



**Cape Holdings Limited (Under Administration) v Synergy Industrial Credit Limited & another;
Sanghrajka & 5 others (Interested Parties) (Miscellaneous Application 114 & 126 of 2015
(Consolidated)) [2025] KEHC 9053 (KLR) (Commercial and Tax) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 114 & 126 OF 2015 (CONSOLIDATED)
JWW MONG'ARE, J
JUNE 26, 2025**

BETWEEN

CAPE HOLDINGS LIMITED (UNDER ADMINISTRATION) APPLICANT

AND

SYNERGY INDUSTRIAL CREDIT LIMITED RESPONDENT

AND

I & M BANK LIMITED OBJECTOR

AND

BIPINCHANDRA BHAICHAND SANGHRAJKA INTERESTED PARTY

VINAYCHANDRA BHAICHAND SANGHRAJKA INTERESTED PARTY

AMANA LIMITED INTERESTED PARTY

AKSHAY VINAY SANGHRAJKA INTERESTED PARTY

ANKIT VINAY SANGHRAJKA INTERESTED PARTY

RITA VINAY SANGHRAJKA INTERESTED PARTY

RULING

Introduction and Background

1. There are four applications for the court's determination by the Applicant ["Cape Holdings"], the Respondent ["Synergy"] and the Objector ["the Bank"]; Cape holdings has filed an application dated



25th November 2024 that seeks to have the Court review its ruling of 4th November 2025 that dismissed its application of 6th May 2023.

2. Synergy has filed the Notice of Motion dated 20th February 2025 seeking orders of prohibition to stop the transfer, alienation, charging, registration of any further dealings, or otherwise dealing with properties known as Plots A, B, and C on Nairobi/Block 218/455 [formerly LR No. 17/67] belonging to the 3rd, 4th, 5th, and 6th Interested Parties. Additionally, it seeks to prohibit dealings with Apartments C3 and E3 erected on LR No. 1870/II/188 belonging to the 1st and 2nd Interested Parties to ensure the realization of the decree which Synergy states amounts to over Kshs. 9 billion.
3. The Bank has also filed the Notice of Motion dated 21st March 2025 and seeks a stay of execution of the decree and warrants of attachment and sale concerning property L.R. No. 209/19436 [I.R. 120877] in the name of Cape Holdings and that the warrants of attachment be lifted unconditionally. On its part, Cape Holdings similarly filed the Notice of Motion dated 21st March 2025 also seeking a stay of execution of the decree and the nullification of warrants of sale concerning the same property L.R. No. 209/19436 [I.R. 120877].
4. The applications have been responded to by the parties by way of various depositions and Grounds of Opposition and canvassed by way of written submissions and oral submissions by the parties' counsel. I will be making relevant references to the said pleadings and submissions in my analysis and determination below.

Analysis and Determination

5. Cape Holdings has by a notice of motion application dated 25th November 2024 invited the court to review its ruling issued on 4th November 2024 that dismissed its application dated 6th May 2023 and urged the Court to find that the said application had not been properly considered and determined.
6. Having considered the arguments put forward by Cape Holdings and the responses filed by Synergy to this application, I decline the invitation by Cape Holding through its application of 25th November 2024 that seeks to have the Court review its orders of 4th November 2025 allow the application by Cape Holdings of 6th May 2023 to be heard afresh. The said invitation in my view is an invitation to the Court to sit on appeal on its own decision and therefore fails to meet the tenets set out under section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. The Court having already pronounced itself on the Application by Cape holdings of 6th May 2023 is now functus officio in as far as that application is concerned. If Cape Holdings is dissatisfied with the ruling of this court of 4th November 2024, the correct route is to move to the Court of Appeal and mount a challenge there.
7. Having disposed of the Application by Cape Holdings seeking a review of this courts orders I now turn to the other three application, and will start by considering the application filed by Synergy. As stated, Synergy's application seeks prohibition orders against the properties owned by the Interested Parties so that they can realize the decree against Cape Holdings. Synergy claims that Cape Holdings has been frustrating the execution of the decree ever since it was issued and that the same remains unpaid. It avers that Cape Holdings' directors, that is the Interested Parties, have been irregularly dealing with company funds as they have been using the same to finance the directors' private projects.
8. That to prevent a further dissipation of properties, prohibition orders were issued on 19th November 2024 in respect of Cape Holdings' properties in Kajiado. Synergy is apprehensive that the subject properties may be disposed off despite it holding a valid consent decree and it claims that 2nd Interested Party has siphoned funds to pay for construction of houses on Nairobi/Block 218/455 [formerly L.R No. 17/67] and subsequently transferred his share of plots to his wife and children [4th, 5th, and 6th



Interested Parties] to defraud Synergy. That this scheme is supported by minutes from 12th July 2022, and an interim annual return dated 13th July 2022.

