



REPUBLIC OF KENYA



**Kambo v Nguku (Civil Miscellaneous Application E211 of 2023)  
[2024] KEHC 6355 (KLR) (Civ) (31 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6355 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL MISCELLANEOUS APPLICATION E211 OF 2023**

**AN ONGERI, J**

**MAY 31, 2024**

**BETWEEN**

**MARY KAMBO ..... APPLICANT**

**AND**

**FAITH WACERU NGUKU ..... RESPONDENT**

**RULING**

1. The application coming for consideration is the one dated 18/4/2023 brought under Section 25, 26(1) – (3) of the *Victim Protection Act* (Act No. 17 of 2014), Oder 51 Rule 1 of the *Civil Procedure Rules* (2010) and Section 1A, 3 and 3A of the *Civil Procedure Act* (Cap. 21) of the laws of Kenya and all enabling provisions of laws seeking the following orders;
  - i. That the orders for compensation issued in Makadara Chief Magistrate’s court Criminal Case no. 1733 of 2016 Republic vs Faith Waceru Nguku on 25<sup>th</sup> January, 2022 and filed herein be adopted and enforced as judgment of this honourable court.
  - ii. That the honourable court be pleased to give the applicant leave to enforce the said orders as a decree of this honourable court.
  - iii. That the application be heard and determined ex-parte.
  - iv. That the costs of this application be awarded to the applicant.
2. It is based on the following grounds on the face of it
  - i. The respondent was convicted on 28<sup>th</sup> December 2020 for the offence of obtaining money by false pretense from the applicant in Makadara MCCR No. 1733 of 2016 Republic vs Faith Waceru Nguku.



- ii. Via an order issued by Hon. M. A. Apondo on 25<sup>th</sup> January, 2022, the respondent herein was ordered to compensate the applicant the sum of Kenya shillings one million (Ksh.1,000,000/=)
  - iii. The respondent has neither preferred an appeal to the conviction sentence or order nor has she complied with the said orders.
  - iv. Consequently, the applicant intends to proceed with enforcement of the orders of the court for recovery of the compensation sum from the respondent.
  - v. The orders sought herein are merely procedural for the purposes of execution, and as such, no response is required from the respondent, and there is no defence to the same.
  - vi. The respondent will not be prejudiced if the orders sought herein are granted.
  - vii. It is just and fair that applicant be allowed to enjoy the fruits of her judgment and consequential ruling.
3. The application is supported by the affidavit of the applicant sworn on 8/4/2023 as follows;
- i. “That I am the Applicant herein well conversant with the facts of this matter hence competent to swear this affidavit in support of the application herewith.
  - ii. That on 28<sup>th</sup> December, 2020 the Respondent was convicted for the offence of obtaining money by false pretense in Makadara Chief Magistrate's Court Criminal Case No.1733 of 2016 - Republic-vs-Faith Waceru Ngukui in which I was the Complainant.
  - iii. That the Respondent knowingly and with an intent to defraud sold me all that land known as L. R. 209/9607 located in Mowlem having already sold the same to a third party.
  - iv. That after I discovered the Respondent had breached the terms of our agreement, I demanded that she return the money paid to her being Kenya Shillings One Million (Kshs.1,000,000/=) which she declined to do and elected to take me round in circles.
  - v. That after unsuccessful follow-up with the Respondent, I reported the matter to the police, who investigated the case and preferred criminal charges against the Respondent.
  - vi. That upon the hearing of the case, judgment was delivered on 28<sup>th</sup> December, 2020 convicting the Respondent.
  - vii. That on 25<sup>th</sup> January, 2022 vide an order delivered by Hon M. A. Apondo, the Respondent was additionally ordered to pay compensation to me in the sum of Kenya Shillings One Million (Kshs.1,000,000/=).
  - viii. That the Respondent is yet to comply with the said orders to date.
  - ix. That I consulted Makadara Chief Magistrate Court and was informed that the court does not have jurisdiction to enforce orders that are civil in nature and was advised to file the application before this honourable court.
  - x. That I am advised by my advocates, whose advise I verily believe to be true that where the Court orders payment of both a fine and compensation, the enforcement of the compensation order is to be executed through the civil courts by way of adoption for enforcement.
  - xi. That I therefore approach this Honourable Court seeking to enforce the orders so issued in Makadara Chief Magistrate's Court Criminal Case No. 1733 of 2016 Republic –vs- Faith Waceru Nguku.



