decree by arrest, and detention of a judgment debtor to subject him to prison as a model of satisfying the decree of the court. These protocols are mandatory and non-negotiable.
11. It should not forgotten that warrants of arrest of a judgment debtor are not just mere instruments to enforce a decree of the court for the arrest of any citizen compromises his or her right to life under Article 26, personal liberty, Article 28 on human dignity and 29 on personal liberty which are the most sanctified of the fundamental rights under our constitution. The right to liberty is a sanctified preambular constitutional call. Adherence to any procedure which affects the liberty of the citizen has to be strict and scrupulous. It is quite apparent in this application that the protocol in this regard has not been followed if on the other hand the yardstick of the limitation of law had been met.
12. It is therefore respectively held by this court that the warrant of arrest issued against the applicant are null and void and unenforceable by dint of law limitation Act and the constitutional imperatives. The application is therefore allowed with costs to be borne by respondents.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 13<sup>TH</sup> DAY OF APRIL 2026**

.....  
**R. NYAKUNDI**

**JUDGE**

