



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 46 OF 2011(OS)

CATHERINE JELUGET KIPLAGAT
RESPONDENT

VERSES

KENNETH KIPLAGAT
APPLICANT

RULING

1. This ruling relates to the application dated **22nd February, 2024** filed by the Applicant, Kenneth Kiplagat seeking for **ORDERS THAT:-**

(a) Spent.

(b) Pending the hearing and determination of this application, this honourable court be pleased to issue orders of injunction restraining the Plaintiff/ Respondent by herself, her servants, agents, proxies and/or persons exercising authority from executing the warrants dated 14th February, 2024 taken out by the Plaintiff/Respondent or further continuing with attendant proclamation or attachment by the Plaintiff/Applicant's appointed auctioneers,

Bemac Auctioneers, or interfering with the Defendant/ Applicant's property or assets whatsoever and howsoever.

(c) The Plaintiff/Respondent is in contempt of court as the Defendant/Applicant has complied in full with the monthly instalment payment schedule directed by this honourable court and has, without fail or default, deposited the directed sums in the Plaintiff/ Respondent's lawyer's account such instalments receipts and acknowledgement of which are produced herein.

(d) There be a stay of execution in this matter until the hearing and final determination of the Defendant/ Applicant's notice of motion dated 11th January, 2024 which is listed before the Hon. Mr. Justice Chemitei for hearing on 26th March, 2024 which hearing the Plaintiff/Respondent is now attempting to preempt by the illegal attachment/proclamation.

(e) The costs of this application be provided for.

2. The application is supported by supporting affidavit and supplementary affidavits sworn by Kenneth Kiplagat on 22nd February 2024, 20th May 2025 and 11th June 2025 respectively.
3. The gist of the Applicant's application is the consent settlement between the parties dated 24th June 2021 in which among others the Applicant in settlement of the

cause agreed to pay the Respondent a total sum of Kshs. 40,000,000 in full settlement of this cause.

4. It is his case that he has continued to meet the instalments as agreed and that to date he has not defaulted.
5. It was therefore illegal and contemptuous for the Respondent to authorize auctioneers to proclaim his assets despite the continuous payment of the instalments and despite the tough economic hardships he was facing.
6. He further averred that he made payments for the period ending 31st December 2023 but to his surprise the Respondent claimed that she did not receive the same. That he also made further instalments for the month of January 2024 and all payments made to the Respondent's counsel's account.
7. Consequently, he deponed that the proclamation made on 14th February 2024 and 21st February 2024 when there has never been a default smacks of bad faith on the part of the Respondent.
8. In reply the Respondent vide her replying affidavit sworn on 15th March 2024 vehemently opposed the application arguing *inter alia* that the Applicant was in default and in arrears.
9. She deponed that the contested amount was confirmed by her advocate to have been received by 7th February 2024 and 11th March 2024 each amounting to Kshs. 2million respectively.

10. The Respondent further blames the Applicant for not paying fees for their son prompting her to make the payments which the Applicant was yet to refund.
11. She averred that the Applicant was already in default for the instalments for January, February and March 2024.
12. The parties were directed to file written submissions which they complied and I have perused the same.
13. The Respondent's preliminary issue in her submissions was that the court had not given directions regarding the application dated 11th January 2024 and therefore she was not obliged to respond to the same.
14. Although there were no direct directions regarding the said application the court was of the view that the parties would file submissions and have the same decided simultaneously. Nonetheless to allay any fears, the court shall give directions below.
15. Turning now to the application at hand I find that the issue is clear cut, namely, whether the Applicant was in default of the arrears as directed by the ruling of 9th May 2023.
16. Clearly the multiplicity of applications herein does not augur well for the court and the parties. I referred the matter to the Deputy Registrar so that the parties can present their accounts. Instead, they simply filed further affidavits and nothing more.
17. The directions I had issued on 8th April 2025 were simple, taking of accounts. In a nutshell I needed to know whether in light of rival averments herein how much had the

Applicant paid and how much the Respondent had received. For example, out of the Kshs 40 million is it true that the balance outstanding was Kshs. 9 million only or Kshs.17 million?

18. Be it as it may the annexures to the rival affidavits and in particular to the December 2023 and January 2024 seems to have been acknowledged by the Respondent albeit late. The paper trail between the two law firms and the banks on the other hand needed to be harmonized in the process of taking accounts.
19. The court respectfully is unable to appreciate the scattered accounts without the input of the parties. I insist on this accounting for the basic reason that both parties have used it as a basis of either execution or avoiding execution.
20. In the premises and before further orders of the court I direct that the parties must sit down and give a comprehensive account of all the installments so far paid. In the meantime, it is imperative for the Applicant to continue complying with the directives from the court.
21. Corollary to this is the application dated 11th January 2024 in which the Applicant is seeking to vary the terms of the mode of payments of the instalments because of new exigencies. Since the Respondent wishes to respond to the same the court shall not make any determination for now but shall grant the Respondent the opportunity to respond.
22. **Consequently, I direct that:**

- (a) The parties within 14 days from the date herein shall undertake accounts so as to ascertain the total amount outstanding and payable by the Applicant and in the event of any disagreement each shall file separate accounts.**
- (b) Once prayer (a) above is complied the court shall give further directions.**
- (c) Meanwhile and pending the above accounting interim orders are extended.**
- (d) The Respondent shall within 14 days from the date herein file any response to the Applicant's application dated 14th January 2024 together with written submissions and corresponding leave granted to the Applicant to file any supplementary affidavit and further submissions, if need be, within 14 days after service.**
- (e) Costs in the cause.**

**Dated signed and delivered at Nairobi via video link
this 22nd day of January 2026.**

**H K CHEMITEI
JUDGE**

