

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT THIKA  
CIVIL SUIT NO. E006 OF 2024

PETER MWANIKI MAINA.....1<sup>ST</sup> PLAINTIFF  
DEDSILVA INTERNATIONAL LIMITED.....2<sup>ND</sup> PLAINTIFF

VERSUS

JULIET WANJIRU MAINA.....1<sup>ST</sup> DEFENDANT  
RAFIKI MICROFINANCE BANK LIMIED.....2<sup>ND</sup> DEFENDANT

**RULING**

The two applications to which this ruling relates are manifestation of intolerance and egocentric approach to simple issues. I say so because in my view, the parties overcame what I consider to have been the hardest parts of the litigation by reaching a consent which seemingly settled the whole matter. This consent which was adopted as a judgement of the court was in the following clear terms;

1. THAT the 1<sup>st</sup> Defendant hereby, acknowledges an outstanding loan with the 2<sup>nd</sup> Defendant, Rafiki Microfinance Bank Limited, amounting to Kenya Shillings Twenty-Six Million, Two Hundred-Thirty Three Thousand, Forty-One Shillings and Fifty Eight cents (Kshs. 26,233,041.58) obtained by the 1<sup>st</sup> Defendant through the 2<sup>nd</sup> Plaintiff, Dedsilva International Limited.
  
2. THAT the 1<sup>st</sup> Plaintiff, Peter Mwaniki Maina, shall resign as a Director of Dedsilva International Limited and transfer all his shares to the 1<sup>st</sup> Defendant, Juliet Wanjiru Maina, and therefore, the 1<sup>st</sup> Defendant shall be the sole director shareholder of the 2<sup>nd</sup> Plaintiff thereby enabling her to execute all necessary company obligations within 14 days from adoption of this consent in Court.

3. THAT once the transfer of shares and resignation of the 1<sup>st</sup> Plaintiff as a director of the 2<sup>nd</sup> Plaintiff is complete, the 1<sup>st</sup> Defendant shall ensure that the 2<sup>nd</sup> Plaintiff, Dedsilva International Limited shall pay the sum of Kshs. 15,000,000/= to the second Defendant on filing of this consent.
4. THAT the 2<sup>nd</sup> Defendant shall discharge the securities held over the following properties within sixty (60) days from the date of adoption of this consent.
  1. Thika Municipality Block 5/266
  2. Thika Municipality Block 24/811
  3. Thika Municipality Block 18/382
  4. Guarantee and indemnity dated 30<sup>th</sup> March 2023, held against the Plaintiff, Peter Mwaniki Maina.These shall be substituted by the title deed provided by the 1<sup>st</sup> Defendant.
5. THAT the 2<sup>nd</sup> Defendant shall restructure the balance of the loan amounting to Kenya Shillings Eleven Million Two Hundred and Thirty-Three Thousand, Forty-One Shillings and Fifty-Eight Cents. (KES. 11,233,041.58).
6. THAT the 1<sup>st</sup> Plaintiff shall not be liable for any interest accruing in the facilities pending discharge of the charge over the properties in (5) above either in his personal capacity or as a director/shareholder of the 2<sup>nd</sup> Plaintiff.
7. THAT 2<sup>nd</sup> Plaintiff shall cover all costs associated with restructuring including valuation and charging of the substituted securities.
8. THAT the consent shall take effect upon filing in Court.

9. THAT the honourable court shall make a determination on the issue of costs.

The parties embarked in complying with the consent orders but a stalemate was created towards the tail end. I say created because the events leading to the perceived stalemate were unfortunate and capable of resolution by ceding harmless grounds. It is this stalemate that led the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant who from the pleadings I understand to be brother and sister file applications seeking to cite each other for contempt of court.

