



REPUBLIC OF KENYA



KENYA LAW
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**Machogu v Chepkwony (Civil Appeal E039 of 2021)
[2025] KEHC 1936 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E039 OF 2021
JK NG'ARNG'AR, J
FEBRUARY 27, 2025**

BETWEEN

JAMES BOSIRE MACHOGU APPLICANT

AND

JOHN KIPKURUI CHEPKWONY RESPONDENT

RULING

1. The Applicant, James Bosire Machogu filed a Notice of Motion Application dated 24th June 2023 where he sought the following orders:-
 - I. Spent.
 - II. Spent.
 - III. Spent.
 - IV. That pending the hearing and determination of this Application inter-partes, a stay of execution of the warrants of attachment and sale dated 20th June 2023 demanding the payment of Kshs 918,103/= and all consequential orders and proceedings thereto.
 - V. That status quo be maintained pending the determination of the amounts owed to the Respondent and any payment of the remaining balances owed to the Respondent.
 - VI. That the auctioneers in the Warrants dated 20th June 2023 do tax their costs.
 - VII. That this Honourable Court do make any such further and/or other orders and issue any other relief it may deem just to grant in the interest of justice.
2. The Application was brought under Order 51 Rule 1, Order 22 Rule 22(2) of the *Civil Procedure Rules 2010*, sections 94, 27, 1A (1), (2), (3), 3A of the *Civil Procedure Rules* and Article 159 of the



Constitution of Kenya, 2010. It was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Lawrence Njuguna sworn on 24th June 2023.

The Applicant's Case.

3. The Applicant stated that Judgment in the trial court in Sotik Civil Suit Number 97 Of 2019 was delivered by Hon. E. Muleka to the tune of Kshs 1,242,250 in favour of Respondent (then Plaintiff). The Applicant further stated that he was granted a stay of execution by this court on condition that he pays the Respondent an initial Kshs 217,000/= and thereafter provide a Bank Guarantee of Kshs 992,775/=.
4. It was the Applicant's case that he appealed the Judgement by the trial court and this court reduced the damages payable to the Respondent from Kshs 1,242,250/= to Kshs 738,250/=. That the Applicant had paid the Respondent Kshs 217,000/= and Kshs 177,383/= and remained with a balance of Kshs 343,867/=. It was the Applicant's further case that the Respondent had commenced execution demanding Kshs 918,103/=.
5. In his written submissions dated 17th July 2023, the Applicant stated that this court had original jurisdiction to determine his Application and was thus not functus officio. He relied on Slok Construction Limited v Erick Odhiambo Odongo (2022) eKLR and Ena Investments Limited v Benard Ochau Mose & 2 others (2022) eKLR.
6. It was the Applicant's submission that he was willing to settle any balance he owed the Respondent. That the balance was Kshs 518, 712/= and not Kshs 918,103/= as demanded by the Respondent.

The Response.

7. The Respondent filed his Grounds of Opposition dated 6th July 2023 and stated that the orders sought by the Applicant could not be granted as this court was *functus officio* and lacked the jurisdiction to hear and determine the Application.
8. In his submissions dated 11th July 2023, the Respondent submitted that the prayer for stay amounted to reopening the suit in which a final decision had been rendered. That the proper court to hear and determine the Application was the court which issued the Decree i.e. Sotik Law Courts and not this court. He relied on Isaiab Owino Lawi v South Nyanza Sugar Company Limited (2021) eKLR and Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others (2013) eKLR.
9. It was the Respondent's further submission that the Application was an abuse of the court process. That in light of the provisions of Order 42 Rule 6 of the Civil Procedure Rules, the Applicant would not suffer any substantial loss if the orders he sought were not granted. That after this court delivered its Judgement on 28th April 2023, he waited for three months for the Applicant to settle his balance without success. It was the Respondent's further submission that he suffered prejudice as he had not enjoyed the fruits of his Judgement.
10. I have gone through and considered the Notice of Motion Application dated 24th June 2023, the Respondent's Grounds of Opposition dated 6th July 2023, the Applicant's written submissions dated 17th July 2023 and the Respondent's written submissions dated 11th July 2023. The following issues arise for my determination:-
 - i. Whether this court has jurisdiction to determine the present Application
 - ii. Whether the present Application is merited.
 - i. Whether this court has jurisdiction to determine the present Application.



11. Jurisdiction is defined in the *Black's Law Dictionary*, 10th Edition as:-

A court's power to decide a case or issue a decree.

12. In the case of *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR), the Court of Appeal stated that:-

“It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?”

In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae”.

13. The singular dispute in the present Application revolved around the amount of money that the Applicant ought to pay the Respondent. This disputed amount was anchored on a Decree in Sotik Civil Suit Number 97 of 2019.

14. Section 34 of the *Civil Procedure Act* provides:-

1. All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
2. The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
3. Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.....

15. The Court of Appeal in *Adiel Muriithi Philip v Thomas Maingi* [2017] KECA 650 (KLR) held:-

“In this regard, Section 34 of the *Civil Procedure Act* is relevant.....

.....A plain reading of the above provision shows that matters concerning discharge or satisfaction of a decree are determined by the court executing the decree. Thus, the High Court being the court that was concerned with the execution of the decree, issued by Kasanga Mulwa, J. had jurisdiction to deal with the consent filed by the parties as the consent related to a compromise and satisfaction of the decree.....”

16. Further, in *South Nyanza Sugar Company Limited V Alfred Sagwa Mdeizi T/A Pave Auctioneers* [2010] KEHC 929 (KLR) Makhandia J. (as he then was) stated:-

“Section 34 of the *Civil Procedure Act* strictly bars the filing of separate proceedings to determine issues that emanate or arise from execution of decrees in a suit. Without obvious regard to these mandatory provisions of the law, the learned magistrate held that the appellant, if he sought to recover any monies from any of the parties to the application had



to bring or initiate independent proceedings. In the face of the clear provisions of Section 34 of the *Civil Procedure Act*, this conclusion was clearly erroneous.”

17. It is clear to me that section 34 of the *Civil Procedure Act* stated that issues emanating from execution of decrees should be brought up and addressed in the court that issued the decree and in this particular case, Sotik Magistrate’s Court. In the case of *The Speaker of the National Assembly v Karume* (2008) 1KLR (E.P) 425, the Court of Appeal held that:-

“In our view there is considerable merit that where there is a clear procedure for the redress of any particular grievance prescribed in the Constitution or an Act of Parliament, the procedure should be strictly followed.....”

18. It is trite law that a court must have jurisdiction to hear and determine a suit or an Application from the very beginning. Without it, the court has no option other than to down its tools. The Supreme Court in the case of *Karisa Chengo v Republic* [2019] KEHC 10109 (KLR), held:-

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics... where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

19. Flowing from the above, it is my finding that this court has no jurisdiction to the extent of determining the computation of payment. As already stated, this was an issue that emanated from execution of a Decree and the best forum for the resolution of this issue was the trial court as envisaged by section 34 of the *Civil Procedure Act*.

20. In the end, it is my finding that this court has no jurisdiction to determine the Notice of Motion Application dated 24th June 2023 and as a consequence must down its tools.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 27TH DAY OF FEBRUARY, 2025.

.....

HON. JULIUS .K. NG’ARNG’AR

JUDGE

Ruling delivered in the presence of Mr. Njuguna for the Appellant Ms. Gogi for the Respondent and Siele and Susan (Court Assistants)

