



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ogola v Wangukwa (Civil Appeal E006 of 2025)
[2025] KEHC 11785 (KLR) (7 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11785 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E006 OF 2025
RN NYAKUNDI, J
AUGUST 7, 2025**

BETWEEN

GEORGE O OGOLA APPELLANT

AND

PETER APOLLO WANGUKWA RESPONDENT

*(Being an Appeal against the Ruling of the Small Claim's Court at Eldoret,
Hon. R. Otieno RM delivered on 10th July 2025 in SCC COMM E 884 of 2023)*

RULING

1. What is pending before this court for determination is a Notice of Motion Application dated 10th July 2025 brought under section 63, section 3 and 3A of the *Civil Procedure Act* and Order 52 of the Civil Procedure Rules where the Applicant is seeking the following orders:
 - a. Spent
 - b. The Honorable Court be pleased to lift the warrants of arrest issued against the Respondent/Applicant pending hearing and determination of the Motion Application
 - c. The Honorable Court be pleased to lift the warrants of arrest issued against the Respondent/Applicant pending hearing and determination of the Memorandum of Appeal herein.
 - d. The cost of this Application be provided for.
2. The Application is made on the following grounds that: -
 - a. There is Honorable Court entered judgment and/or in favour of the Respondent for of Kshs 1,000,000.00 against the Applicant.



- b. The Respondent applied for the Notice to Show Cause dated 29/4/2025 for the Applicant to show cause why he should not be committed to a civil jail.
 - c. In response to the said Notice to Show Cause, the Applicant have a proposal to settle the said decretal sum in instalment of Kshs. 25,000.00 per month till payment in full which proposal the Respondent rejected without giving the Applicant counter proposal.
 - d. The Applicant's advocate when the matter came for mention for directions on the said Notice to Show Cause on 10th July 2025, stated the said proposal to the court but the court never considered the Applicant proposal and issued warrant of arrest against the Applicant
 - e. The court in delivering its ruling, never gave the Advocates reasons for its decision to issue warrant of arrest against the Applicant.
 - f. Since there is an active warrant of arrest against the Applicant, he risked being arrested by the Respondent anytime and committed to civil jail.
 - g. The Applicant's right to liberty is likely to be prejudiced.
 - h. That it is fair only if the ruling of the Trial court on 10th July 2025 be varied and the warrants of arrest issued against the Applicant be set aside.
 - i. The Claimant will not be prejudiced in any way and it is only just, fair and expedient that this application is allowed.
 - j. It is in the interest of justice that the Application herein be issued.
3. The Application is supported by the annexed affidavit sworn by the Applicant who deponed on oath as follows;
- a. That there is Honorable Court entered judgment and/or in favour of the Respondent for of Kshs 1,000,000.00 against the Applicant.
 - b. That the Respondent applied for the Notice to Show Cause dated 29/4/2025 for me to show cause why I should not be committed to a civil jail.
 - c. That in response to the said Notice to Show Cause, I gave a proposal to settle the said decretal sum in instalment of Kshs. 25,000.00 per month till payment in full which proposal the Respondent rejected without giving me counter proposal.
 - d. That when the matter came for mention for directions on the said Notice to Show Cause on 10th July 2025, my advocate on record stated the said proposal to the court but the court never considered my proposal and issued warrant of arrest against me at the request of the Respondent.
 - e. That the court in delivering its ruling, never gave the Advocates representing the parties' reasons for its decision to issue warrant of arrest against me.
 - f. That since there is an active warrant of arrest against me, I am apprehensive that I can be arrested by the Respondent anytime and committed to civil jail since it is not the first time he has arrested
 - g. That the Respondent has once arrested on 26th May 2025 with regards to this matter on the Notice to Show Cause before the same was served on me and heard in court. They served me the said Notice to Show Cause by police arresting me.



- h. That my right to liberty is likely to be prejudiced.
- i. That it is fair only if the ruling of the Trial court on 10th July 2025 be varied and the warrants of arrest issued against the Applicant be set aside.
- j. That the Respondent will not be prejudiced in any way and it is only just, fair and expedient that this application is allowed.
- k. That it is in the interest of justice that the Application herein be issued.
- l. That I swear this Affidavit in support of the Application annexed hereto.

Directions

- 4. I have considered this application and the same be served upon the Respondents for inter parties highlighting on 24th September 2025 before Court 1.
- 5. One of the averments in the affidavit touches on right to liberty of the applicant which is a constitutional imperative. As such interim injunction do issue to maintain the status quo of the situation while the legal case is determined.
- 6. The parties file brief submissions to canvass the application.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT AND PUBLISHED VIA EMAIL OF COUNSELS AND CTS AT ELDORET THIS 7TH AUGUST 2025

.....

R. NYAKUNDI
JUDGE