By notice of motion dated 4<sup>th</sup> April 2025, the 1<sup>st</sup> plaintiff sought the following orders;

- a) Spent.
- b) **THAT** the Honourable Court be pleased to cite Ms. Juliet Wanjiru Maina, the director shareholder of Dedsilva International Limited for contempt of the judgment of the court dated the 18<sup>th</sup> day of November, 2024.
- c) **THAT** an order of committal to prison be made against Ms. Juliet Wanjiru Maina, for such period as this Honourable Court may deem fit and just in that she has blatantly disobeyed the express orders made herein by this Honourable Court.
- d) **THAT** an order compelling Ms. Juliet Wanjiru Maina, to handover the duly executed discharge of charge for the properties known as Thika Municipality Block 5/266, 24/811, 18/382.

- e) Any other orders the Court may deem fit in the circumstances.
- f) An order that costs of and occasioned by this motion be paid by the respondent herein.

In his affidavit in support of the application sworn on 4<sup>th</sup> April 2025, the 1<sup>st</sup> plaintiff deponed that, the 1<sup>st</sup> defendant had frustrated execution of clause 7 of the consent order by refusing to pay the costs of registration of the discharge of charge despite the 1<sup>st</sup> plaintiff meeting the said costs which were the 1<sup>st</sup> defendant's obligation. The 1<sup>st</sup> plaintiff added that the 1<sup>st</sup> defendant had failed to execute and handover the discharge of charge for purposes of registration. In an effort to prove this point, the 1<sup>st</sup> defendant annexed correspondence demanding the executed discharge from the 1<sup>st</sup> defendant.

In reply to the application, the 1<sup>st</sup> defendant has deponed that the contempt application was filed almost immediately his advocate informed the 1<sup>st</sup> plaintiff's advocates that 98 per cent of the process of registering the discharge of charge was complete and requested either the original title deed or a physical handover at the Thika Land Registry. She admits that the discharge of charge was in the hands of her advocate and not herself and argues that the consent order did not specify which law firm was to undertake the registration of discharge of charge. She however avers that she has paid the costs of discharge to her advocates.

The 1<sup>st</sup> defendant has also deponed that she complied with the clauses which provided for the 1<sup>st</sup> plaintiff's resignation by executing the necessary documents and paying of the loans to enable the properties to be discharged. She adds that the delay in processing the discharge was caused by the process of getting the title deeds from the 2<sup>nd</sup> defendant and not her yet the 2<sup>nd</sup> defendant had not been

cited for contempt of court. She also blames some delay on an issue with franking machine at the lands registry. She adds that there was an oral agreement that her advocates would finalize the registration of the discharge of charge before the original title deed in dispute could be released to facilitate the final step.

She has also averred that her advocates issued a professional undertaking to the effect that he shall release the original title deed for parcels numbers Thika Municipality Block 5/266, 24/811, 18/382 (hereinafter referred to as ‘the properties’) once it was released to him for registration of the discharge but the 1<sup>st</sup> plaintiff’s advocate demanded an amendment to include a timeline of seven days for the return which her advocate did but the 1<sup>st</sup> plaintiff’s advocate declined it on claim that the ship had sailed due to delay of 24 hours.

The 1<sup>st</sup> defendant avers that the stalemate has been caused by misunderstanding between the advocates for the parties with the 1<sup>st</sup> plaintiff’s advocates claiming from her legal fees associated with the registration of the discharge of charge, while she had already paid her advocate for the same work who had completed 98 per cent of the work that is; payment of stamp duty, registration, discharge and search fees and franking of all documents ready for registration.

She retorts that, it is the 1<sup>st</sup> plaintiff who is in contempt of court for failing to release the title deed to her advocate for registration of the discharge of charge. She claims that third parties are behind the application for contempt who want to see her go to jail and escalate their sibling’s rivalry. She asks the court to look beyond the face of the application and see a family dispute that can be solved through mediation rather than contempt of court proceedings and she commits to peaceful resolution and reconciliation instead of punitive measures.

