

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL SUIT NO. 54 OF 2015 (O.S)**

JOHN GICHIRI THUO.....DECREE HOLDER/RESPONDENT

VERSUS

HARI GAKINYA T/A

HARI GAKINYA & CO ADVOCATES.....JUDGMENT DEBTOR/APPLICANT

**RULING**

1. The Applicant herein moved this Court vide the Notice of Motion dated 10<sup>th</sup> August, 2025, and expressed under Order 22 Rule 18, Order 22 Rule 35, Order 51 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, seeking Orders that;

***1) Spent.***

***2) Pending the hearing and determination of this application, there be a stay of execution of the warrant of arrest issued against the Applicant on or about 8th August 2025.***

***3) The warrant of arrest issued against the Applicant be set aside and/or discharged for non-compliance with Order 22 Rules 18 and 35 of the Civil Procedure Rules.***

***4) That costs of this application be in the cause.***

2. The application is premised on the grounds of the Notice of Motion and supported by the Applicant's Affidavit, sworn on even date. He argues that the warrant is procedurally defective because he was never served with a Notice to Show Cause, which is a mandatory requirement under Order 22 Rule 18 of the Civil Procedure Rules.

3. He contends that the Decree Holder failed to file an affidavit demonstrating that they attempted to recover the debt through other legal means before resorting to arrest.
4. In his Supporting Affidavit, the Applicant explains that the debt arose from a financial loss of approximately Kshs. 2,000,000 /- involving a former associate at his firm. He emphasises his good faith by noting that he has already paid roughly Kshs. 700,000/- toward the debt. To secure the remaining balance, his wife, who also serves as his partner in the firm, deposited the title deed to their matrimonial home with the Respondent's advocate.
5. He states that he has even authorised the sale of this property to settle the debt and has introduced potential buyers. He maintains that the warrant of arrest is oppressive, premature, and intended to embarrass him in his professional capacity as an officer of the court.
6. The Respondent/ Decree holder opposed the application vide a replying affidavit sworn on 13<sup>th</sup> October, 2025, by Beatrice Njeri Njagua, the Advocate in conduct of the matter on behalf of the Respondent. She details a long-standing history of the Applicant failing to honour court-sanctioned agreements.
7. She states that while a consent was first recorded on 21<sup>st</sup> February, 2019, for a principal sum of Kshs. 2,800,000/-, the Applicant failed to comply, necessitating warrants of attachment as early as 2019. Despite being granted a further 90-day grace period in January 2020 at his own request, the Applicant failed to settle the debt. Subsequently, that attempt at resolution also failed. She explains that, for instance, in October, 2022, the Applicant issued two cheques of Kshs. 500,000/- each, but instructed the Respondent

to hold them indefinitely pending confirmation of payments from the Nakuru County Government.

8. In November 2023, the parties entered into a new consent for monthly instalments of Kshs. 50,000/-, with a clause that a warrant of arrest would issue automatically upon default. The Applicant failed to honour these terms also.
9. Following those failures, in April, 2024, a formal Notice to Show Cause was indeed issued, requiring the Applicant to appear before the Court on 30<sup>th</sup> July, 2024, to explain why he has failed to comply with the court orders.
10. The Respondent explicitly refutes the Applicant's claim of having paid Kshs. 700,000/-, putting him to strict proof regarding these payments. The Respondent maintains that the only payment ever effected was Kshs. 350,000, leaving an outstanding principal balance of Kshs. 2,450,000/- plus interest of Kshs. 1,029,000/-, calculated from 2019.
11. Regarding the title deed deposited as security, the Respondent argues this has been used by the Applicant as a carte blanche to derail settlement under the guise of finding prospective buyers. A court directive on 7<sup>th</sup> November, 2024, stipulated that if the debt was not settled, the Decree Holder would be at liberty to sell the property.
12. Lastly, the Respondent asserts that the current warrant of arrest is procedurally sound, having been applied for in March 2025 following the Applicant's breach of the varied consent terms established in December 2024.
13. The Respondent concludes that the Applicant has no intention of satisfying the decree and is merely attempting to prevent the Decree Holder from enjoying the fruits of their judgment.

### **Analysis and Determination**

14. From the material before the Court, the only issue for determination is whether the warrant of arrest issued against the Applicant should be stayed.

15. Order 22 Rule 18 of the Civil Procedure Rules relied on by the Applicant provides that:-

***“(1) Where an application for execution is made—(a) more than one year after the date of the decree; (b) against the legal representative of a party to the decree; or (c) for attachment of salary or allowance of any person under rule 43, the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:***

***Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom the execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him:***

***Provided further that no such notice shall be necessary on any application for the attachment of salary or allowance which is caused solely by reason of the judgment-debtor having changed his employment since a previous order for attachment. (2) Nothing***

***in subrule (1) shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.(3)Except as provided in rule 6 and in this rule, no notice is required to be served on a judgment debtor before execution is issued against him.”***

16. Further, Order 22 Rule 35 of the Civil Procedure Rules states that;-

***“Where a decree is for the payment of money, the decree- holder may apply to the court for an order that—(a)the judgment-debtor; (b)in the case of a corporation, any officer thereof; or(c)any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.”***

