



**Maina & Maina Advocates Llp v Rashi; Director of Immigration & another (Interested Parties) (Miscellaneous Application E418 of 2022) [2026] KEHC 6247 (KLR) (Commercial and Tax) (8 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6247 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E418 OF 2022**

**JWW MONG'ARE, J**

**MAY 8, 2026**

**BETWEEN**

**MAINA & MAINA ADVOCATES LLP ..... PLAINTIFF**

**AND**

**MONTHINDA RASHI ..... RESPONDENT**

**AND**

**DIRECTOR OF IMMIGRATION ..... INTERESTED PARTY**

**INSPECTOR GENERAL OF POLICE ..... INTERESTED PARTY**

**RULING**

**Introduction and Background**

1. On 17<sup>th</sup> March 2025, the court entered judgment in favour of the Applicant in respect of their Certificate of Costs dated 13<sup>th</sup> January 2023 for the sum of Kshs. 12,733,789.90 together with interest at the rate of 14% from 21<sup>st</sup> November 2022 until payment in full. The Applicant has now filed the application dated 8<sup>th</sup> September 2025 seeking the court to issue a warrant of arrest against the Respondent, compel her to deposit her passport as previously ordered, summon the 1<sup>st</sup> Interested Party to provide a detailed account of her movements in and out of Kenya, summon the 2<sup>nd</sup> Interested Party to present her for cross-examination and secure her attendance in court, allow the Applicant's advocate to cross-examine her and that the resultant orders be served upon the Department of Immigration for enforcement at all ports.



2. The application is supported by grounds on its face and the supporting affidavit of Ivy Muyoti, an advocate practicing in the Applicant's firm, sworn on 8<sup>th</sup> September 2025. It is opposed by the Respondent through her replying affidavit sworn on 2<sup>nd</sup> November 2025.
3. The Applicant's case is that the court previously issued orders on 28<sup>th</sup> March 2023 for the Respondent to deposit her passport and security of Ksh. 12,733,789.80 or equivalent property and that on 21<sup>st</sup> May 2025, she was ordered to deposit half the decretal sum, that Ksh. 6,366,894.90, in court within 60 days. The Applicant claims that the Respondent has ignored these court orders as no passport was deposited and no security was provided, that she is a foreign national with no known local address or assets, that the Applicant has made repeated inquiries to the 1<sup>st</sup> Interested Party about her whereabouts and travel status but there has been no response and that they have reliable information that the Respondent is at an advanced stage of making arrangements to flee Kenya permanently. The Applicant states that the Applicant risks recovering nothing if she flees and that no prejudice will be suffered to the Respondent if the application is granted.
4. In response, the Respondent denies acting beyond that of a broker or intermediary and claims she was only engaged to facilitate introductions and negotiations, and never took control, possession, or management of any funds, property, or contractual rights. She categorically denies any fraudulent, dishonest, or wrongful conduct, including any allegation of misappropriating funds or obstructing the Applicant and states she has no intention of absconding from the court's jurisdiction. She claims to be a permanent resident of Nairobi with substantial family, business, and personal ties in Kenya. She expresses willingness to attend court, abide by lawful orders, and provide any information reasonably requested to help resolve the matter expeditiously. As such, she prays that the application be dismissed with costs for being entirely without merit.

### **Analysis and Determination**

5. The Applicant's application is anchored under inter alia Order 39 Rule 1 of the Civil Procedure Rules which provides as follows:

#### **Order 39 - Arrest and Attachment before Judgment**

Where at any stage of a suit, other than a suit of the nature referred to in paragraphs [a] to [d] of section 12 of the Act, the court is satisfied by affidavit or otherwise—

- (a) that the defendant with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him- [i]has absconded or left the local limits of the jurisdiction of the court; or [ii]is about to abscond or leave the local limits of the jurisdiction of the court; or [iii]has disposed of or removed from the local limits of the jurisdiction of the court his property or any part thereof; or
- (b) that the defendant is about to leave Kenya under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

The court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the court until the suit is disposed of or until the further order of the court.



6. From the above, Order 39 Rule 1 allows arrest before or during a suit but before judgment if the court is satisfied the defendant is about to abscond, leave jurisdiction, or dispose of property to delay or obstruct execution. This matter is concluded as judgment has already been entered in favour of the Applicant and it is no longer at the stage of arrest to show cause why security for appearance should be furnished in the pending suit as the judgment and decree already exist.
7. However, I note that under Order 22 Rule 35 of the Rules, after a decree for payment of money has been issued, the decree-holder may apply to court for orders that judgment-debtor be orally examined as to the debts owing to the judgment-debtor and the property or means of satisfying the decree. The said provision states as follows:

“Where a decree is for payment of money, the decree-holder may apply to the court for an order that –

  - (a) the judgment debtor;
  - (b) In the case of a corporation, any officer thereof; or
  - (c) Any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment debtor or officer, or other person, and for the production of any books or documents.”
8. The essence of an order sought under Order 22 Rule 35 of the Rules is to assist with discovery. This observation was made by Ringera J, in *Ultimate Laboratories V Tasha Bioservice Limited*; HCCC No. 1287 of 2000 where the Learned Judge emphasized thus:

“Two things emerge from the above proposition. One, the power of the Court to summon a person to attend and be examined under Order 22 Rule 35 is circumscribed within the purpose set out in the Rule. That is;...as to whether any or what debts are owing to the judgment debtor, and whether the judgment debtor has any and what property or means of satisfying the decree. I therefore, take the view that, as long as the Applicant has shown that the Respondent is in a position to provide information in the nature of discovery....as to whether any or what debts are owing to the judgment debtor, and whether the judgment debtor has any and what property or means of satisfying the decree, the Court should summon the person to attend and be examined in relation to the purpose stated in the Rule.”
9. It is not in dispute that there is a valid decree for Kshs. 12,733,789.80 in favour of the Applicant and against the Respondent who claims she was only a broker and intermediary and this raises a genuine question of what assets or means she has. She has not deposited her passport nor furnished security and it is clear that she has ignored previous court orders for the same. I totally understand that the Applicant must be curious as to whether she has any assets to satisfy the decree against her and the Respondent’s affidavit does not disclose any assets or means of satisfying the decree, which is exactly why Order 22 Rule 35 exists. I find merit in the prayer for the Respondent to be summoned and be orally examined on the same. The more coercive prayers of arrest and committal and summoning of the 1<sup>st</sup> Interested Party are premature at this stage as those remedies can only be considered if the Respondent fails to attend the oral examination or is found to have given false or misleading testimony.



## **Conclusion and Disposition**

10. In the foregoing, I find that the Applicant's application dated 8<sup>th</sup> September 2025 has merit and the same is allowed in the following terms:
  1. The Respondent shall personally appear before the Deputy Registrar of the Division on a date to be fixed by the Deputy Registrar, but in any event not later than 45 (Forty-five) days from the date of this ruling, for oral examination.
  2. If the Respondent fails to attend the oral examination as directed, the Applicant shall be at liberty to apply for the adjourned prayers afresh, and the Court will then consider them on their merits, including the possibility of arrest and committal.
  3. Costs of this application shall be borne by the Respondent and are assessed at Kshs. 30,000.00. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF MAY 2026**

.....

**J.W.W. MONGARE**

**JUDGE**

In the presence of

1. Mr. Maina for the Advocate
2. N/A for the Respondent
3. Amos- Court Assistant