In her notice of motion dated 22<sup>nd</sup> April 2025 which I see as a reaction to the 1<sup>st</sup> plaintiff's aforesaid application, the 1<sup>st</sup> defendant seeks the following orders;

1. Spent.
2. Spent.
3. THAT this Honourable Court do find and declare that Peter Mwaniki Maina the 1<sup>st</sup> Plaintiff/Respondent is in contempt of the lawful orders of the Court issued on 18<sup>th</sup> November 2024 by deliberately withholding the original title deeds required to comply with the consent judgment.
4. THAT the Honourable Court be pleased to summon the Respondent to appear in person and show cause why he should not be committed to civil jail or otherwise punished for contempt of Court.
5. THAT pending inter partes hearing, the Honourable Court be pleased to direct that the discharge of charge process, which is already 98 per cent completed, be finalized under the supervision of the Court.
6. THAT the Honourable Court do order the Respondent, PETER MWANIKI MAINA, to forthwith surrender or cause to be surrendered the original title deeds for: Thika Municipality Block 24/811, Thika Municipality Block 5/266 and Thika Municipality Block 18/382 to the Applicant's Advocates to enable registration of the Discharge of Charge, or in the alternative;
7. THAT the Honourable Court do order the parties' representatives to convene at the Thika Lands Registry for joint physical handover and lodging of the original title deeds for registration of the discharge of charge at Thika Land Registry.

8. THAT the costs of this application be borne by the Respondent.

She has restated in her affidavit dated 22<sup>nd</sup> April 2025 that the consent judgement did not specify which legal representative would register the discharge of charge and only required her to bear the costs of the process an obligation she has discharged. She has effectively repeated what she had stated in her affidavit in reply to the 1<sup>st</sup> plaintiff's application and adds that upon receipt of discharge documents, the 1<sup>st</sup> plaintiff's advocate presented her advocate with three fee notes which were grossly exaggerated and manifestly unreasonable. Upon her advocate protesting, it was orally agreed that her advocate would proceed with the registration of the discharge of charge for the other properties belonging to the respondent prior to release of the original title deeds in contention.

The 1<sup>st</sup> defendant adds that, the 1<sup>st</sup> plaintiff's advocates failed in his professional duty of aiding to expedite dispute resolution and promote healing especially in matters involving sensitive family relations. She states that she is not under an obligation to engage or remunerate a second law firm for the same service offered by her advocates.

The 1<sup>st</sup> plaintiff replied to the application through affidavit dated 23<sup>rd</sup> May 2025 in which he avers that the consent was comprehensive and covered the settlement of outstanding financial obligations, the transfer of shares in the 2<sup>nd</sup> plaintiff and his resignation. He adds that the 1<sup>st</sup> defendant was to pay all fees associated with the discharge of charge which was presented by his advocates and forwarded to the 2<sup>nd</sup> defendant's advocates for execution.

The 1<sup>st</sup> plaintiff avers further that the 1<sup>st</sup> defendant's advocates misrepresented to the bank that they were in full custody of the discharge and took over the process from his advocates without his knowledge, consent or information and that it was not proper for the 1<sup>st</sup> defendant's advocates to undertake registration of documents drawn by his advocates without any procedural correspondence, notice or accountability. According to the 1<sup>st</sup> defendant, that action was corruption of the legal process and breach of the integrity of the conveyancing procedures under Section 33 of the Land Registration Act.

He insists that the process was hampered by the 1<sup>st</sup> defendant's failure to pay as she was required to do. He has stated that a party cannot be compelled to accept a professional undertaking and since the 1<sup>st</sup> defendant's counsel's undertaking was not mutually acceptable, the parties should stick to the terms of the consent.

### ***Analysis and determination***

I have read the applications and considered the facts stated in the parties' respective affidavits. I have also gone through the parties' submissions dated 21<sup>st</sup> July 2025 and 4<sup>th</sup> August 2025. Having done so and having internalised the terms of the consent, I have formed opinion that the bone of contention herein is not in essence failure by either of the parties to comply with the terms of the consent but a contest of who can harm the other more.

