



Republic & another v County Secretary, County Government of Kitui (Judicial Review E026 of 2021) [2025] KEHC 9262 (KLR) (Judicial Review) (30 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9262 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

JUDICIAL REVIEW E026 OF 2021

RE ABURILI, J

JUNE 30, 2025

IN THE MATTER OF: AN APPLICATION FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF: SECTION 8 AND 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES

BETWEEN

REPUBLIC APPLICANT

AND

POWER PUMP TECHNICAL COMPANY LIMITED EX PARTE APPLICANT

AND

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF
KITUI RESPONDENT**

RULING

1. This ruling arises from a post-judgment dispute on satisfaction of a decree in respect of which a judgment in mandamus was delivered on 15th July 2019 in this matter. The decree, issued on 31st October 2018, by G.Nzioka J adopting the Arbitral Award made on 8th December 2017 by Hon. E. Torgbor as decree of the Court vide Nairobi HCCOM& Admiralty MISC Cause NO. 193 of 2018 required the respondent, a government entity, to settle the sum of Kenya Shillings Twenty-Two Million Five Hundred Thousand (Kshs. 22,500,000) together with interest at court rates from 20th May 2011 until payment in full, as well as the costs of the mandamus application.



2. The applicant alleges that the respondent has failed to fully comply with the decree, having only made partial payments and failed to account for accrued interest and costs. The respondent maintains that the decree has been substantially settled and that only interest is outstanding.
3. The background and procedural history of this matter is that the decree arises from a judgment in favour of the applicant against the respondent for the sum of Kshs. 22,500,000, following arbitration proceedings and award which was adopted by the Court in above stated Commercial Division of the High Court, which amount was due with interest from 20th May 2011, and costs.
4. Following non-compliance with the decree, the applicant instituted these judicial review proceedings and obtained an order of mandamus compelling the respondent to satisfy the decree. Contempt of court proceedings were initiated and prosecuted against the respondent, culminating in her being found to be in contempt of court and warrants of arrest were issued against her.
5. Subsequent to partial settlement, the exact amount which has not been verified, a dispute arose as to whether the respondent had discharged the full decretal obligations, including interest and costs. The Court, on being apprised of the disagreement, directed the parties to file a joint reconciliation statement, which they were unable to agree on. The Court thereafter directed that each party file a separate reconciliation statement, which is now before the Court for determination.
6. I have considered each of the parties' statement of account the applicant's statement is dated 9th May, 2025 done by Maina Waweru and Company Certified Public Accountants giving the balance due to be Kshs 17,209,504 while the respondent's statement
7. The only issue for determination is whether the decree issued on 31st October 2018 and affirmed in the judgment of 15th July 2019 has been fully satisfied, or whether a balance, comprising principal, interest, and costs, remains outstanding and payable by the respondent to the applicant.
8. Order 21 Rule 17 of the [Civil Procedure Rules](#) empowers the court to pass a decree for accounts or direct an inquiry into the accounts, even after a judgment has been rendered. The provision states:

Special directions as to accounts [Order 21, rule 17]

The court may, either by the decree directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matter therein contained with liberty to the parties interested to take such objection thereto as they may be advised.
9. This rule allows for judicial discretion to determine the outstanding sum, particularly in cases involving monetary decrees dependent on prior transactions or adjustments.
10. Post-judgment taking of accounts is particularly relevant where there are allegations of part payment of the decretal sum; interest computation remains outstanding or is in dispute; the decretal sum arises from a complex financial relationship, such as a loan agreement, partnership dissolution, or commercial transaction; and the execution of the decree is challenged due to discrepancies in the balance claimed.
11. In such scenarios, the court's involvement in reconciling accounts ensures that the execution process is based on a verified, accurate balance.



12. In this case, the parties were directed by the Court to carry out joint reconciliation statement but they could not. They have filed separate statements showing what each one of them considers to be the balance, taking into account interest and what has been paid.

13. In *First National Finance Bank Limited v Universal Apparels (EPZ) Ltd & 2 others* [2017] eKLR, F. Ochieng J (as he then was) stated as follows concerning post judgment taking of accounts as is the case herein:

“

“20. In my understanding, when the learned Deputy Registrar was directed to take accounts in accordance with Order 21 Rule 17 of the *Civil Procedure Rules*, she was simply assisting the Judge to undertake a task which the Judge would have otherwise been expected to undertake personally.

