



**Njenga v Kahuho (Commercial Case E547 of 2023) [2025] KEHC 12496 (KLR)
(Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12496 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E547 OF 2023
JWW MONG'ARE, J
SEPTEMBER 1, 2025**

BETWEEN

WINNIE WANJIRU NJENGA PLAINTIFF

AND

JANE WAITHERA KAHUHO DEFENDANT

RULING

Introduction and Background

1. By the Originating Summons dated 3rd November 2023 and made under section 1A,1B,3,3A and 63(e) of the *Civil Procedure Act*(Chapter 21 of the Laws of Kenya), Order 22 Rule 48(1), Order 51 Rule 1 of the Civil Procedure Rules and Article 159(2)(d) of *the Constitution*, the Plaintiff is seeking the court's leave to attach and sell the property titled Ngong/Ngong/101460("the suit property"), registered under the Defendant, to recover a decretal sum.
2. The Plaintiff states that on 1st October 2021, the parties entered into an agreement for the purchase of one-eighth of an acre from Title Number Ngong/Ngong/98384 for Kshs.2,600,000.00/= and that the Plaintiff made a partial payment. The Plaintiff claimed that the Defendant failed to provide completion documents or extend the completion date within the stipulated 90-day period and the Plaintiff then invoked the arbitration clause in the agreement. A sole arbitrator was appointed and issued an Award in favor of the Plaintiff on 4th November 2022. This Award was adopted and enforced by the Court on 17th July 2023, in HCCOMMARB Case No. E010 of 2023. The Defendant's application to set aside the Award was dismissed on 22nd August 2024.
3. The Plaintiff states that despite these legal proceedings, she has been unsuccessful in recovering the decretal sum from the Defendant and that a private investigator and an official search confirmed that the Defendant is the registered owner of the suit property, which is unencumbered and capable of



satisfying the decretal sum. The Plaintiff is now seeking court approval to attach, advertise, and sell the suit property to recover the outstanding sum and proposes a valuation of the suit property and that the terms of sale be set by the Deputy Registrar to ensure fairness. The Plaintiff also seeks a prohibitory order to prevent the Defendant from transferring or encumbering the property, thereby preserving it for attachment and sale and that this is deemed necessary to prevent the Defendant from frustrating the execution of the decree.

4. The Plaintiff highlights the Defendant's failure to participate in the arbitral proceedings, her subsequent dismissal of the application to set aside the award, and her continued inaction in settling the decretal sum. The Plaintiff argues that all available legal avenues have been exhausted and the Defendant has shown no good faith in resolving the dispute, leaving no option but to seek execution through the attachment and sale of the suit property. That the prohibitory order is essential to protect the Plaintiff's rights and ensure the decree's enforcement.
5. The Defendant responded to the suit through her replying affidavit sworn on 19th January 2024. She depones that she is a 73 years old woman and while she does not deny that the present suit is based on the Award of 4th November 2022, she claims that she was not involved in the hearing and the judgments were entered by default. She claims that she appointed advocates to represent her, but they defaulted on their duties in the early stages of the arbitration process, leaving her unrepresented. She asserts she was not involved in the appointment of an arbitrator and was only served with documents after an arbitrator had already been appointed. The Defendant reiterates that the judgments forming the basis of the Plaintiff's suit were entered without her participation.
6. The Defendant depones that the Plaintiff is not a stranger to her, as she had bought a smaller parcel of land from her in 2013. That the current dispute concerns a property of 0.387 Ha, but the portion in dispute is only one-eighth of an acre and that the Defendant's home and shelter are on this property. The Defendant alleges the Plaintiff's application is based on misrepresentation of facts and ill motives to steal her land and that the Plaintiff has not paid the full purchase price of KShs.2,600,000.00/= as alleged in the Agreement for Sale. The Defendant accuses the Plaintiff of contracting seven unknown people to remove boundaries and beacons, encroaching on her house and the agreed-upon 1/8th acre parcel. She claims she summoned both herself and the Plaintiff to the office of the Advocate who witnessed the sale agreement and that Plaintiff allegedly walked out of the first meeting, and refused to attend the second. That it was after the second meeting that the Plaintiff served the Defendant with the arbitral forum documents. The Defendant believes the Plaintiff's prayers to enforce the Award in this manner should not be granted and she concludes that if her responses and evidence had been factored in, the outcome of the Award would have been different.
7. The court directed the parties to canvass the suit by way of written submissions but only those of the Plaintiff are on record.

