



REPUBLIC OF KENYA



**Kihara v Ajele (Returning Officer Naivasha Constituency) & 2 others (Election
Petition 2 of 2008) [2025] KEHC 7693 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
ELECTION PETITION 2 OF 2008**

JM NANG'EA, J

MAY 28, 2025

BETWEEN

JAYNE NJERI WANJIRU KIHARA PETITIONER

AND

**CHRISTOPHER L AJELE (RETURNING OFFICER NAIVASHA
CONSTITUENCY) 1ST RESPONDENT**

ELECTORAL COMMISSION OF KENYA 2ND RESPONDENT

JOHN MICHAEL NJENGA MUTUTHO 3RD RESPONDENT

RULING

1. For determination is the 3rd Respondent's Notice of Motion application dated 18th January, 2024 filed pursuant to Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 51 Rule 1 of the Civil Procedure Rules 2010 for the following orders:-
 - i. Spent
 - ii. That a break in order be issued to the 3rd Respondent/Applicant against the Petitioner/Respondent allowing him through his appointed auctioneers namely Impair Group of Companies or any other appointed auctioneers to break in and gain access into the Petitioner/Respondent homestead in Naivasha Constituency, Maraigushu Area in compliance and to give effect to the orders of the Honourable Court issued on 19th December, 2019 and 20th September, 2023; (sic).
 - iii. That the said breaking in order be supervised and overseen by the Naivasha Police Station, Office Commanding Station to ensure compliance and maintenance of peace as the 3rd Respondent/Applicant's appointed auctioneers namely Impair Group of Companies proclaim.(sic)



- iv. That the respondent to pay the costs herein.
2. The application is based on grounds set out on the face thereof and the Supporting Affidavit of the 3rd Respondent wherein he deposes inter alia that by judgement delivered on 19th December, 2019 the Court found in his favour, entering judgement in the sum of Kshs. 7,523,107 being taxed costs following striking out of the Election Petition filed against him and two others. He was also granted interest thereon at Court rates.
3. It is further averred that by Ruling dated 20th September, 2023 the Court appeared to disapprove of the Petitioner's conduct, observed that she had tried to wriggle around the directions of the Court that required fresh warrants of attachment and sale of property to be issued by the Deputy Registrar for recovery of a sum of Kshs. 9,891,768.
4. The 3rd Respondent continues to aver that the Petitioner has filed frivolous Applications in an attempt to thwart execution and has adamantly refused to pay the decretal amount with attempts to access the premises in order to proclaim proving to be in vain.
5. The Petitioner is also said to have written to the 3rd Respondent's Auctioneers on 10th November 2023, contending that the decretal sum shown in the warrants of attachment was not payable and proposed a meeting on 15th November, 2023 wherein she would make payment proposals. The 3rd Respondent avers that the invitation was only meant to hoodwink the 3rd Respondent into believing that the Petitioner was keen on making good the judgement debt as nothing came out of the initiative.
6. On 18th October, 2023, on the basis of the warrants issued on 29th September 2023, the Applicant's Auctioneers allegedly went to Petitioner's premises to execute the court orders but were violently turned away by security guards. Fresh warrants of attachment were issued on 29th November, 2023 and on 11th December, 2023 but could not be executed owing to the same violent resistance.

Petitioner's case

7. The Petitioner by Replying Affidavit sworn on 15th March, 2024 narrates that the subject matter of this application is Party and Party costs that were awarded after her Petition was struck out on a technicality. She opines that had the Supreme Court been established by then, it would have voided the decision. She asserts that the Ruling of 23rd May, 2018 by which the certificate of costs was issued is fatally defective in form and in substance as it flows from a purported Advocate-Client Bill of Costs yet the parties herein have not had an Advocate-Client relationship, none of them being an advocate or client of the other. Aggrieved, she filed a Notice of Appeal against the Ruling and also the order of 19th December, 2019 and requested for proceedings as well as leave to appeal as the statutory period had expired. That application was allowed on 24th June, 2021. Her plea for stay of execution was, however, met with very inconvenient stay orders that resulted in her remitting Kshs 2,967,530.40 to the 3rd Respondent and/or his Auctioneers..
8. The Petitioner laments that the instant application is fatally defective as it seeks an order that is vague and generalized and has no description of property intended to be attached to avoid confusion which may result in a breakdown of law and order or risk of lives. She denies having put up a homestead in Maraigushu contending that the place is only a general area. The Petitioner therefore wants the execution process to await her pending appeal which has been found to raise arguable issues.



