

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
HIGH COURT CIVIL CASE NO. 27 OF 2019

CIMBRIA EAST

AFRICA LIMITED.....1ST PLAINTIFF/RESPONDENT

JORGEN NIELSEN.....2ND PLAINTIFF/RESPONDENT

VERSUS

KENYA POWER AND

LIGHTING

CO.

LTD

.....DEFENDANT/APPLICANT

RULING

1. The **Motion dated 22/07/2025** is brought by the Defendant (hereinafter Applicant) as against the Plaintiffs (hereinafter the Respondents) seeking Orders-

1) *Spent*

2) *Spent*

3) *That the Decree irregularly issued herein be set aside and/or recalled to permit issuance of a regular Decree as prescribed in Order 21 Rule 8 of the Civil Procedure Rules.*

4) *That the warrants of attachment of sale irregularly issued be set aside.*

- 5) *That the proclamation effected on 21/07/2025 be declared illegal and the 1st Plaintiff condemned to pay Defendant.*
- 6) *That accrued interest be computed at 6% per annum.*
- 7) *That the court be pleased to order stay of execution of the Judgment in this suit delivered on 12/06/2025 pending hearing and determination of the Defendants intended appeal against the same.*
- 8) *That the costs of this application be awarded to the Defendant.*

2. The grounds for the motion are stated on its face and amplified by the affidavit sworn on 22/07/2025 by one Shelmith Ngunjiri, legal officer of APA Insurance Company, for the deposition upon delivery of the judgment on 12/06/2025 (Cherere J) in favour of the 1st Plaintiff in the sum of Kshs. 29,914,658/- he lodged an appeal by a Notice of Appeal to the Court of Appeal against the whole decision – annexed and marked as “SN1”.
3. That the Respondent proceeded to issue warrants of attachment and sale of the Applicants assets – marked “SN2” whereas a Decree was issued on 12/07/2025 and without costs being ascertained, marked “SN3” and a proclamation executed on 21/07/2025, which were all irregularly issued as the Applicant’s insurer, APA paid to the 1st Plaintiff/Respondent the principle sum of Kshs. 29, 914,658/-

by an EFT/RTGS marked “SN4” before the warrants were issued.

4. Additionally, the Applicant faults the 1st Plaintiff’s Advocates for failure to disclose to the court of the payment hence causing the warrants to be issued, even before the costs were taxed, and irregularly and erroneously computing interest at 14% pa whereas the interest applicable is 6%.
5. For the above, the court is urged to grant to the Applicant the reliefs sought.
6. For the foregoing the Applicant deposes that it had no statutory or contractual obligation to indemnify or satisfy the judgment obtained in the Small Claims Court Case No. E3907/2023.
7. **In opposition to the Defendant’s application**, the 1st Respondent filed a Replying Affidavit sworn on 12/09/2025 by one Laban Kipchirchir Kirui, with authority by the 1st Plaintiff. It is averred that indeed a Notice of Appeal was filed and served upon it, that upon delivery of the judgment, a 30 days stay of execution was granted by the court which lapsed on 11/07/2025, that the decretal sum remained unpaid and accordingly the 1st Plaintiff commenced execution proceedings, further stating that the principle sum was paid by the Applicant on 17/07/2026, six days after expiry of the stay

period who failed to promptly favour the 1st Respondent with proof of settlement.

8. It posits that despite the above, interest as shown in the decree remained outstanding urging that the execution proceedings were therefore regular, urging that provisions of **Order 21, Rule 8 CPR** does not mandate a Decree holder to seek from the judgment debtor concurrence on the form of the decree, nor does **Section 94 CPA** bar liquidated decree as it is ascertainable.
9. It further posits that there is already a Bill of costs filed and dated 27/06/2025 that is pending taxation; whereas interest on the judgment sum was captured in the decree – Ext. “LKK1”, which stood at Kshs. 37,761,314/ applied at 14% pa as seen in the warrants.
10. The Respondent further cites High Court practice Directions to state that where a decree is silent as to the rate of interest to be applied the court shall be deemed to have ordered interest at 14% per annum; and therefore the same is lawful.
11. Finally, it is the 1st Respondent’s statement that it should be allowed to proceed with execution of the balance of the decretal sum, being the accrued interest.
12. Parties filed submissions, which the court has considered alongside the affidavit material provided.

Issues for Determination

a) *Whether an order for stay of execution of the decree and judgment ought to be granted pending hearing and determination of the pending appeal.*

b) *Who bears the costs of the application.*

Whether the decree and warrants of attachment should be set aside for being irregularly obtained.

13. It is evident that the motion under review concerns post judgment execution proceedings. It is not contested that there is an intention by the Applicant to appeal against the whole decision of this court (Cherere J) delivered on 12/06/2025.
14. It is not in dispute that the court's judgment rendered on 12/06/2025, as seen in the decree dated 12/06/2025 was for Kshs. 29,914,658/= as against the Applicant (Defendant) in favour of the 1st Plaintiff with costs and interest from date of filing.
15. It is not in dispute that the date of interest accruing on the principal sum stated above is not stated therein.
16. The parties agree that the principal sum of Kshs. 29,914,658/= was paid on the 17/07/2025 prior to issuance of the warrants of attachment dated 18/07/2025 and subsequent proclamation of the applicants assets on 21/07/2025.

It is also not disputed that the decree was drawn and issued before the costs were neither agreed nor taxed.

17. Do the above events prior to proclamation constitute non-compliance with execution procedures provided under **Order 21 Rule 8 CPR; and Order 22**, and therefore to be declared as irregular and subject to setting aside costs to the Applicant?

18. It is common ground that the 30 days stay of execution of the court's judgment expired the 30 days after the judgment, to wit,

At the time, and/or prior thereto, the Applicant never sought further stay orders formally or otherwise, save for filing the Notice of Appeal dated 24/06/2025.

19. **Order 21 Rule 8 CPR** provides:

(2) – Any party in a suit in the High Court may prepare a draft decree and submit it for the approval of the other parties to the suit, who shall approve it with or without amendment, or reject it, without undue delay; and if the draft is approved by the parties, it shall be submitted to the Registrar who if satisfied that it is drawn up in accordance with the judgment shall sign and seal the decree accordingly.

20. The above provision, as held in numerous superior court decisions, is not mandatory; among them **Micro Enterprises Support programme Trust Registered Trustees V. Mayfor**

Savings & Credit Cooperative Society Limited & 5 Other [2013] KEHC 549 (KLR). Exclusive African Treasures Ltd vs. African Ecocamps Ltd HCCC. 378/2008; and Orion East Africa V. Mugama Farmers' Co-operative Union Ltd [2016] KEHC 6493 (KLR).

21. The thread across the above decisions is that **Order 21 Rule 8(1)** is not coached in mandatory terms, and the court is not precluded from approving a draft order/decree even when the procedure laid down therein is not adhered to. Failure by the 1st Plaintiff to share the draft decree with the Applicant does not render the decree illegal or null and void.
22. However, a perusal of the decree as drawn does not include the element of costs as awarded by the court in the judgment.

Section 94 of the Civil Procedure Act Provides:-

Execution of decree of High Court before costs ascertained:-

“Where the High Court considers it necessary that a decree passed in the exercise of its original civil Jurisdiction should be executed before the amount of costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation”.

23. Clearly, the Respondent was too quick to execute the decree without costs being ascertained, yet no urgency had been demonstrated considering that the principal sum had been paid. The purpose of the above provision, as stated in the case of **Machiri Limited v. China Wu Yi Company Limited and Kenya National Highways Authority (3rd party)[2021] eKLR**, is to prevent a judgment debtor from holding up the execution for a known sum to which there can be no sensible contest; and also to protect the judgment debtor from multiple executions regarding the same suit.
24. The rationale of sharing a draft decree with the opposite side is clear; to enable the other party point out any errors, if any, and communicate. In this instance, had the Respondent shared the draft decree, these anomalies would have been rectified and probably resolved before the execution proceedings were taken.
25. I have noted that there is a Bill of Costs dated 27/06/2025 pending taxation. **Section 94** therefore should have been complied with.
26. On the matter of interest rate applicable to the principal sum, when the court is silent, parties have to revert to the High Court practice Directions on interest rates on decrees and judgments (Gazette Notice No. 11168 of 2000) wherein it provides; **where a decree is silent on the rate of interest,**

the court shall be deemed to have ordered interest at 14% per annum.

27. Whereas the applicant proposes the applicable rate of 6% per annum, it has not stated the basis of the rate. Without any basis for complaint or suggestion of 6% per annum, the interest rate of 14% per annum applied cannot be faulted.

The principal sum had been paid on 17/07/2025, the Applicable accrued interest should therefore be effected from the date of such payment.

28. It follows therefore, without further interrogation that the execution process particularly the decree was flawed and must be recalled to enable the registrar of court to prepare a regular decree including the taxed costs that may be taxed by the taxing master, having due regard to the fact that the principal sum of Kshs. 29,914,658/= has been settled, and the date of such payment.

Whether an order for stay of execution of the decree ought to be granted.

29. In view of the court's finding above, it is evident that the issue stated above is answered in the affirmative. The execution proceedings are hereby stayed to await taxation of the costs and fresh decree to be drawn, in respect of costs and interest only.

30. In respect to prayer 7 of the motion, an order of stay of execution of the judgment delivered on 12/06/2025 pending hearing and determination of the intended appeal, it is trite that a notice of appeal does not constitute stay of execution regard to provisions of **Order 43 Rule 6 (2) of the Civil Procedure Rules** must be complied with; to wit-
- a) *Substantial loss must be demonstrated;*
 - b) *Security for the due performance of the decree must be furnished.*
31. The court has discretion to grant an order of stay of execution pending appeal. Each party's interest must be taken into account calling to aid the case **County Government of Kisii V. Tengenya (2025) KEELC 78 (KLR), Sammy Some Kosgei v Grace Jelel Boit [2013] KLR**, wherein the court is mandated to investigate whether the applicant would suffer substantial loss if the stay order is not granted. If an Applicant cannot demonstrate substantial loss, the order may not be granted.
32. Here, the Applicant having paid the principal sum and only disputing the wrong interest lumped thereon, the court is convinced that there is a need to stay further execution proceedings. See also Machira **t/a Machira & Co. Advocates V. East Africa Standard [2002] 2KLR**, and Kenya Shall **V. Kibiru [1986]**.

33. In the totality of material placed before the court and the circumstances, an **order staying further execution proceedings is hereby granted to the Applicant pending taxation of the Respondents costs and upon a regular decree drawn, applying interest at 14%pa on account of the taxed costs.**

34. **As the principal sum of Kshs. 29, 914,658/= is already paid, I need not impose any conditions on the order of stay of execution.**

However in view of the orders sought and the courts ruling at par. 33 above, I find it not necessary to allow and or grant leave to the Applicant interms of prayer 7 as it is upon the above directions being complied with that a necessity or not may arise to lodge an appeal against the judgment of the court delivered on 12/06/2025.

35. **Each party is directed to bear own costs of this motion.
Order accordingly.**

Delivered Dated and Signed at Nairobi this 16th April, 2026.

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JANET MULWA.
JUDGE

ORIGINAL