

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT MISC. APPLICATION NO. E1359 OF 2025

**STELLA MUMBI MBOGO.....DECREE
HOLDER/APPLICANT**

VERSUS

**CENTSAVVY
CREDIT LIMITED.....JUDGMENT DEBTOR/RESPONDENT**

RULING

1. For determination before the court is the Decree holders - Stella Mumbi Mbogo, (hereinafter the Applicant) **motion dated 23/09/2025**. The Applicant seeks orders compelling the judgment Debtor/Respondents, CENTSAVVY Credit limited (hereinafter the Respondent) director Fredrick Lusuli Ikana to attend court to be orally examined as to the business and affairs of the respondent and its properties and or means of the Respondent to satisfy the decree sum, stated as Kshs. 10,151,363.22.
2. The motion is premised upon provisions of **Order 51 Rule (1) Order 22 Rule 35 of the Civil Procedure Rules (CPR) and Section 1A, 3A and 63 of the Civil Procedure Act (CPA)** alongside the supporting affidavit sworn by the Applicant on 23/09/2025.

As stated in by the Applicant, these execution proceedings arose from a judgment and decree passed in **Milimani Commercial Courts Case No. E 353 of 2024 - Stella Mumbi Mbogo vs. Centsavvy Credit Limited** in the sum of Kshs. 9,868,202.54/- plus costs of Kshs. 264,005.00/- as shown provisions of **Order 51 Rule (1), Order 22 Rule 35 of the Civil Procedure Rules (CPR) and Section 1A, 3A and 63 of the Civil Procedure Act (CPA)** alongside the supporting affidavit sworn by the Applicant on 23/09/2025.

3. As stated in by the Applicant, these execution proceedings arose from a judgment and decree passed in Milimani Commercial Courts case No. E353 of 2024 - **Stella Mumbi Mbogo v. Centsavvy Credit Limited** in the sum of Kshs. 9,868,202.54 plus costs of Kshs. 264,005.00/- as shown in the Decree and certificate of costs issued on 31/10/52024 annexed as “exhibit SMM-2”.
4. The Respondent (JD) lodged a Notice of Preliminary Objection dated 24/09/2025 on grounds that this court has no jurisdiction to hear and determine the application being not the court executing the4 decree by dint of **Section 34 of the Civil Procedure Act.**
5. As is the law, a preliminary objection once raised ought to be determined in the first instance as if argued successfully; the case or application may be dismissed or struck out as held in the case of **Mukisa Biscuit Manufacturing Co. Ltd v. WestEnd Distributors Ltd (1969) EA.** The parties were

directed to file submissions on both the motion and the Preliminary Objection. Only the Applicant filed its submissions dated 14/01/2026. I have perused and considered the same.

Analysis and Determination

6. Whereas the Applicant has submitted on the parameters and threshold under **Order 22 Rule 35 of the CPR** - examination of judgment debtor as to its property, and lifting the veil of incorporation a limited liability company to facilitate oral cross examination of its directors it has failed to address the matter of the preliminary objection.

The Preliminary Objection must be a point of law which has been pleaded, that if argued may dispose of the suit it cannot be based on disputed facts or facts requiring further inquiry - **Mukhisa Biscuit case (supra) & Mogonchi v. Ombiro (2025)eKLR.**

7. In the instant case, the Preliminary Objection is grounded on **Order 22 Rule 35**. As stated above, the judgment and decree emanated from the subordinate court, Milimani commercial Courts. Several modes of execution of a decree are provided at **Order 22 CPR**.

8. **Order 22 Rule 35** provides where a decree is for the payment of money, the decree holder may apply to the court for an order that

a) ...

b) In the case of a corporation, any officer thereof; or

c) Any other person may be orally examined....

9. To the above extent, the Applicant is empowered to invoke the principle of lifting and or piercing the veil of incorporation to get the directors of the company and if successful, to hold them accountable for the payment of the companies debts.
10. The question now arises as to which court ought to handle the execution proceedings.

Section 30 of the Civil Procedure Act provides thus -

A decree may be executed either by the court which passed it or by the court which it is sent for execution.

11. **Section 31(1) provides:-** the court which passed a decree may on the application of the Decree holder send it for execution to another court.

(d) If the court which passed the decree considers for any other reason, which it has recorded in writing, that the decree should be executed by such other court.

(2) the court which passed a decree may, of its own motion send it for execution to any court of inferior but competent jurisdiction.

12. Considering the above legal imperatives, the court that passes a decree retains the authority to enforce the decree in the numerous modes of execution, save for the proviso stated above, for which the court that passes the decree must consider upon application, for transfer to another court.

13. The court in the case of **Kenya Tea Development agency Holdings Ltd. V. Lee Kimanthi & 2 Others (2021) eKLR** emphasized that execution of a decree must be thought he proper statutory channels being the original court or upon lawful transfer see also **Duncan Nderitu Ndegwa v. Kenya Pipeline Co. Ltd (2018) eKLR** wherein the court nullified execution proceedings undertaken by another court without statutory transfer.
14. Considering in this instance, that the court that passed the decree is the subordinate court as aforesated, and there being no explanation by the Applicant why the said court cannot execute its decree, it is obvious that the application is incompetently filed in this court.
15. The original jurisdiction of enforcement of a decree lies with the court that passes the decree, and only on the rare circumstances as tabulated at **Section 31(1) of the Civil Procedure Act** would any other court assure jurisdiction to execution proceedings from the original court.
16. **In the result, the Respondents Preliminary Objection succeeds. Thus rendering the Applicants motion dated 23/09/2025 incompetent. It is thus struck out with cost to the Respondents.
Orders accordingly.**

Delivered Dated and Signed at Nairobi this 30th Day of April, 2026.

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JANET MULWA.

JUDGE

ORIGINAL