



**F.A. Badia & Co. Advocates v Chemsols Limited (Miscellaneous Application 581 of 2021)
[2025] KEHC 12409 (KLR) (Commercial and Tax) (4 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12409 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 581 OF 2021**

PM MULWA, J

SEPTEMBER 4, 2025

BETWEEN

F.A. BADIA & CO. ADVOCATES APPLICANT

AND

CHEMSOLS LIMITED RESPONDENT

RULING

1. Before the court is the Applicant's Notice of Motion dated 19th June 2023 brought under Article 159 of *the Constitution*, Sections 1A, 1B, 3A of the *Civil Procedure Act*, Section 561 of the *Insolvency Act*, Order 51 of the Civil Procedure Rules 2010 and all other enabling provisions of the law.
2. The Respondent/Applicant seeks the following orders:
 - i. Spent
 - ii. That pending the hearing and determination of this application the court be pleased to quash/ set aside/ stay/ invalidate/ nullify the request for renewal and reissuance of fresh warrant of attachment of movable property in execution of the decree and warrant of sale of property in execution of the decree for money against the Respondent dated 14th June 2023.
 - iii. That the costs of this application be awarded to the Applicant together with interest thereon at such rates and for such period as this honourable court may deem fit.
 - iv. That the costs of the application be provided for and
 - v. Any such and further relief as this court may deem fit.
3. The application is supported by the affidavit of Charles Okadia Otieno, a shareholder and director of the Applicant, who avers that the application for renewal and reissuance of fresh warrants of



attachment of movable property dated 14th June 2023 by F.A. Badia Advocates is irregular, an abuse of the court process, and devoid of the leave/approval contemplated under Section 561 of the *Insolvency Act*.

4. It is contended that the subject matter of this dispute is pending before the High Court in HCCOMMIP E015 of 2023, in which the Applicant was served but did not enter appearance. The Applicant asserts that the orders for renewal and reissuance of warrants are calculated to embarrass the Court in the said matter. Further, that this Court is not suited to rewrite contractual obligations, and the parties ought to adhere to the mutually agreed payment schedule dated 15th March 2023.
5. The application is opposed through a replying affidavit sworn on 9th April 2024 by Badia A. Fiona, who avers that the application is moot since the warrants were renewed and reissued on 19th June 2023 pursuant to the Decree-Holder's request dated 13th June 2023.
6. It is deponed that an Advocate-Client Bill of Costs dated 5th August 2021 was taxed at Kshs. 1,152,325 on 14th January 2022. A Certificate of Taxation was issued on 7th February 2022 and was adopted as judgment of the Court on 20th December 2022 (per Hon. Justice D.O. Chepkwony). Warrants of attachment were thereafter issued on 24th February 2023, and a proclamation carried out on 2nd March 2023.
7. The Respondent further avers that following proclamation, a payment plan dated 20th March 2023 was agreed upon, but the Applicant defaulted. By the time of filing the present application, only Kshs. 239,000/- had been paid. It is contended that the Applicant, having failed to honour the payment plan, has approached this Court with unclean hands and abused the stay orders issued on 26th June 2023.
8. Pursuant to directions, the application was to be canvassed by written submissions. Only the Respondent filed submissions.

Analysis and determination

9. From the material placed before me, the following issues arise for determination:
 - i. Whether the renewal and reissuance of warrants of attachment dated 14th June 2023 was irregular, unlawful, or in abuse of court process.
 - ii. Whether the Applicant has demonstrated sufficient grounds to warrant the setting aside of the warrants.
 - iii. Who should bear the costs of the application.
10. On the first issue, it is important to mention that execution is a right that flows directly from a valid judgment. In *James Wangalwa & another v Agnes Naliaka Cheseto - Misc Application No 42 of 2011 [2012] eKLR* the court held that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process.”
11. The record before me shows that an Advocate-Client Bill of Costs was taxed, a Certificate of Taxation issued, the same was not set aside, appealed or dismissed and subsequently adopted as a judgment under



the provisions of Sections 51(2) of the *Advocates Act*. As a consequence, the Decree Holder is entitled to pursue execution. Section 51(2) provides as follows:

“The certificate of a taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including an order that judgment be entered for the sum certified to be due with costs.”

12. A certificate of taxation by the taxing officer is final as to the amount of costs covered thereby, unless it is set aside or altered by the court. In *Machira & Co. Advocates v Arthur K. Magugu & Another* [2012] eKLR, the court of appeal held that;