17. The record reveals a protracted history of litigation and attempted executions. The suit was commenced by way of an Originating Summons dated 20<sup>th</sup> July 2015, wherein Gichiri Njogu (now Decree Holder/Respondent) sought to recover from the Respondent therein (Now Judgment/Debtor/Applicant) a sum of Kshs. 2,800,000/= being the balance of the proceeds from the sale of his land known as Nakuru/Municipality Block 16/137. The matter did not proceed for full hearing. On 21<sup>st</sup> February 2019, the parties recorded a consent adopting a settlement dated 20<sup>th</sup> February 2019. Under the terms thereof, the Respondent therein was to pay

- the principal sum of Kshs. 2,800,000 together with Kshs. 100,000 as legal fees within 120 days, failing which the Applicant was at liberty to execute.
18. Upon default by the Respondent, execution proceedings were initiated. On 21<sup>st</sup> July 2019, the Applicant applied for warrants of attachment, which were issued on 1<sup>st</sup> August 2019. However, this mode of execution did not yield satisfaction of the decree. Subsequently, on 6<sup>th</sup> October 2020, the Applicant sought to vary the mode of execution from attachment of property to execution against the person of the judgment-debtor. This prompted the issuance of a Notice to Show Cause on 29<sup>th</sup> October 2020, requiring the Respondent to appear before the Court and explain why he should not be committed to civil jail.
  19. The record further demonstrates that the Respondent failed to satisfy the decree despite these steps, culminating in the issuance of warrants of arrest on 9<sup>th</sup> June 2022. Non-compliance persisted, and on 25<sup>th</sup> July 2023, a further Notice to Show Cause was issued, requiring the Respondent to attend Court on 26<sup>th</sup> September 2023. However, the decretal sum remained largely unpaid.
  20. Within that period, the parties engaged in further negotiations and entered into additional consent arrangements, including one of 21<sup>st</sup> November 2023 providing for payment by monthly instalments of Kshs. 50,000, in default, a warrant of arrest to issue.
  21. Once again, the Respondent failed to comply and on 16<sup>th</sup> April 2024, yet another Notice to Show Cause was issued, requiring the Respondent to appear in court on 30<sup>th</sup> July 2024. Additionally, directions were issued on 7<sup>th</sup> November 2024 authorising the Decree-Holder to proceed with the sale of the Respondent's property No. Nakuru/ Municipality 27365/78, whose title had been deposited as security in the event of continued default.

22. It is against that sustained default and repeated indulgence by both the Court and the Decree-Holder that the impugned Warrant of Arrest was issued on 27<sup>th</sup> March 2025.
23. The Applicant now contends that the said Warrant of Arrest is procedurally defective for want of compliance with Order 22 Rule 18 of the Civil Procedure Rules, asserting that he was never served with a Notice to Show Cause.
24. The Applicant's contention and assertion that he was never served with a Notice to Show Cause and therefore the warrant is procedurally defective for want of compliance with Order 22 Rule 18 of the Civil Procedure Rules is not factual.
25. The Court record shows that Notices to Show Cause were issued on multiple occasions, thus giving the Applicant ample opportunity to be heard. To be specific, the Notices were issued on 29<sup>th</sup> October 2020, 25<sup>th</sup> July 2023, and again in April 2024.
26. The record further shows that the execution process has been continuous and punctuated by successive court orders and applications. In the circumstances herein, and in accordance with the proviso to Order 22 Rule 18, the necessity of issuing a fresh Notice to Show Cause is dispensed with where there has been a prior execution application or order within the preceding year. From the history of this matter, the Applicant herein cannot claim lack of Notice.
27. Further, the Court record shows that the Applicant has actively participated in the execution process, including entering into multiple consent arrangements and offering security in the form of a title deed. That conduct is inconsistent with a party alleging to be unaware of the execution proceedings or being prejudiced, for that matter.

28. As regards Order 22 Rule 35, which the Applicant has relied on to argue that the Decree-Holder was obligated to first exhaust other modes of execution, including examination of the Judgment-Debtor, the circumstances herein do not favour him and therefore, his argument is untenable. The Decree-Holder is entitled to pursue any lawful mode of execution.
29. In any event, the record demonstrates that indeed, alternative modes of execution were attempted but they were frustrated by the Applicant's persistent default. The assertion that the Decree-Holder acted impulsively in resorting to arrest is therefore not supported by the evidence herein.
30. From the foregoing, this Court is satisfied that the impugned Warrant of Arrest issued herein was proper and, in the context of a long history of non-satisfaction of the decree, the Applicant has failed to demonstrate any procedural irregularity or legal basis warranting the setting aside of the said Warrant.
31. Accordingly, the Notice of Motion dated 10<sup>th</sup> August 2025 is devoid of merit and therefore dismissed with costs to the Respondent.

**Dated, signed and delivered at Nakuru this 13<sup>th</sup> day of April, 2026.**

**PATRICIA GICHOHI**

**JUDGE**

**N/A by Judgment/Debtor/Applicant**

**Ms Mwaniki h/b Njeri Njagua for Decree Holder/ Respondent**

**Erickson, Court Assistant**