



**Matiro v Board of Iriani Girls High School (Civil Appeal E053 of 2021)
[2025] KEHC 11937 (KLR) (8 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E053 OF 2021
MA ODERO, J
AUGUST 8, 2025**

BETWEEN

JAMLICK GITARI MATIRO APPELLANT

AND

THE BOARD OF IRIANI GIRLS HIGH SCHOOL RESPONDENT

JUDGMENT

1. Before this Court is the Memorandum of Appeal dated 24th September 2021 by which the Appellant Jamlick Gitaro Matiro seeks the following orders:-
 - “(a) That the appeal herein be allowed and the ruling of the subordinate Court be set aside.
 - (b) That the Appellant be awarded the costs of this appeal and the application in the Subordinate Court.
2. The Respondents Board Of Iriani Girls High School opposed the appeal.
3. The appeal was canvassed by way of written submissions. The Appellant filed the written submissions dated 23rd June 2025 whilst the Respondents relied upon their written submissions dated 21st July 2025.

Background

4. The Appellant filed in the chief magistrates court a Civil Suit No. 280 of 2015 against the Respondents seeking compensation for goods and services rendered to the Respondent. In the plaint dated 17th August 2015 the Appellant sought the following orders:-
 - “(a) The payment of the sum of Kshs. 6,049,400/=



- (b) Costs of the suit
- (c) Interest on (a) and (b) above at court rates.”

5. The parties thereafter entered into a consent dated 22nd July 2016 effectively compromising the suit. Pursuant to that consent the Respondents paid to the Appellant the sum of Kshs. 6,652,747 which payment according to the Respondents discharged them from any further debt owed to the Appellant.
6. However the Appellant later commenced execution proceedings against the Respondent, claiming that he was still owed an amount of Kshs. 3,930,077.
7. The Respondents then filed in the lower court a Notice of Motion dated 11th June 2021 seeking to stay execution of the decree.
8. On 9th September 2021 the learned trial magistrate delivered a Ruling by which she found that the Respondents claim for further payment was totally unfounded.
9. Being aggrieved by this Ruling the Appellant filed this appeal which is founded on the following grounds:-
 - “ 1. The learned Trial Magistrate erred in law in varying the terms of a consent order when no fraud or collusion had been demonstrated and no sufficient material had been given.
 - 2. The Learned Trial Magistrate erred in law and in fact in finding accruing interest was not to be paid till the full settlement of the decretal sum.
 - 3. The Learned Trial Magistrate misdirected herself in law by misinterpreting accruing to mean accrued.
 - 4. The Learned Trial Magistrate erred in law and fact by considering extraneous matters or facts in staying of the execution of the decree.”
10. As stated earlier the Respondents opposed the appeal.

Analysis And Determination

11. I have considered the appeal before this court, the record of the lower court as well as the submissions filed by both parties.
12. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and come up with its own findings and conclusions [see PEters -vs- Sunday Post Limited [1958] E.A 424]
13. In SELLE and Another -vs- Associated Motor Boat Company Ltd & Others [1968] 1. E.A 123 it was stated as follows:-
 - “.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence.”



14. Likewise in *Gitobu Imanyara & 2 Others -vs- Attorney General* [2016], eKLR the Court of Appeal stated thus:-

“An appeal to this court is by way of a trial retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make allowance in this respect.”

15. The main bone of contention in this appeal revolves around the interpretation of the consent entered into by the parties. It is not in dispute that the parties herein entered into a consent dated 22nd June 2016. That consent was duly adopted as an order of the court and thus became binding on both parties.

16. The consent which appears at Page 40 of the Record of Appeal reads as follows:-

“By Consent:-

1. The application dated 17th June 2016 is hereby withdrawn.
2. The Defendant/judgment debtor to pay the plaintiff/judgement creditor the remaining balance of the decretal sum and costs now standing at Kshs. 6,235,721 (six million two hundred and thirty five thousand seven hundred and two hundred and twenty one only), plus all the accruing interest as follows:-
 - a. Kshs. 600,000/- (six hundred thousand only) on or before the 15th August 2016.
 - b. Thereafter to pay the remaining balance in equal monthly installments of the sum of Kshs. 150,000/- (one hundred and fifty thousands only) commencing the 15th September 2016 and thereafter by the 15th day every succeeding month until payment is full.
3. The Defendant/Judgement Debtor to pay the plaintiff's/Judgement Creditor the sum of Kshs. 10,000/- (ten thousand shillings) being thrown away costs for the application dated 17/6/2016.
4. In default execution to issue.”