21. Therefore an order under rule 17 is different from a situation under Order 49 Rule 7, pursuant to which the Registrar or Deputy Registrar would be exercising his Special Powers, as conferred by the rules.

22. Under Rule 17 of Order 21, it is the Judge who still retains jurisdiction to take accounts. However, the Judge was simply getting the practical assistance of the Deputy Registrar, in carrying out the function entrusted to the Judge.

23. Meanwhile, under Order 49 rule 7, the Registrar has the power, in his own capacity, to undertake the tasks which are specified. In exercising jurisdiction under Order 49, the Registrar does not act on the directions of a Judge.

24. Therefore, in this case, it was the court which was taking accounts, through the practical assistance by the learned Deputy Registrar.

25. Accordingly, when the court was called upon to review the results of the findings made, the court was actually being asked to review its own decision, albeit one which was taken on its behalf.

26. This is therefore not a request for an appeal from the decision of the Deputy Registrar.

.....”

14. The Court takes accounts in order to enable it satisfy itself if the Decree had been settled in full. If the court is satisfied that the Decree had been satisfied in full, the court would lift the warrant of arrest issued in this case.

15. In my view, the post-judgment account-taking is appropriate where the decretal amount was intertwined with interest and cost computations.

16. It is for that reason that the Deputy Registrar of the Court can be asked to ascertain the outstanding balance, affirming the principle that justice requires a fair and accurate computation before coercive execution measures are employed.

17. Upon the Deputy Registrar taking of accounts and verification of the sum due, the Court will issue a certificate of balance and execution process as commenced via contempt of Court may proceed. Any objections under Order 22 Rule 51 must be made on the basis of the final computed balance, not speculative claims.



18. Accordingly, the post-judgment taking of accounts is a judicially sanctioned mechanism for ensuring that execution is based on the actual sum due, after considering payments, interest and costs. It promotes accountability, transparency and compliance with both the letter and spirit of the decree issued.
19. Where the parties contest the sum claimed or assert partial compliance, the court should not hesitate to invoke its powers under Order 21 Rule 17 of the *Civil Procedure Rules* to take or direct the taking of accounts, thereby facilitating a fair and just enforcement of its judgments.
20. It is important for parties to appreciate that unless a decree is specifically settled in full and unless interest and costs are expressly waived, the judgment debtor remains obligated to satisfy the full extent of the decree and any lawful accruals thereon.
21. In this case, the reconciliation statement filed by the applicant is based on the original decretal sum of Kshs. 22,500,000, adds interest accrued from 20th May 2011 to the date of the last payment, and includes the costs of the mandamus application. It is however not supported by payment schedules and correspondence that chronicle the payments received and the running balance.
22. On the other hand, the respondent's reconciliation largely reflects only the principal amount and does not provide a transparent computation of accrued interest. Notably, there is no evidence of settlement or payment of interest or costs, nor any agreement or court order waiving them.
23. The Court notes that payment of a judgment debt, especially where interest is accruing over an extended period, must reflect both the timing of payments and the interest component. Payments made years after the judgment do not discharge interest that lawfully accrued during the period of non-payment.
24. For the reasons stated, I am satisfied that the respondent has not fully settled the decretal amount as per the judgment delivered on 15th July 2019 and the decree issued on 31st October 2018. A balance remains outstanding in respect of interest and costs, which the respondent remains legally bound to satisfy, unless an agreement for waiver is reached.
25. In the end, it is hereby ordered that the respondent has not fully satisfied the decree in Judicial this matter as per the judgment delivered on 15th July 2019 and certificate of order against the government.
26. The file is hereby referred to the Deputy Registrar for verification and certification of the outstanding balance, inclusive of interest from 20th May 2011 to date and the costs of the mandamus application. The Certificate of Balance shall be filed within thirty (30) days from the date of this ruling.
27. The matter shall be mentioned on 23rd July 2025 before the Deputy Registrar.
28. I make no orders as to costs.
29. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

