

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC CASE MISC NO. E013 OF 2025

KHALEF HAMED AHMED APPLICANT

VERSUS

ABDALLAH JUMAA NGOZI RESPONDENT

AND

RANDOLPH M. TINDIKA INTERESTED PARTY

RULING

1. By a Notice of Motion dated 10th July 2025, Khalef Hamed Ahmed Al- Ghaafiry (the Applicant) prays for the following orders:

a) Spent;

b) That this Honourable Court be pleased to issue an eviction order against the Respondent, Abdallah Jumaa Ngozi from Plot No. 7871/1/MN, C.R No. 22474, Shanzu in enforcement of the consent arbitral award dated 19th November 2024 as adopted as a Judgment of this Court on 4th July 2025;

- c) That this Honourable Court be pleased to declare and affirm that the Agreement for Sale dated 13th December 2023 stands automatically rescinded pursuant to Clause 4 (d) of the said Award and that the Respondents' continued occupation of the suit property is unlawful;**
- d) That the Officer Commanding Station (OCS), Bamburi Police Station be directed to supervise and ensure compliance with the eviction order and to provide such security and assistance as may be necessary to preserve public order during execution; and**
- e) That the costs of this Application be awarded to the Applicant.**

2. The application is supported by some two Affidavits sworn by the Applicant and is premised on the grounds that:

- i. The Estate of the deceased urgently requires the proceeds from resale of the subject property to finance the education of a dependent beneficiary, Shamim Khalef Hamed Ahmed Al- Ghaafiry, who**

is currently in her final year of legal studies at the University of London (Malaysia Campus) with tuition and relocation costs due by September 2025;

- ii. The Applicant is the duly appointed Administrator of the Estate and is mandated to safeguard and manage assets of the Estate;**
- iii. On 13th December 2023, the Applicant entered into a written sale agreement with the Respondent over Plot No. 7871/I/MN, Shanzu, Mombasa.**
- iv. The Respondent breached the Agreement, prompting the Applicant to invoke the arbitration clause, culminating in a consent arbitral award on 19th November 2024 later adopted as a Court Order on 4th July 2025;**
- v. Clause 4(d) of the Award stipulated that failure to pay the balance of Kshs 10,229,698 by 18th January 2025 would trigger automatic rescission and compel the Respondent to vacate within 30 days;**

- vi. The Respondent remains in unlawful occupation having defaulted and being given notice to vacate;**
- vii. There is no stay of enforcement and proceedings in CMCC No. 3388 of 2007 are unrelated having been brought against the Applicant in his personal capacity and do not relate to the Estate or the subject property; and**
- viii. Section 38 of the Civil Procedure Act authorizes this Court to enforce judgments by all lawful means including eviction.**

3. Abdalla Jumaa Ngozi (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 17th September 2025, the Respondent avers that he purchased the suit property through the Sale Agreement dated 13th December 2023. He further avers that a dispute arose thereafter and the matter was referred to arbitration where the parties reached a consent which was thereafter adopted by the Arbitrator on 19th November 2024.

4. The Respondent avers further that he was issued with warrants of attachment dated 4th November 2024 in Mombasa **CMCC No. 3388 of 2007; Randolph M. Tindika -vs- Khalef Hamed Ahmed** for purposes of fulfilling a decree of Kshs 7,395,524.65 in favour of Randolph M. Tindika who thereafter obtained a restraining order stopping the Respondent from making any further payments to the Applicant herein.
5. The Respondent avers that the Applicant herein failed to clear an outstanding loan for Motor Vehicle Registration No. KDL 517T and as such, the Respondent instituted **Mombasa CMCC No. E091 of 2025; Abdalla Jumaa Ngozi V Khalef Hemed Ahmed and Another**. He further avers that he also filed Mombasa ELC Case No. E014 of 2025 seeking vesting orders after he realized that the Applicant had no completion documents. It is the Respondent's case that he is ready and willing to complete the transaction as long as the Applicant provides the original log book as he acknowledged receipt of Kshs. 2,000,000/=.

6. Randolph M. Tindika (the Interested Party) is equally opposed to the application. In his Replying Affidavit sworn on 25th November 2025, the Interested Party avers that the Applicant was paid Kshs 2,000,000/= for purposes of settling outstanding motor vehicle loan arrears for motor vehicle registration No. KDL 517T and was required to supply the original logbook to the Respondent's Advocates but that was not done. As a result, the Interested Party filed Mombasa CMCC No. E091 of 2025 against the Applicant.
7. The Interested Party avers that the Applicant is in default of fulfilling his part of the bargain. It is his further case that the Applicant had sought specific orders which were granted on 4th July, 2025 with finality and hence this Court is *functus officio*. The Interested Party asserts that this application is meant to frustrate the execution of the decree in his favour in Mombasa CMCC No. 3388 of 2007 and specifically Garnishee Proceedings dated 10th July 2025 and urges the Court to dismiss the same.
8. I have carefully perused and considered the application as well as the responses thereto. I have similarly perused and

considered the submissions placed before the Court by the Applicant and the Interested Party. I was unable to find any submissions on the part of the Respondent.