- xii. That the Respondent did not prefer an Appeal after the delivery of Judgment on 28<sup>th</sup> December, 2020 neither did she file any application for review of the Orders granted on 25<sup>th</sup> January, 2022.
  - xiii. That the Orders sought herein are merely procedural for the purposes of execution, and as such, no response is required from the Respondent, and there is no defence to the same.
  - xiv. That it is in the interest of justice, equity and conscience that the orders sought herein are allowed.
  - xv. That I make this affidavit in support of the application filed herewith”.
4. The applicant filed a supplementary affidavit sworn on 18/12/2023 attaching the proceedings of Makadara court.
  5. The parties filed written submissions as follows; the applicant submitted that section 175 of the [Criminal Procedure Code](#);

“ A Court which convicts a person of an offence ...; and finds, on the facts proven in the case, that the convicted person has, by virtue of the act constituting the offence, a civil liability to the complainant or another person (in either case referred to in this section as the "injured party"), may order the convicted person to pay to the injured party such sum as it considers could justly be recovered as damages in civil proceedings brought by the injured party against the convicted person in respect of the civil liability concerned”.
  6. The applicant argued that the [CPC](#) anticipates that where the circumstances would give rise to compensation in civil proceeds, an injured party can be granted compensation from the convicted person, without having to file a separate suit in civil proceedings.
  7. The second piece of legislation supporting compensation of victims of crime, is the enactment of Article 50 (9) of the [Constitution](#) which provisos seek to provide for protection of victims of crime and to provide them with support services to provide for reparation and compensation to victims. The operationalization of Article 50 (9) of the [Constitution](#) is through the enactment of the [Victims Protection Act](#) (Act No. 14 of 2017) of the Laws of Kenya. Section 3 (b) (i) of the said [Act](#) explains that its purpose is to protect the dignity of victims through provision of better information, support services, reparation and compensation from offenders. Your Ladyship, we submit that compensation orders serve as a pivotal component of the justice system, combining aspects of both restorative and retributive justice to Victims. The [Victims Protection Act](#) 2014 is intended to be an avenue for victims of crime to be compensated by offenders for crimes committed against them. Section 23 (1) of the [Victims Protection Act](#) 2014 accords a victim the right to restitution or compensation from an offender whilst Section 23 (4) explains that once a compensation order is made against a convicted offender, it should be enforced in civil proceedings.
  8. The applicant submitted further that Section 175 (3) of the [Criminal Procedure Code](#) provides for the circumstances where compensation cannot be ordered and this case does not fall within the same.
  9. Section 25 of the [Victims Protection Act](#) is careful to ensure that the order for compensation are not in conflict with the Rights of an Accused or Convicted person. It provides that a compensation or restitution order against a convicted offender, is in addition to any other sentence that the court may make against the offender, but it is not to be taken as part of the sentence passed against the person.



10. It was the applicant's argument that the facts of this case, meet the threshold for an award for compensation set out in the provisions of both statutes. The Applicant is therefore entitled to compensation as a result of the Respondent's failure to refund the Purchase Price of the sum of Kenya Shillings One Million that were obtained by the Respondent under false pretences and Section 23 (2) (a) of the *Victims Protection Act* 2014 which entitles a victim to a right to compensation by the offender for economic loss occasioned by an offence.
11. The respondent agreed that orders of compensation of victims by a convicted party from a criminal charge are provided for under law, but the award in this matter was to the tune of Kshs. 1,000,000 and which falls way below the pecuniary jurisdiction of this honorable court. it was the respondents argument that the lower court vested with such pecuniary jurisdiction is the magistrate court.
12. The respondent submitted however that in the event this court pronounces itself to have jurisdiction to grant enforcement orders as prayed, the respondent is currently unemployed and has no steady income but is willing to settle the amount of Kshs. 1,000,000 in monthly installments of Kshs. 10,000.
13. The sole issue for determination is whether the respondent should be order to pay compensation.
14. I find that the trial court's judgment which is attached and it is not in dispute that the respondent was ordered to pay the applicant compensation of the of Kshs.1,000,000.
15. Section 23 (2) (a) of the *Victims Protection Act* 2014 entitles a victim to a right to compensation by the offender for economic loss occasioned by an offence.
16. Section 175 (3) of the *Criminal Procedure Code* provides that no order for compensation will be issued where:
  - (a) the payment would exceed the amount that the court making the order is authorized by law to award as damages in civil proceedings
  - (b) in any case where, by reason of
    - (i) the complexity of evidentiary matters affecting the quantum of damages;
    - (ii) the insufficiency of evidence it in relation to such damages or their quantum;
    - (iii) the provisions of the *Limitation of Actions Act* (Cap. 22); or
    - (iv) any other circumstances, the court considers that such an order would unduly prejudice the rights of the convicted person in respect of the civil liability.
17. The respondent was ordered to pay compensation and in her submissions, she has stated that she is currently unemployed and has no steady income but is willing to settle the amount of Kshs. 1,000,000 in monthly installments of Kshs. 10,000.
18. The applicant is granted leave to enforce the trial court's judgment.
19. Judgment be and is hereby granted in favor of the applicant against the respondent in the sum of Kshs.1,000,000.
20. The application dated 18/4/2023 is accordingly allowed with costs to the applicant.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY, 2024.**

**A. N. ONGERI**



**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent

