

Procedural Limits of Civil Jail as a Mode of Execution in the Small Claims Court

(A Commentary on the Eldoret High Court Misc. Civil Application No. E 039 of 2026)

10th June 2026



The legal machinery for execution proceedings delicately balances the interests of a decree-holder against the constitutional rights of a judgment-debtor. A recent ruling by the High Court of Kenya at Eldoret—**Misc. Civil Application No. E 039 of 2026: Barnaba Ngeno v William Barmasai Kangogo**—shed crucial light on this delicate balance by addressing procedural limits on civil imprisonment, specifically within the Small Claims Court (SCC) ecosystem.

We break down this milestone ruling and its impact on execution processes.

Case Background: From the Small Claims Court to the High Court

The dispute originated from the **Eldoret Small Claims Court (Civil Case No. E 612 of 2024)**, where the Claimant (William Barmasai Kangogo) sued the Respondent (Barnaba Ngeno) for trespass to land. Specifically, the Claimant sought damages and compensation for overt acts of the Respondent including:

- Cutting down trees on the Claimant's farmland; and.
- Using those trees to fence his private land.

The events that followed were:

1. The SCC Adjudicator entered judgement in favour of the Claimant and ordered the Respondent to pay the Claimant Kshs 788,961.81.

2. Following the judgment, the Claimant extracted the decree and commenced execution by applying for warrants to commit the Respondent to civil jail *without* giving him prior notice of the entry of the judgment or demanding settlement of the decretal amount.
3. The Respondent, now legally the judgement-debtor, was then arrested and detained.
4. Aggrieved by his detention, the Respondent/judgement-debtor moved the High Court, under its supervisory jurisdiction, seeking to set aside the committal proceedings.

The Core Legal Questions

The High Court was tasked with resolving two (2) fundamental issues

1. **Whether a court may lawfully commit a judgment-debtor to civil jail for the non-payment of a debt.**
2. **Whether the Small Claims Court complied with strict statutory procedures regarding due process.**

And the High Court Spoke: Analyzing Jurisprudence on the Right to Due Process

The High Court, interpreting the law, reiterated a constitutional safeguard, that depriving a person of their liberty over a civil debt required strict adherence to statutory law. How?

1. The Death of Automatic Committal to Civil Jail

Many a times, Kenyan courts have ruled that inability to pay a debt should not be punished with imprisonment. Likewise, the High Court echoed the intention behind **Section 38 of the Civil Procedure Act**, that **committal to civil jail is only lawful if a debtor has the financial means to pay but willfully, dishonestly, or maliciously refuses to do so**. So informed, the High Court cautioned that rushing to issue arrest warrants without evaluating the debtor's financial capabilities, execution processes risk violating **Article 29 of the Constitution of Kenya**.

2. The Notice Requirement is Mandatory

The High Court noted that the Claimant bypassed the vital requirement of serving a *Notice to Show Cause*. Precedents abound where the High Court has routinely set aside committal orders where due process was short-circuited. This is to buttress the point that litigants cannot skip procedural steps to force payments through sudden detention. Simply put, **a judgment-debtor must always be granted an opportunity to appear in court and explain their financial constraints before an arrest warrant can be legally issued**.

3. Jurisdiction of the Small Claims Court

Again, the High Court rendered what is commonplace, that the Small Claims Court is designed for enhanced access to justice through quick, informal, and cost-effective proceedings, a position we wholly associate with (see our previous article on <https://onyangoaywa.com/2026/06/04/the-small-claims-court-is-wide-open-for-business/>). However, the SCC should exercise jurisdiction within the ambit of the **Small Claims Court Act, its parent Act**. More, High Court jurisprudence has heavily curtailed the SCC's power to send individuals to civil jail, steering the SCC instead toward non-custodial execution methods like:

- Attachment and sale of movable property; and,
- Garnishee orders (attaching funds held in bank accounts).

Strategic Takeaways for You

The ruling in **Misc. Civil Application No. E 039 of 2026** serves as a vital reminder to both sides of a civil dispute:

- **For Judgment Creditors:** Shortcuts in execution will invalidate your victory. Bypassing statutory notices or rushing to commit a debtor to civil jail without a proper "proof of means" inquiry will lead to costly supervisory interventions by the High Court, delaying recovery.
- **For Judgment Debtors:** If your liberty is threatened by an aggressive creditor through civil jail warrants—especially within the Small Claims Court framework—the law provides rapid, robust remedies to set aside those proceedings and secure your release.

How We Can Assist

Located in the commercial hub of **Westlands (Nairobi)**, **Onyango & Aywa Advocates** actively tracks evolving judicial trends to offer cutting-edge dispute resolution services. Whether you need to enforce a hard-won court judgement through legally sound execution methods, or require urgent legal representation to counter an unlawful warrant of arrest and committal, our team is equipped to safeguard your interests.

Contact us today to consult with our civil litigation specialists.

By:

Victor Okinda (Mr) | Lawyer

Aywa S. (Mr) | Managing Partner

June 10th, 2026