



**Abuga v Northern Rangeland Trust (Civil Appeal E031 of 2025)  
[2026] KEHC 4291 (KLR) (Civ) (31 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4291 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CIVIL  
CIVIL APPEAL E031 OF 2025  
SC CHIRCHIR, J  
MARCH 31, 2026**

**BETWEEN**

**PAUL ABUGA ..... APPELLANT**

**AND**

**NORTHERN RANGELAND TRUST ..... RESPONDENT**

*(Being an Appeal from the Ruling of the Chief Magistrate's Court at Isiolo,  
Hon. M.A Odhiambo (SRM) dated 27th August 2024 in MCCC/E007 of 2021)*

**JUDGMENT**

1. This appeal arises from the Ruling of the chief Magistrate's court at Isiolo delivered on 27<sup>th</sup> August 2024, In which the trial court set aside a consent order dated 16<sup>th</sup> January 2024, and the subsequent warrants of attachments .
2. In arriving at the decision, the trial court concluded that the consent order was vitiated by a fundamental mistake in calculations on interest and that the consent was entered into under the undue pressure of an impending auction.
3. Aggrieved by the decision, the Appellant, moved this Court vide a Memorandum of Appeal dated 3<sup>rd</sup> September 2024, raising 14 grounds. The Appellant pleads that the trial magistrate, while indicating that the was a fundamental mistake, failed to indicate the source of mistake; that she failed to appreciate that the consent was at the behest of the defendant; that the trial magistrate failed to appreciate that the consent was entered into willingly; that arising from that consent the Auctioneer proceeded to have his bill of costs taxed; that the court while arriving at a finding that the consent was entered into unwillingly failed to appreciate that the respondent has since partially complied with it. It is further stated that the trial court imputed non- disclosure by the Appellant yet the decree issued by the trial court on 16<sup>th</sup> November 2023 show that ksh. 2,500,000 was duly accounted for. It is stated that the



trial court erred by setting aside the consent order while leaving the consent itself intact. It is finally pleaded that the Ruling dated 27<sup>th</sup> August 2024 vitiated other proceedings subject of a different trial court before being heard on merit.

4. The Appeal proceeded by way of written submissions, which were also highlighted orally by the respective Advocates.

### **The Appellant's Submissions**

5. The Appellant relied on written submissions dated 1<sup>st</sup> December, 2025 and further submissions dated 23<sup>rd</sup> January 2025. It is submitted that the trial court failed to appreciate the nature of consent Judgments; that the consent was validly negotiated, signed, and filed by advocates from both sides, satisfying all requirements of legal representation and voluntarism
6. While relying on *Flora N. Wasike v Destimo Wamboko KECA 149 (KLR)*, the Appellant submits that a consent order is a binding contract between the parties. The Appellant further contends that the Respondent partially complied with the consent terms by making payments of Kshs. 1,800,000 and Kshs. 1,434,866. This, he argues, is inconsistent with claims of coercion or mistake.
7. The Appellant therefore argues that any arithmetical disagreement over interest should have been cured via Section 99 of the *Civil Procedure Act* rather than setting aside the entire compromise. It is finally submitted that the ruling was flawed and inconsistent with the prevailing law.

### **The Respondent's Submissions**

8. The Respondent opposes the appeal, asserting that the consent was a product of concealment of facts and misrepresentation bordering on fraud.
9. The Respondent's argues that the Appellant calculated interest on sums that had already been paid by the insurer following the lower court Judgment.
10. The Respondent contends that the consent was signed under the threat of having their motor vehicles sold by public auction, which created significant pressure and rendered the consent involuntary.
11. Relying on *MacFoy v United Africa Co. Ltd (1961) 3 All ER 1169*, the Respondent emphasizes that the actions by the Appellant were illegal and thus any resultant action or proceedings therefrom became a nullity. The respondent insists that the Appellant's failure to disclose that they had already been paid is nothing short of fraud and that demanding interest on the money already received is not only baseless but also immoral.
12. The Respondent therefore urges this Court to dismiss the appeal.

### **Analysis and determination**

13. I have considered the trial court's record, the Memorandum of Appeal and the respective submissions, and I have identified the following issues for determination:
  - a) Whether the trial court erred in setting aside a consent order.
  - b). Whether arithmetical errors in interest computation constitute a fundamental mistake sufficient to vitiate a consent.
  - c). What appropriate orders should the court make