9. In response, Cape Holdings states that the application is considered an abuse of court process because no accounts have been taken in accordance with Order 21 Rule 17 and Order 22 Rule 7 of the Civil Procedure Rules to ascertain the true decretal amount, including the computation of interest limited under section 4 of the *Limitation of Actions Act* and Article 10[2][b] of *the Constitution*. Cape Holdings contends that the current application cannot proceed as the just and true decretal sum has not been ascertained and that Synergy is pursuing an excessive and illegal amount. Further, that the court lacks jurisdiction to grant the application as it is not grounded on any express provision of law and contravenes Article 40 of *the Constitution*, which protects the Interested Parties' right to property. It states that the attachment of the Interested Parties' properties is deemed unconstitutional and illegal because they are not parties to the decree and there is no connection to demonstrate that Cape Holdings has the power to dispose of the Interested Parties' properties, as the Interested Parties are strangers to the suit.
10. In their response, the Interested Parties state that Synergy is "approbating and reprobating" or "blowing hot and cold" by taking inconsistent stances regarding the nature of the orders sought. That Synergy stated in its deposition sworn on 17th April 2025 that the prohibition orders were for "preservation of assets purchased and/or developed with funds siphoned from the Judgment Debtor" and were distinct from execution orders under Order 22. However, in their submissions, Synergy now contends the application is made pursuant to Order 22 Rule 48 of the Rules, which is specifically for execution of decrees. The Interested Parties assert that this contradiction goes to the core of Synergy's case and if the case is based on Order 22 Rule 48, it should fail in limine as this applies exclusively to property belonging to a Judgment Debtor and liable to attachment in execution of a decree.
11. The Interested Parties aver that they are distinct from the Judgment Debtor, Cape Holdings and the properties in question are not registered in Cape Holdings' name but in the names of the Interested Parties which renders Order 22 Rule 48 inapplicable. They emphasize that section 44[1] of the *Civil Procedure Act* only authorizes execution against property belonging to the judgment debtor, whether registered in its name or held on its behalf and that Synergy has not provided evidence that Cape Holdings is the beneficial owner of the properties in question. The Interested Parties submit that mere assertions of beneficial ownership are insufficient without proof of circumstances giving rise to equitable recognition, such as a trust or fiduciary relationship and that Synergy's own annexures confirm the legal ownership of the properties by the 3rd Interested Party, with no indication of beneficial ownership by Cape Holdings. They reiterate the principle that a company is a separate legal entity from its directors and shareholders, and its property cannot be held in trust for another party without unequivocal proof.
12. The Interested Parties submit that the current application is premature and that Synergy has not complied with the requisite procedural steps as it should have first moved the court under Order 22 Rule 35 of the Rules to examine Cape Holdings' directors to ascertain their property and means of satisfying the decree. That without such an application, the court is not empowered to assess Cape Holdings' creditworthiness or capacity to satisfy the decree, nor can it authorize proceedings against the properties of the 1st and 2nd Interested Parties. They assert that Synergy's failure to follow proper procedure undermines the legitimacy of the application and disentitles them from equitable relief, leading to a request for dismissal with costs on grounds of non-compliance and prematurity.
13. The Interested Parties express concern that Synergy has twice obtained prohibition orders against properties owned by directors of Cape Holdings or third parties without first bringing a formal



application under Order 22 Rule 35 and they claim Synergy has attempted to circumvent the proper legal framework by asserting that previous proceedings were merely for preservation, not execution. They argue that if the current proceedings are indeed execution proceedings, then the orders sought cannot be granted at this stage because the court has not been furnished with any report or evidence detailing the execution steps taken against Cape Holdings since the decree was issued.

14. Even though not expressly stated in its application, Synergy has submitted that its application is grounded on Order 22 Rule 48 of the Rules which provides as follows:

“48. Attachment of immovable property [Order 22, rule 48]

[1] Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.

[2] A copy of the order shall be affixed on a conspicuous part of the property.”

15. From the above, the property of a judgment debtor can be attached by way of a prohibition order stopping the judgment debtor from dealing with the property. As admitted by Synergy in its submissions, for a prohibitory order, the property must belong to the Judgment Debtor, and there must be a risk of dissipation. It is not in dispute that the subject properties sought to be attached belong to the Interested Parties and not Cape Holdings, who is the Judgment Debtor. In the court’s previous ruling of 19th November 2024, I restated that a prohibition order can only issued once the court is satisfied that the property in question belongs to the judgment debtor. However, I agree with Synergy’s submission that prohibitory orders can extend to third parties where it is demonstrated that assets registered in their name are, in reality, beneficially owned or funded by the Judgment Debtor, or were acquired using the Judgment Debtor’s funds.
16. Going through Synergy’s deposition, whereas I can agree that prohibition orders have been issued against other properties belonging to the Interested Parties and Cape Holdings and I am of the view that it will not be prudent to attach any further properties of the Interested Parties until Synergy can demonstrate that it has executed all of Cape Holdings’ already-attached properties and that there remains an unpaid balance of the decretal sum. This is not to say that Synergy does not have an arguable case for a prohibition order but that the circumstances of this case makes its application premature at this point, owing to the fact that they have already attached Cape Holdings’ other properties and that there are properties of its directors already attached that are yet to be realized.
17. As to the amount of the decretal sum due to Synergy, I reiterate that this issue has already been canvassed and pronounced by this court and the Court of Appeal in *I & M Bank Kenya Limited & another v Synergy Industrial Credit Limited & 2 others* [2024] KECA 855 [KLR]. The subject Award published on 30th January 2015 allowed Synergy’s claim and awarded it Kshs.1,666,183,000 in full and final settlement of its claim against Cape Holdings, which sum was to attract compound interest at the rate of 18% per annum from 1st January 2015 until payment in full. The Award was on 25th March 2021 adopted as a decree of the Court in this matter where it was stated that the decretal sum was Kshs. 4,497,776,260.35. This court and the Court of Appeal held that execution of the decree was completed once the prohibition order was registered against Cape Holdings’ property LR No. 209/19436[IR 120877] and that the correctness of the decree could not be challenged in light of the Court of Appeal’s pronouncement that its execution was complete.



18. Therefore, if Cape Holdings has not made any payment towards settling the decree as from 25th March 2021, it follows that the sum of Kshs. 4,497,776,260.35 continued to attract compound interest at the rate of 18% per annum to date. This rate of interest was affirmed by the Court of Appeal in Synergy Industrial Credit Limited v Cape Holdings Limited [2020] KECA 208 [KLR] which held that this award of interest was proper. Cape Holdings cannot now be heard to say that the interest awarded is unconscionable or time barred. The court has also issued Warrants of Sale to Synergy's auctioneers indicating that as at 11th April 2025, the decretal sum now stands at Kshs. 9,162,047,045.18. This is what I find to be the decretal amount as at that date and Cape Holdings' entreaty for the court to determine the actual decretal amount is rejected in light of this court's and the Court of Appeal's previous pronouncements on the decretal sum and interest rate payable on the same.
19. The arguments I can entertain are that either the decree has not been satisfied in full even after Cape Holdings' already-attached properties have been sold or that Synergy has realized a sum in excess of the decretal sum after selling the said attached properties. As the Court of Appeal already stated that execution of the decree is complete in so far as the attachment of property LR No. 209/19436 is concerned and that on 12th June 2024, the Court of Appeal itself vacated the stay it had issued earlier, it follows that there is nothing left for this court to stay. As the Court of Appeal has already declared the execution complete and subsequently vacated any prior stay, I find that this court does not have jurisdiction or legal basis to stay an execution that a higher court has confirmed as finalized.
20. Whereas it is true that execution is complete, I note that Cape Holdings and the Bank have raised procedural complaints about the manner in which the intended sale of the subject property is to be done by Synergy's auctioneers. They state inter alia that the Warrants of Sale and Notification of sale have been re-issued to another auctioneer and one year has passed but that no Notice to Show Cause has been issued, that there is no current valuation report showing the value of the suit property and that the encumbrances in the subject property title have not been captured. In short, Cape Holdings state that the intended sale of the subject property is affront of Rule 15 of the Auctioneers Rules which provide as follows:

“ 15. Immovable property

Upon receipt of a court warrant or letter of instruction the auctioneer shall in the case of immovable property—

- [a] record the court warrant or letter of instruction in the register;
- [b] prepare a notification of sale in the form prescribed in Sale Form 4 set out in the Second Schedule indicating the value of each property to be sold;
- [c] locate the property and serve the notification of sale of the property on the registered owner or an adult member of his family residing or working with him or where a person refuses to sign such notification, the auctioneer shall sign a certificate to that effect;
- [d] give in writing to the owner of the property a notice of not less than forty-five days within which the owner may redeem the property by payment of the amount set forth in the court warrant or letter of instruction;



[e] on expiry of the period of notice without payment arrange sale of the property not earlier than fourteen days after the first newspaper advertisement."