9. By his application before the Court, the Applicant urges this Court to issue orders of eviction against the Respondent from all that property known as Plot No. 7871/1/MN (CR No. 22474). The Applicant further urges the Court to declare and affirm that the Sale Agreement dated 13th December 2023 stands rescinded pursuant to clause 4 (d) of the Arbitrators Award and that the OCS Bamburi Police Station be directed to supervise and ensure compliance with the eviction order.
10. The Respondent is opposed to the application and avers that the Applicant has failed to clear an outstanding loan for motor vehicle registration No. KDL 517T due to Kenya Commercial Bank. He asserts that as a result he was compelled to file Mombasa ELC Case No. E014 OF 2025 seeking vesting orders after he realized that the Applicant did not have completion documents for the transaction. It is his case that he is ready and willing to complete the

transaction once the Applicant provides the original log book for the motor vehicle.

11. That was the same position taken by the Interested Party. According to the Interested Party it was the Applicant who was in default having failed to fulfil his part of the bargain. The Interested Party further asserted that the Applicant had sought specific orders which were granted by this Court with finality on 4th July 2025 and that hence this Court was *functus officio*. The Interested Party insisted that this present application was merely meant to frustrate the execution of the decree in his favour arising from Mombasa CMCC No. 3388 of 2007.
12. It was clear from a perusal of the arguments made herein that the nature and import of the decision made by this Court on 4th July 2025 was clearly lost on some of the parties and/or that they had deliberately chosen to misinterpret the same.
13. By a Notice of Motion dated 20th February 2025, the Applicant had sought an order that the Court be pleased to adopt the arbitral award dated 19th November 2024. While

the Interested Party had not been enjoined in these proceedings by then, the Respondent had raised the very same objections raised to this present application.

14. Having considered the issues before the Court and in the Court's Ruling delivered on 4th July 2025, I allowed the Application having found out at Paragraphs 14 and 15 of the Ruling as follows:

“14. In the matter herein, I note that Clause 19 of the Sale Agreement executed by the parties on 18th December 2023 provided for any dispute arising to be referred to arbitration. It is also clear that both parties submitted themselves voluntarily to the arbitration process in line with the said provisions. The Respondent against whom the arbitration award is to be invoked does not dispute the validity of the award but appears to state that the enforcement thereof should await the determination of another suit which he has since filed; and

15. Having considered the provisions of Section 37 of the Arbitration Act, I was unable to find any basis upon which the Court can decline to recognize and/or enforce the arbitral

award on the grounds advanced by the Respondent. The process of arbitration is itself resorted to by parties to avoid the usually long Court processes and to stay an arbitral award to await the outcome of a suit filed after the arbitration process is concluded would in itself defeat the very purpose for which the parties resorted to arbitration.”

15. That being the case, it was indeed interesting to hear the Interested Party submit herein that this court is *Functus Officio* following its decision delivered on 4th July 2025. As I understood it, the Applicant herein has approached this Court seeking for orders of execution following the arbitral award that was adopted as an order of this Court on 4th July 2025. Section 38 of the Civil Procedure Act, Cap 21 gives this Court the power to enforce execution of its orders.
16. From my perusal of the current application, it was evident that the application is specifically intended to seek the execution of the final decree and the same cannot be construed to constitute an attempt to revive a “spent”

matter, nor to re-litigate the merits of the underlying dispute.

17. From the material placed before me it was apparent that the Interested Party herein was never a party to the Consent Arbitral Award, the Sale Agreement or the subsequent decree issued by this Court. That being the case, it was clear that the Interested Party lacks both privity of contract and any legally cognizable right to intervene or interfere with the enforcement proceedings between the Applicant and the Respondent as the Principal Parties.
18. From his own Replying Affidavit as filed in these proceedings, it was apparent that the Interested Party had filed other proceedings against the Applicant. I was not persuaded that the mere fact that he had filed Garnishee proceedings against the Respondent granted him substantial or proximate interest in the subject matter of these present proceedings and that he could forestall the execution process herein by displaying the Garnishee application.
19. It follows that I am persuaded that there is merit in the Motion dated 10th July 2025. I allow the same in terms of

Prayer No. 'b' thereof. The Respondent has 30 days from today to remove himself from the suit premises failure to which the Applicant shall be at liberty to evict the Respondent at the Respondent's costs.

20. The costs of this application are awarded to the Applicant.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 23rd day of April, 2026.

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Khalef Ahmed the Applicant present in person
- c) Mr. Mwanzia Advocate for the Respondents
- d) Mr. Tindika Advocate for the Interested Party