



**Kehodo v Scangraphics Kenya Ltd (Cause 437 of 2015)  
[2025] KEELRC 2019 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2019 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 437 OF 2015  
HS WASILWA, J  
JUNE 30, 2025**

**BETWEEN**

**ALEX ADIKA KEHODO ..... APPLICANT**

**AND**

**SCANGRAPHICS KENYA LTD ..... RESPONDENT**

**RULING**

1. The Respondent/Applicant filed a Notice of Motion dated 11<sup>th</sup> December 2024 seeking orders that: -
  1. Spent
  2. there be a stay of execution of the warrants of attachment issued to M/s Ruol Auctioneers on 9<sup>th</sup> December 2024.
  3. the warrants to M/s Ruol Auctioneers by this Court on 9<sup>th</sup> December 2024 be set aside.
  4. the costs of this application be provided for.

**Respondent/Applicant’s Case**

2. The Applicant avers that this court delivered a judgment in favour of the Claimant/Respondent on 20<sup>th</sup> January 2022 in respect to this matter for Kshs. 266,032 together with costs and interests thereon.
3. The Applicant avers that it has not been doing well and was evicted from the premises it was operating on for non-payment of rent last year.
4. The Applicant avers that on 9<sup>th</sup> December 2024, it was served with warrants of attachment dated even date for recovery of Kshs. 517,065 to M/s Ruol Auctioneers and on the same day it was served with a proclamation by M/s Ruol Auctioneers.



5. The Applicant avers that the judgment being almost three years old, a notice to show cause should be issued to the Respondent before warrants of attachment are issued.

### **Claimant/Respondent's Case**

6. In opposition to the Application, the Claimant/Respondent filed a Notice of Preliminary Objection dated 15<sup>th</sup> January 2025 on the following grounds:
  1. THAT the application is incompetent, misconstrued and otherwise an abuse of the due process of this Honourable Court.
  2. THAT the application is fatally defective and is filed in contravention and as abuse of the provisions of Order 22 Rule 6 and Order 22 Rule 18 (2) (3).
7. The Claimant/Respondent further filed a replying affidavit dated 20<sup>th</sup> January 2025.
8. The Claimant/Respondent avers that upon delivery of the judgment on 22<sup>nd</sup> January 2025, his advocate filed a Bill of Costs which was taxed by the taxing master at Kshs. 155,185. Subsequently, they were issued a Decree the court and his advocates instructed Mbeki Auctioneers to execute warrants of attachment.
9. The Claimant/Respondent avers that m/s Mbeki Auctioneers tried to no avail to locate, serve and proceed with the ensuing attachment as the Respondent/Applicant closed shop beforehand and disappeared without a trace to defeat the justice process. As a result, the auctioneer returned the warrants to the court unexecuted and informed them to trace the Respondent/Applicant to where they moved.
10. The Claimant/Respondent avers that since the Director of the Respondent/Applicant is his uncle, he was able to investigate where he relocated the company and when he confirmed the location, he informed his advocates who instructed m/s Ruol Auctioneers to apply for warrants attachment against them.
11. It is the Claimant/Respondent's case that the application is intended to delay and frustrate him from enjoying the fruits of his judgment; and the allegations that the company has not been doing well is made in bad faith as no evidence was attached to prove the same.
12. The Claimant/Respondent avers that the judgment having been delivered in 2022, the Applicants had an obligation to have settled the matter but had been playing cat and mouse games.

### **Applicant's Submissions**

13. The Applicant submitted that Order 22 Rule 18(1) (a) of the Civil Procedure Rules provides that where an application for execution is made more than one year after the date of the decree, the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him.
14. The Respondent/Applicant submitted that the decree herein was issued on 22<sup>nd</sup> January 2022, more than three years ago, therefore, a notice to show cause should have been issued to the Judgment/Debtor before warrants of attachment were issued to m/s Ruol Auctioneers thus the warrants should be set aside.
15. It is the Respondent/Applicant's submission that the Order 22 Rule 6 of the Civil Procedure Rule provides that if a party has obtained a default judgment against another, he/she is required to give a ten-day notice to the party in default that he/she is proceeding to execute the judgment before he/she



commences execution. Therefore, this rule is not relevant as it does not related to execution of a decree which is more than one year old.

16. The Respondent/Applicant submitted that the import of Order 22 Rule 18(2) is that a court can allow execution without notice to a Judgment Debtor if unreasonable delay can be caused by the issue of such notice or if the issuance of the notice would defeat the ends of justice, provide the court has recorded such reasons before allowing execution to proceed. The application did not suggest that there were reasons recorded by the court before allowing execution to proceed notwithstanding the decree is three years old.
17. The Respondent/Applicant further submitted that the import of Order 22 Rule 18(3) is that the court has discretion to allow execution to proceed without issuing a notice to show cause except in situations where Order 22 Rule 6 and Order 22 Rule 18(1) apply. In the instant application, Order 22 Rule 18(1) (a) applied and a notice to show cause should have been issued.

### **1st Respondent's Submissions**

18. The Claimant/Respondent submitted that the decree was issued previously together with warrants of attachment which instructions were issued to Mbeki Auctioneers to execute. However, all efforts by the auctioneers bore no fruits as the Respondent/Applicant closed shop and the warrants were returned to the court unexecuted. Service for this execution only materialised and became possible since the Respondent/Applicant is a relative of the Claimant/ Respondent's Director thus investigating the formers whereabouts became tenable.
19. The Claimant/Respondent submitted that Respondent/Applicant has no intention of settling the due decretal sum thus their application is an abuse of the application of the law and inclination to reliance on a technicality to avert justice.
20. The Claimant/Respondent submitted that the warrants of attachment had been issued within the stipulated time to Mbeki Auctioneers who couldn't manage to execute as the Respondent/Applicant bolted off and closed shop. Additionally, the Claimant/ Respondent through his advocates tried to request a re-issue of the same warrants to M/s Okuku Auctioneers vide a letter addressed to the Deputy Registrar which elicited no response or action thereof.
21. The Claimant/Respondent submitted that issues as averred by the Respondent/Applicant in the application are mere technicalities which contravene the provisions of Article 159 of *the Constitution* that states that justice shall be administered without undue regard to technicalities.
22. The Claimant/Respondent submitted that allowing the application to succeed shall occasion a breach of his constitutional rights to fair administrative action and access to justice as enshrined in Articles 47 and 48 of *the Constitution*.
23. It is the Claimant/Respondent's submission that the Respondent/Applicant's argument that the decree has taken three years before application for execution is nothing but a ploy to mislead this court into a miscarriage of justice and a tactic employed to harass and rip off the Claimant/ Respondent justice for the unfair termination occasioned by the Respondent/Applicant.
24. The Claimant/Respondent submitted that on costs and interest to this suit, it relies on Sections 26 and 27 of the *Civil Procedure Act* and requests that this court do grant and commit the Respondent/ Applicant to the same.



25. I have examined all the averments of the parties herein. The applicant claimant filed a preliminary objection against the application by the respondents for stay averring that this is 2<sup>nd</sup> attempt to execute the decree for which the respondent have been subverting.
26. It is true that there is currently no reason that would warrant another stay of execution of a decree which has been pending execution for over 3 years.
27. In the circumstances of the case, I decline to grant stay orders as sought and direct execution to proceed. Costs in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> OF JUNE, 2025.**

**HELLEN WASILWA**

**JUDGE**