21. On the Notices, even though Cape Holdings held that the same were not issued as per the Rules, I find that any such irregularity has been cured by the passage of time and that no prejudice has been occasioned upon them being that stay of execution orders were issued by the court. However, I find that there is a valid argument by Cape Holdings in respect of the valuation of the subject property and indication of the reserve price. This is so because Rule 11[b] of the Auctioneers Rules provide in part as follows:

11. Contents of court warrant or letter of instruction

[1]A court warrant or letter of instruction shall include, in the case of—

.....

immovable property—

.....

[ix] the reserve price for each separate piece of land based on a professional valuation carried out not more than 12 months prior to the proposed sale.

22. Considering that the last valuation was done in 2020 and that Warrants have been reissued to a new auctioneer, I find that it will be at least prudent to conduct another valuation of the subject property before its sale. It is only this valuation that will give the Auctioneers a basis for indicating the reserve price and that this has to be based on a professional valuation carried out not more than 12 months prior to the proposed sale. I am cognizant of the fact that property values in Kenya, like in many dynamic markets, can fluctuate significantly over a 5-year period due to various factors such as economic growth, infrastructure development, changes in zoning, supply and demand, and inflation. The previous valuation may not reflect the current market value, which could lead to either selling the subject property below its true worth, which could be detrimental to Cape Holdings or setting an unrealistic reserve price that prevents a successful sale. A current valuation ensures that the subject property will be auctioned at a fair market price, protecting the interests of all parties involved and promotes transparency in the auction process.

23. Therefore, whereas the Auctioneers Rules may not explicitly state a limit for valuation validity, other relevant provisions, particularly Rule 11 [b][x] above which specifies a 12-month validity for the valuation used to set the reserve price, strongly indicate that a re-valuation of the subject property is necessary. Given the dynamic nature of property markets, and the legal obligation to achieve a fair price, conducting a fresh valuation after close to 5 years is not just prudent but essentially a legal necessity before proceeding with a sale under the Auctioneers Rules.

24. Therefore, whereas Synergy can proceed with the execution by selling the subject property L.R. No. 209/19436 [I.R. 120877] in the name of Cape Holdings, I find that the proposed sale must be within the legal framework and the Auctioneers Rules.

Conclusion and Disposition

25. In the foregoing, I now issue the following orders:

- a. Cape holdings application dated 25th November 2024 is dismissed.
- b. Synergy's application dated 20th February 2025 is dismissed



- c. The applications by Cape Holdings and the Bank dated 21st March 2025 and 25th March 2025 are allowed to the extent that the Warrants of Attachment and Sale concerning property L.R. No. 209/19436 [I.R. 120877] in the name of Cape Holdings are hereby lifted and set aside
- d. An independent, professional valuation of the property known as LR. No. 209/19436 [I.R. 120877] be forthwith conducted by a Valuer appointed by Synergy within 30 days from the date of this Order. The costs of the said valuation shall be borne by Cape Holdings
- e. The intended sale/auction of the subject property be and is hereby stayed pending the completion and presentation of the valuation report to this Court upon which the court shall proceed to issue fresh warrants of sale in accordance with the law.
- f. There is no order as to costs in respect of the applications.

DATED SIGNED AND DELIVERED virtually this 26TH DAY OF JUNE 2025

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J.W.W. MONGARE

JUDGE

In the presence of:-

- 1.Ms. Asli Osman for the Plaintiff-Synergy Industrial Credit Limited.
- 2.Mr. Allen Gichuhi SC for the 1st Respondent-Cape Holdings Limited.
- 3.Mr. Kabaiku for 2nd Respondent-I & M Bank.
- 4.Mr. Mikwa Holding brief for Mr. Gitonga for the Interested Parties.
- 5.Amos- Court Assistant