3rd Respondent's Submissions

9. The 3rd Respondent relies on the case of Stephen Maina Kimanga & 4 Others vs Lucy Waithira Mwangi & 2 Others [2015] eKLR in support of his submission that the Court has a duty to give effect to its orders, and that if a party is hell bent on defiance of court orders, the Court in exercise of its inherent jurisdiction will ensure compliance. He therefore craves access to the Petitioner's premises through his Auctioneers to levy execution.

The Petitioner's submissions

10. The Petitioner's advocates appear to have irregularly filed two sets of submissions on the same application. The submissions, however, involve substantially the same arguments. It is contended that the Application is vexatious as there is pending litigation in the Court of Appeal arising from taxation and certificate of costs in issue. Based on the Court of Appeal's ruling attached to the Petitioner's submissions, the appeal is said to raise issues worth canvassing before the superior court.
11. The Petitioner seeks to distinguish the 3rd Respondent's legal submissions for the reason that in the instant case, the property sought to be attached and/or proclaimed for sale have not been sufficiently ascertained.

Analysis and determination

12. I have considered the Application against the record, rival affidavit evidence and written submissions. Is the application merited?
13. It is common ground that a certificate of costs has been issued in favour of the 3rd Respondent. Part of the costs were made good but the 3rd Respondent maintains that a large part of the awarded costs have not been satisfied. The Petitioner is accused of placing many hurdles in the way to frustrate payment of the balance of the decretal sum due, hence this application.
14. There are no orders staying execution of the decree. Pendency of an appeal ipso facto is no reason to stop execution proceedings. Order 42 Rule 6 (1) of the Civil Procedure Rules 2010 enacts inter alia that no appeal or second appeal shall operate as stay of execution of proceedings except in so far as the Court appealed from may order.
15. In the premises, the 3rd Respondent's application is merited. Previous courts that dealt with this matter have pronounced themselves on the issues raised by the Petitioner in this application and this court has no jurisdiction to revisit them. That the 3rd Respondent does not sufficiently or accurately describe the properties sought to be attached and/or their location is not a basis to impugn the application. Anyone aggrieved by such attachment will be at liberty to lodge objection proceedings as provided by law. The Petitioner is therefore frustrating execution of the long pending decree for no good cause.
16. In the end, the Application is allowed in the following terms.
 - i. A break-in order be and is hereby issued in favour of the 3rd Respondent allowing him through his appointed Auctioneers namely, Impair Group of Companies to break and gain access into the Petitioner's homestead in Maraigushu Area, Naivasha Constituency, to levy execution for the balance of the decretal sum.
 - ii. The exercise shall be supervised by the Officer Commanding Naivasha Police Station, to ensure compliance and maintenance of peace and security.



- iii. The Applicant shall serve this order upon the Officer Commanding Naivasha Police Station for provision of necessary security as directed.
- iv. The Costs of this Application shall be borne by the Respondent.

Ruling accordingly.

J. M. NANG'EA

JUDGE

Ruling dated, delivered and signed at Nakuru this 28th day of May, 2025 in the presence of:

The 3rd Respondent's Advocate, Mr Musumba for Mr Busieda

The Petitioner/ Respondent's Advocate, Mr Kihara.

The Court Assistant, Jeniffer.

J. M. NANG'EA

JUDGE