For an application for contempt of court to succeed, the applicant must prove that the alleged contemnor was served with the court order in issue or at least they were aware of existence of the same. The contemnor must have had time, opportunity, obligation and ability or mandate to comply with the court order. The applicant must also proof that the contemnor willfully disobeyed the clear terms of the court order. While laying down the ingredients of a civil offence of contempt Honourable Justice A.K. Ndungu held in ***Republic v County***

**Secretary, Narok County Government & another; SEC & M Company Limited (Ex-parte) [2023] KEHC 617 (KLR)** that;

*‘These ingredients are summed up in the book Contempt in Modern New Zealand as follows;*

*There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -*

- a) The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant.*
- b) The defendant had knowledge of or proper notice of the terms of the order.*
- c) The defendant has acted in breach of the terms of the order; and*
- d) The defendant’s conduct was deliberate.*

Contempt of court is a more serious than a civil refraction and as such the standard of proof must be above that of balance of probabilities. Although it has penal consequences, proof of civil contempt of court does not call for the same standard of proof as in criminal cases. The standard of proof is balanced between the balance of probabilities and beyond reasonable doubts. Honourable Justice E.K. Wambwoto restated this position in ***Criticos & another v AIC Makutano & 66 others; Henan Highway Engineering Group Company Ltd (Co-Contemnor) [2025] KEELC 5040 (KLR)*** where he held that;

*‘Contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily. It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it*

*to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge.'*

I must confess that I have been moved by the proposition by the 1<sup>st</sup> defendant that this court should look beyond the face of the application and see this as a matter capable of amicable settlement in order to resolve whatever may be left in the parties' family relationship. I must emphasize that I have not lost sight of the fact that the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant are siblings and were ready to settle their dispute out of the court. Such overtures must be encouraged by assisting the parties bridge the gap in their stand on the remaining part of the dispute noting that courts and litigation should be the last resort for parties especially where protagonist are family members.

The law does not exist for the sole purpose of adversarial procedures but it should play a role in management and building of relationships and trust. Actually, it would be advancement of the law if the society were to be encouraged to sort their issues without taking hardline stands and only resort to court actions when all other disputes resolution mechanisms have failed. A court order should only be imposed where parties have failed to maintain cordial relationships, be they commercial, contractual or social.

The 1<sup>st</sup> defendant has not mentioned or disclosed the third parties she claims are out to drive a wedge between her and her brother but she creates an impression in my mind of a party who would be happy in seeking reconciliation and dispute resolution otherwise than the punitive nature of court orders. In the above context, I believe that condemning either of the parties to punitive compulsion in a matter where there is an alternative method of ensuring compliance would be counterproductive and will not serve the purpose of the rule of the law.

It is notable from the evidence placed before this court that neither of the parties has failed to execute, sign or do any act which frustrated execution of the court orders. In my view, the stalemate was caused by their advocates who have taken hardline position on who between them should undertake the registration of the documents. It is apparent that the 1<sup>st</sup> defendant's advocates presented the discharge of charge for registration and the only remaining process is the actual registration of the same and removing the entry from the register and the title deed which cannot be done without actual presentation of the original title deed to the lands registry. The 1<sup>st</sup> plaintiff's position is that the process should be undertaken by them with the 1<sup>st</sup> defendant paying their fees for doing the work.

I have not seen any of the parties accusing the other of noncompliance. Instead, they are giving their advocate's stand on the issue of how the process should be completed. Although cases belong to the parties and advocates are assumed to be acting on instructions from their clients, a court should be cautious and able to decipher an act of the advocate from that of their clients so that it does not punish an innocent litigant who acts on advice from their advocates.

The 1<sup>st</sup> plaintiff deposited his title deed with his advocates who have held on it on account of arguments that they are the ones to register the discharge of charge. I find it hard to find the 1<sup>st</sup> plaintiff guilty of contempt of court on that basis. Similarly, the 1<sup>st</sup> defendant paid her advocates for registration of the same discharge of charge. In either of the scenarios, the end result would be in compliance with the court order. If the two advocates had agreed on who should do the registration, these applications would have been unnecessary and the process which has now taken more than a year would have been completed in a month or so.

In my view, the advocates for the parties are the ones who frustrated the process in arguing who is to receive fees for registration of the discharge of charge. It will be an affront to justice to condemn any of the parties for contempt of court which is a serious offence for independent actions of their respective advocates. In that regard, I find the two applications lacking merits and I hereby decline to find in favour of any.