14. On the first issue, it is trite that a consent order is in the nature of a contract and the only grounds of setting aside, are those grounds upon which a contract may be set aside. In the case of *Flora wasike* (supra) cited by the Appellant the court of Appeal held: “Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them.....and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court.....or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement”
15. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd* (2001) eKLR, the court warned against judicial interference in parties’ contracts. The court held:
- “A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved”.
- The court went on to cite with approval a passage from *Fina Bank Limited vs Spares & Industries Limited*, where it was held:
- “It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain”.
16. A brief background to this dispute is necessary; - The Appellant herein was awarded general damages of ksh. 2,500,000 and special damages in the sum of ksh. 66,900 by the lower court. Upon delivery of judgment, the respondent paid ksh. 2,500,000. The Appellant thereafter went on Appeal seeking for more damages on account of loss of earning capacity which the trial court had declined to award. The high court in *Meru* awarded ksh. 3,000,000 under this head. When the matter went back to the lower court for redrawing of the decree, the court discounted the amount due by the ksh. 2,500,000 that had been paid. However, interest was calculated from the date of judgment, with no consideration being made for the fact that at least no interest should accrue on the amount already paid. Thus, there was error in the drawing of the decree dated 16<sup>th</sup> November 2023. That error is the genesis of the problem that has ended up in this court.
17. The calculations on the decree of 16/ 11/2023 brought the amount due to ksh. 4,669,771. The parties entered a consent for payment of this sum through the letter dated 15/01/2024 addressed to the court and subsequently, the order dated 16<sup>th</sup> January 2024 for the said amount and the terms of payment was drawn. It is this order that forms the subject matter of this Appeal.
18. Thus there was indeed an error on the calculation of interest and therefore the consent was tainted by a mistake or a misapprehension of a material fact, both of which are valid grounds for setting aside a consent order or judgment. Therefore, in principle, the trial court did not err.

**Whether arithmetical errors in interest computation constitute a fundamental mistake sufficient to vitiate a consent.**

19. The consent order however was not just about the amount due. It had other provisions, for instance the payment of Auctioneers fee, the conditional release of the defendant’s vehicle and the default clause.
20. The pertinent question then is whether the particular error warranted the setting aside of the entire consent order, in the in the circumstances of this case The terms of the consent were as follows:
1. The defendant shall pay the plaintiff ksh. 4,669,771 all-inclusive in three instalments



2. The defendant shall pay ksh. 1,800,000 on or before 26<sup>th</sup> January 2024 as the first instalment
  3. The defendant shall pay a second instalment of ksh. 1,434, 885 on or before 30<sup>th</sup> March 2024
  4. The defendant shall pay the final instalment of ksh. 1,434,886 on or before 31<sup>st</sup> May 2024
  5. The consent herein shall operate as stay of Execution
  6. The Auctioneer’s fees shall be negotiated and agreed upon by the parties
  7. The Motor vehicle Registration No. KCG 316W to be released upon payment of the 1<sup>st</sup> instalment on or before 26<sup>th</sup> January 2024
  8. In default of the above term’s execution to issue.
21. From the above terms, the error on interest should not have had any bearing paragraph 5,6,7 and 8 of the order. Further as correctly pointed out by the Appellant the setting aside of the order has had an effect on other matters attendant to the case. For instance, the Auctioneer has since taxed his/ her costs. The record also show that the motor vehicle referred to under paragraph 7 has since been sold in execution of the decree. The Appellant also states that there has been partial compliance with the order.
  22. It is not hard to see the challenges posed by the setting aside of the consent order. It is not also lost on this court that in the Application forming the subject matter of this Appeal, the Respondent herein had sought to have the order “vacated/ set aside/ varied or reviewed”, perhaps in appreciation of the challenges that would result by a blanket vacation of the consent order. The trial court should at least have taken a cue from the respondent’s prayers and refrain from setting aside the entire consent.
  23. Am in agreement with the Appellant that the cure for the error lay on an Application under section 99 of the *civil procedure Act* and not the setting aside of the order. Section 99 provides as follows: “ Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”
  24. Before I conclude, I wish to point out that the accusations that the Respondent has labelled against the Appellant are not true. Firstly, the consent emanated from the respondent. Indeed, it was done on its letterheads. Further contrary to the respondent’s allegation, the amount of ksh. 2,500,000 was accounted before at the time of redrawing of the decree. On the error on interest, the respondent has no moral ground to accuse the Appellant of fraud if the respondent too failed to notice the error when it drew the terms of the consent. Further, and in any event as a matter of law and practice decrees are drawn by the courts, not parties to the suit. Therefore, to allege that the consent was founded on fraud smacks of insincerity on the part of the respondent. The allegation too that it was based on undue influence is not plausible, in the light of legal representation that the respondent had throughout the trial, and after trial.

### **Final orders**

25. In the end, the Appeal succeeds. The lower court’s Ruling dated 27<sup>th</sup> August 2024 is hereby set aside and is substituted with the following:
  - a. The parties herein are hereby directed to reconcile the computation of interest , and if the dispute persists, through an Application before the Trial court pursuant to section 99 of the *civil procedure Act*.



- b. In default of an agreement on computation, the trial court shall determine the correct interest, payable strictly as a matter of Arithmetic.
- c. The consent order dated 9th April 2024 shall be varied in accordance with the outcome in (a) or (b) above and the payments terms, as may be appropriate, but otherwise binding on the parties, in all other respects.
- d. The costs of this Appeal are awarded to the Appellant.

**DATED, SIGNED AND DELIVERED VIRTUALLY, AT NAIROBI THIS 31<sup>ST</sup> DAY OF MARCH 2026.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of :

Ismail Adow- Court Assistant

Mr. Mutuma for the Appellant