Analysis and Determination

8. As stated, the Plaintiff's suit is anchored under inter alia Order 22 Rule 48 of the Rules which provide that "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". For the court to acquiesce to an application for attachment, the court must be satisfied that the property sought to be attached belong to the respondent (see *Eco Bank Kenya Limited v Harvey Engineering Limited, Stanley Nduati Mwangi & Joseph Mburu Muigai* [2018] KEHC 5359 (KLR)).



9. From the Defendant's deposition, it appears she is arguing against the merits of the Award and the subsequent judgment and decree that are the subject of this execution proceedings. However, it is not lost to me that the Award is now a judgment and decree of the court and that previous attempts by the Defendant to set it aside were unsuccessful. The Defendant cannot re-litigate the grounds for setting aside the Award as this would be an affront to the doctrine of res judicata which prevents a party from re-litigating issues that have already been determined by a competent court. The issues being raised by the Defendant were raised or ought to have been raised before the court that heard her application to set aside the Award and since that application was heard and determined by a judge of this court, the same issues cannot be re-litigated before me as this would be running afoul to the principle of judicial comity, which discourages one High Court judge from interfering with or setting aside the orders of another High Court judge over the same issues (see *Wakhungu & 2 others v Republic* [2024] KECA 1426 (KLR])
10. Order 22 Rule 48 above deals with the examination of a judgment debtor to determine their ability to satisfy a decree through attachment of property. The focus of such proceedings is typically on the debtor's assets and ability to pay, not on the validity of the underlying judgment. Execution proceedings are not the appropriate forum to challenge the validity of the judgment itself and as I have stated, this should have been addressed in the arbitration, enforcement and/or setting-aside proceedings.
11. In this case, the Plaintiff has annexed the certificate of official search which indicates that the Defendant is indeed the registered owner of the suit property. The Plaintiff holds a valid decree that has not been set aside and remains unsatisfied. It was not disputed that the Defendant holds no other moveable assets available for attachment that can settle the decree and that the suit property is capable of settling the same. I find therefore that the Plaintiff has demonstrated that she is entitled to the orders sought.

Conclusion and Disposition

12. In the upshot, I now issue the following final orders:
 - a. The Originating Summons dated 3rd November 2023 is allowed.
 - b. Leave be and is hereby granted to the Plaintiff, Winnie Wanjiru Njenga, to attach and sell Property Title Number: Ngong/Ngong/101460 registered in the name of the Defendant, Jane Waithera Kahuhu by way of Public Auction for the recovery of the decretal sum.
 - c. A valuation of Property Title Number: Ngong/Ngong/101460 shall be conducted to determine its current market value.
 - d. A prohibitory order be and is hereby issued, prohibiting the Defendant, Jane Waithera Kahuhu, from transferring or charging Property Title Number: Ngong/Ngong/101460 in any way, and all persons from taking any benefit from any purported transfer or charge.
 - e. The attachment shall be complete and effective upon registration of a copy of this prohibitory order or inhibition against the title to Property Title Number: Ngong/Ngong/101460.
 - f. The terms of sale for Property Title Number: Ngong/Ngong/101460 shall be set by the Deputy Registrar of the Court.
 - g. The costs of valuation, Auctioneers' fees and any other related expenses shall be paid from the proceeds of sale herein.
 - h. The Plaintiff is awarded costs of this suit.



**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF SEPTEMBER
2025**

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J.W.W. MONGARE

JUDGE

In the presence of

1. Ms. Kimathi for the Plaintiff.
2. Mr. Alusa holding brief for Ms. Munyua for the Defendant.
3. Amos- Court Assistant

