



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sanghani & another v Wainaina (Civil Case E092 of 2019)  
[2026] KEHC 5292 (KLR) (Civ) (10 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5292 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
CIVIL  
CIVIL CASE E092 OF 2019  
MA OTIENO, J  
APRIL 10, 2026  
IN THE MATTER OF THE INSOLVENCY ACT, 2015  
HCCC NO. E092/2019**

**BETWEEN**

**RAJENDRA RATILAL SANGHANI ..... 1<sup>ST</sup> PLAINTIFF**

**GRANADA TRADING COMPANY LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**GEORGE WAINAINA ..... DEFENDANT**

**RULING**

1. The Defendant/Applicant has moved the Court through an Application dated 11th August 2025, seeking the following substantive orders:
  - i. Leave to appeal against the order of Hon. C. L. Adisa issued on 11th August 2025, which directed that warrants of arrest do issue against him; and
  - ii. Stay of execution of the said warrants of arrest pending the intended appeal.
2. The Application is premised on the grounds set out on its face and supported by the Applicant's affidavit. The Applicant contends that the impugned order is appealable only with leave pursuant to Section 75 of the *Civil Procedure Act*, as it relates to arrest and detention in execution proceedings.
3. The Applicant asserts that he has never refused or neglected to satisfy the decree. He states that he has acted in good faith by making substantial payments, contending that prior to the issuance of the warrants, he paid KES 9,000,000 together with auctioneer's charges, and subsequently paid an



additional KES 8,000,000, making a total of approximately KES 17,000,000 against a decretal sum of KES 22,065,000.

4. Relying on *Benson Ogina Ogallo v Samson Omuombo Odido* [2021] KEHC 5032 (KLR), the Applicant submitted that committal to civil jail under Section 38 of the *Civil Procedure Act* is a measure of last resort and should not be invoked where a judgment debtor is actively attempting to settle the decree. He further argued that incarceration would disable him from generating the remaining alleged balance of KES 5,065,000.
5. The Applicant therefore seeks leave to appeal, stay of execution of the warrants of arrest, and reasonable time to settle the outstanding balance.
6. The Respondent/Decree Holder vehemently opposed the application through a replying affidavit dated 21<sup>st</sup> October 2025. It was deponed that the Application amounts to a re-litigation of issues already determined and thus *res judicata*.
7. The Respondent disputed the Applicant's alleged payments, asserting that only KES 9,000,000 has been paid in total; KES 7,500,000 by August 2024 and KES 1,500,000 thereafter, leaving an outstanding balance of KES 13,065,000.
8. The Respondent further pointed out that the Applicant breached a consent judgment dated 17th October 2023 and failed to honour a sworn undertaking dated 9th December 2024, in which he undertook to clear the balance within three months.
9. It was submitted that the Applicant's conduct amounts to an abuse of the court process and that the Decree Holder is entitled to enjoy the fruits of a lawful judgment. Reliance was placed on *James Gathirwa Ngugi v Multiple Hauliers (EA) Ltd* [2016] eKLR and *Otieno v Chelisa & Another* [2023] KEHC 1674 (KLR) to urge dismissal of the Application with costs.
10. The Application was canvassed by way of written submissions. The Applicant's submissions are dated 16th March 2026, while those of the Respondent are dated 18th March 2026.

### **Analysis and Determination**

11. I have carefully considered the Application, the rival affidavits, the submissions by both parties, and the applicable law. The sole issue for determination is whether the Applicant is entitled to leave to appeal and stay of execution of the warrants of arrest.
12. It is not contested that an order directing arrest and committal in execution proceedings is appealable only with leave under Section 75 of the *Civil Procedure Act*. Leave, however, is discretionary and will only be granted where an applicant demonstrates arguable grounds of appeal.
13. The Applicant's principal argument is that he has substantially satisfied the decree and that committal to civil jail is premature and punitive. He relies on judicial authority to the effect that imprisonment ought to be employed only as a last resort.
14. The Respondent, on the other hand, contends that the Applicant is a serial defaulter whose conduct disentitles him from the Court's discretion.
15. From the record before the Court, the following facts are incontrovertible:
  - a. The parties entered into a final consent settlement on 17th October 2023 for the sum of KES 22,065,000.



- b. The Applicant defaulted on the court-ordered monthly instalments of KES 1,000,000 after August 2024.
  - c. On 9th December 2024, the Applicant swore an affidavit undertaking to settle the balance within three months, expressly inviting the Court to take “appropriate action” in default.
16. Despite these indulgences, the Applicant repeatedly failed to honour both the consent judgment and his own sworn undertaking. His alleged payments are disputed and unsupported by credible proof sufficient to displace the Respondent’s position.
  17. In these circumstances, the Applicant cannot be heard to invoke the equitable discretion of the Court. To grant a stay at this stage would be to aid a litigant who has persistently obstructed execution and treated court orders with casual indifference.
  18. Courts exist to resolve disputes conclusively, not to perpetuate them. As was stated in *Mary N. Njehia v National Bank of Kenya Ltd* [2017] eKLR, repeated litigation and disregard of settled matters undermine the integrity of the judicial process.
  19. In the absence of an arguable appeal, the prayer for leave fails. Without leave, the application for stay is rendered untenable.
  20. The upshot of the foregoing is that the Defendant’s Application dated 11th August 2025 is hereby dismissed with costs to the Plaintiffs/Decree Holders.
  21. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 10<sup>TH</sup> DAY OF APRIL 2026**

**HON. MR. JUSTICE MOSES ADO**

**JUDGE OF THE HIGH COURT**

In the presence of: -

C/A – Moses

Ms. Njiru..... for the Defendant/Applicant

Mbugua h/b for Kago..... for the Plaintiff/Respondent