17. It is trite law that a consent order is tantamount to a contract entered into between the parties. The duty of the court is to enforce the consent as is written. It is not the business of the court to vary and/or amend the consent, in any way.

18. In the case of *Flora Wasike -vs- Destinno Wamboko* (1988) eKLR it was held that

“It is now settled law that a consent judgment or order has a contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled which are not carried out.....”

19. In this case the position of the Respondent is that having paid to the Appellant the sum of Kshs. 6,652,747 they have discharged their obligation under the consent. According to the Respondent this



included the agreed sum of Kshs. 6,235,721 plus all accrued interest accruing which amounted to a total sum of Kshs. 6,652,747.

20. On the other hand the position of the Appellant is that under the terms of the consent the Respondent was obliged to pay the sum of Kshs. 6,235,721 plus all accruing interest ‘until payment in full.’
21. There is a long list of precedents relating to the issue of consent judgments. The underlying principle in all those precedents is that a courts mandate is only to enforce a consent. Courts cannot set aside or vary a consent and in deed a court should never amend a consent judgment, unless fraud, misrepresentation and/or coercion are shown to have existed.
22. In Kenya Commercial Bank Ltd V Specialised Engineering Co. Ltd [1982] KLR 485, Harris J held inter alia, that -

A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.....

23. Similarly in Brooke Bond Liebig vs Mallya (1975) EA 266 Mustafa Ag. VP stated thus;

“The compromise agreement was made an order of the court and was thus a consent judgement. It is well settled that a consent judgment can be set aside only in certain circumstances, e.g on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.” (emphasis my own)

24. In the same case Law, Ag. P. observed that: -

“A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”

25. In the case of Board of Trustees National Social Security Fund v Micheal Mwalo [2015] eKLR the Court of Appeal stated as follows:-

“The judgment arose from a consent of the parties to the suit. The law pertaining to setting aside of consent judgments or consent orders has been clearly stated. A Court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between the parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.” [Own emphasis]

26. Lastly in Wildung v Sanderson [1897] 2 CL. 534 it was stated as follows:

“A consent Judgment or order is meant to be the formal result and expression of an agreement already arrived at by the parties to the proceedings embodied in an order of the Court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary agreement. It is of course, enforceable while



it stands, and a party affected by it cannot if he concludes, he is entitled to relief, simply wait until it is sought to be enforced against him, and then raised by way of defence, the matters in respect of which he desires to be relieved. He must, when he has completed obey it, unless and until he can get it set aside in proceedings duly constituted for this purpose.”

27. I have carefully and anxiously perused the consent dated 22nd July 2016. The same made no provision for the payment of interest beyond the date of the order. The consent indicated that the decretal sum was to be paid in two (2) installments as per clause 2(a) and (b) of the order. The amounts to be paid were ‘inclusive’ of all interest due at the date when the consent was entered into.
28. I do agree with the trial court that if the intention was to have the interest run from the date of the consent until payment in full then the parties would have expressly stated this in the consent. The consent would have included terms such as ‘Interest until payment in full’ and as the trial court pointed out the percentage of interest payable would have been indicated.
29. The fact is that payment of interest until payment in full was not expressly included in the consent. The court cannot ‘infer’ this to be a term of the consent nor can the court presume that this was the ‘intention’ of the parties.
30. Based on the foregoing I find that the Respondents claim to additional interest is totally unfounded. Accordingly I find no merit in this appeal. The same is hereby dismissed in its entirety. Costs to be met by the Appellants.

DATED IN NYERI THIS 8TH DAY OF AUGUST, 2025.

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MAUREEN A. ODERO

JUDGE