“So long as the certificate of taxation stands, the amount therein is payable and cannot be avoided.”
13. The facts in this matter are largely undisputed. There exists a valid judgment and decree in favour of the Decree-Holder arising from taxed Advocate-Client costs, duly adopted by this Court. The Applicant defaulted in the satisfaction of the decree and further failed to adhere to a voluntarily agreed payment plan, thereby prompting the Decree-Holder to move the Court for warrants of attachment of movable property and warrants of sale of property in execution of the decree.
14. The Applicant has candidly admitted being in default but seeks to invoke equitable principles, contending that the parties are bound by the payment schedule. I am not persuaded by this line of argument. In my considered view, a payment plan, even if voluntarily agreed, does not extinguish or suspend a judgment debt unless it is either fully complied with or expressly adopted by the Court as an order with stay provisions. In the present case, there is no evidence that the alleged schedule was sanctioned by the Court. In any event, there is admitted default. Equity, it must be remembered, aids the vigilant and not those who slumber on their rights. The Applicant, having failed to honour the plan, cannot now turn his own breach into a shield against execution. As the Respondent has correctly observed, he who comes to equity must come with clean hands.
15. Execution of a decree is a lawful process and a party seeking to execute a decree must move the court as provided by Order 22, rule 6. Execution is the mechanism by which the successful party secures the fruits of his litigation. In *Kenya Commercial Bank Ltd v James Osebe* [1982] KLR 296, the Court underscored that a decree-holder is entitled to enjoy the fruits of his judgment and that execution should not be obstructed without lawful cause. A warrant of attachment of movable property is issued under Order 22 Rules 37 of the Civil Procedure Rules. It authorizes the Court bailiff or a duly licensed auctioneer to attach movable property belonging to a Judgment-Debtor in satisfaction of a decree for money. Its purpose is to place the identified property under the custody of the law pending realization.
16. On the other hand, Order 22 Rule 55 of the Civil Procedure Rules provide for the warrant of sale, which follows attachment. Once movable property has been lawfully attached, the next logical and necessary step is its realization by way of public auction.
17. The rationale for a warrant of sale is straightforward - attachment by itself does not satisfy the decree. It merely secures the property. It is the sale of the attached property that converts such assets into liquid cash payable to the Decree-Holder in discharge of the judgment debt. The Court in *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another* [2006] eKLR emphasized that the object of execution is to ensure that the decree-holder realizes the judgment in his favour, and sale of attached property is one of the recognized lawful means of doing so.



18. It follows that warrants of attachment and sale are not perpetual in nature but are subject to statutory timelines and judicial oversight. A warrant of execution remains valid for twelve (12) months from the date of issue. If execution is not completed within that period, the Decree-Holder is obligated to apply to the Court for renewal or reissuance of the warrant.
19. The renewal, however, is not automatic. The Decree-Holder must formally approach the Court and demonstrate that the decree remains unsatisfied and that execution could not be concluded within the initial period of validity. As the Court observed in *National Bank of Kenya Ltd v Anaj Warehousing Ltd* [2015] eKLR, execution proceedings are strictly regulated by law, and any warrant or process issued outside the statutory framework is irregular and liable to be set aside.
20. Judicial practice recognizes that reissuance is permissible where execution has not been completed, provided the application is made promptly and in compliance with Order 22 Rule 7(2) Civil Procedure Rules, the Court will extend the life of a warrant for a further period of twelve months. In the present case, I am satisfied that the application for renewal and reissuance was properly before the Court, and that the warrants were lawfully issued within the four corners of the law.
21. The Applicant invokes Section 561 of the *Insolvency Act*, which restricts commencement or continuation of legal process against a company once insolvency proceedings are in place, unless with leave of Court. The section provides:

“When a liquidation order has been made or a provisional liquidator has been appointed, no person may commence or continue legal proceedings (including execution) against the company or its property, except with the leave of the court and subject to such terms as the court may impose.”
10. The onus is on the party alleging protection under Section 561 to demonstrate that liquidation proceedings have in fact commenced. In the present case, however, no material has been placed before me to show that the Applicant is under administration, liquidation, or any formal insolvency proceedings within the contemplation of Section 561. Mere pendency of another matter (HCCOMMIP E015 of 2023) without proof of insolvency status does not suffice to invoke Section 561.
11. In *Re Global Tours & Travel Ltd HC Winding Up Cause No. 43 of 2000*, Ringera J. stated:

“The purpose of insolvency moratoria is to give breathing space to companies under genuine insolvency processes. The court will not lightly extend such protection where no such process is established.”
10. It follows that Section 561 cannot be invoked merely because the Applicant is facing execution or because another commercial dispute is pending in court.
11. On whether the warrants should be set aside, the test is whether sufficient cause has been shown. In *National Bank of Kenya Ltd v Juja Coffee Exporters Ltd* [2021] eKLR, the Court held:

“The execution process, once sanctioned by a valid decree, cannot be stayed or set aside except for sufficient cause such as fraud, procedural irregularity or proof of satisfaction of the decree.”
10. The contention that the warrants were irregular collapses in view of the fact that the warrants were renewed at the request of the Decree-Holder after the Applicant’s default on the agreed settlement



plan. In my view, the chronology of events demonstrates that the warrants were lawfully issued in execution of a subsisting decree, and the Applicant has not shown any irregularity or abuse of process on the part of the Decree-Holder. Its only contention is financial difficulty and existence of a payment plan which it defaulted on. The law expressly permits renewal of warrants within the applicable statutory limits where execution has not been completed.

11. The principle that Equity aids the vigilant, not the indolent, remains true in the instant case. In *Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others* [1995] eKLR, the Court of Appeal observed that “...he who comes to equity must come with clean hands and must do equity.”
12. The Applicant, having admitted default under a payment plan, cannot seek equitable relief to restrain lawful execution. A decree-holder is entitled to enjoy the fruits of their judgment, and the court should be slow to deprive them of that right without lawful cause.
13. On costs, Section 27 of the *Civil Procedure Act* provides that costs follow the event, unless the Court for good reason orders otherwise. The Respondent has successfully opposed the application and is therefore entitled to costs.
14. For the reasons set out above, I find that the Applicant’s Notice of Motion dated 19th June 2023 is without merit. Accordingly, the same is dismissed with costs to the Respondent/Decree-Holder.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF SEPTEMBER 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Okadia for Applicant

N/A for Respondent

Court Assistant: Carlos