Having said the above, the parties need to be assisted to unlock the stalemate in order to execute the orders of the court to the fullest extent. Leaving the matter in the status it is in without making directions that will compel parties to comply will be tantamount to the court having made orders in vain. Every matter brought and finalized in court in whatever means must bring issues between the parties to a closure.

I note that the 1<sup>st</sup> defendant's advocates had given an undertaking which in ordinary practice and if there was good will would have closed the execution and compliance with the court order. The terms of the undertaking even with amendment were however not acceptable by the 1<sup>st</sup> plaintiff's advocates. It is true as submitted by the 1<sup>st</sup> plaintiff that a party cannot be compelled to accept an undertaking which was not part of the consent or agreement between the parties but this court has a duty to unlock a deadlock in a way that is aimed at enabling execution of its orders or decrees.

It is equally true as submitted by the 1<sup>st</sup> defendant that the consent order did not specify which party was to register the discharge of charge. The fact that the 1<sup>st</sup> plaintiff's advocate drew the discharge of charge does not give them exclusive right or duty to register it in absence of an order or agreement to that effect. In normal conveyance practice, a discharge of charge is released to the owner of the property for purposes of registration. The justification of this is to place

responsibility, integrity and correctness of the details and information therein on the owner such that there may not be left anything encumbering the property or any claim of deliberate breach of registration process that may result to lack of full discharge. The 1<sup>st</sup> plaintiff's invocation of Section 33 of the Land Registration Act is irrelevant to this matter as the same makes provisions for replacement of lost certificates of title or lease and registers which is not the case here.

In addition to the above, the 1<sup>st</sup> plaintiff has misrepresented or misapprehended the terms of the consent in respect to the costs associated with the discharge of charge for the properties in issue. The 1<sup>st</sup> plaintiff has leveraged his argument on clause 7 of the consent which appears to speak of the 2<sup>nd</sup> plaintiff covering costs associated with restructuring including valuation and charging of the substituted securities. This does not talk of the properties intended to be discharged but the new securities. Again, the party bound to pay the said costs here is the 2<sup>nd</sup> plaintiff and not the 1<sup>st</sup> defendant who are obviously different persons.

I do agree with the position taken by the 1<sup>st</sup> defendant that she is not bound and has no duty to engage the 1<sup>st</sup> plaintiff's advocates for registration of discharge of charge as the consent did not say so neither did she instruct the said advocates. In this regard, I find each party should meet their advocates' costs as it relates to registration of the discharge of charge but that does not include the costs of the suit which shall be borne by the 1<sup>st</sup> defendant as ordered by the court vide its ruling dated 27<sup>th</sup> February 2025.

The final orders of the court in respect of the two applications are as follows;

1. The 1<sup>st</sup> plaintiff's application dated 4<sup>th</sup> April 2025 and the 1<sup>st</sup> defendant's application dated 22<sup>nd</sup> April 2025 are dismissed.

2. The 1<sup>st</sup> defendant shall through her advocates release duly executed original discharges of charges in respect of land parcels numbers Thika Municipality Block 5/266, Thika Municipality Block 24/811 and Thika Municipality Block 18/282 and all other documents necessary and required for registration of the discharge of charge to the 1<sup>st</sup> plaintiff's advocates within seven (7) days from the date of this ruling.
3. Upon release of the discharge of charge and other necessary documents, the 1<sup>st</sup> defendant and her advocates shall be discharged from any further liability in respect of consent dated 15-11-2024 and adopted by the court on 18-11-2024 unless the 2<sup>nd</sup> defendant or the lands registrar shall require execution of any further or more documents.
4. There shall be no orders as to costs in respect of the two applications.

Dated signed and delivered at Nairobi this 30<sup>th</sup> day of April 2026.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mr. Omondi holding brief for Miss Ikua for the plaintiff and Mr. Kairu Kihunyo for the 1<sup>st</sup> defendant and in absence of the 2<sup>nd</sup> defendant.