



REPUBLIC OF KENYA



KENYA LAW
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**Oksana Investment Supplies Limited v Wamwea (Civil Case E121 of 2018)
[2024] KEHC 10234 (KLR) (Commercial and Tax) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10234 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E121 OF 2018
PM MULWA, J
AUGUST 15, 2024**

BETWEEN

OKSANA INVESTMENT SUPPLIES LIMITED PLAINTIFF

AND

ALICE WANJIRU WAMWEA DEFENDANT

RULING

1. Before the Court is the plaintiff's Notice of Motion dated 14th December 2023, made under Sections 1, 1A, 3 and 3A of the *Civil Procedure Act*. The application is seeking for orders that:
 1. Spent
 2. The Receiver Managers be and are hereby ordered to conduct audit of the rental income over L.R NO. 209/11396(I.R 505103) in the presence of the defendant and the plaintiff.
 3. The Receiver Managers be and are hereby ordered to give the status of payment of fire insurance for L.R NO. 209/11396(I.R 505103) payment of land rates and land rents.
 4. The Receiver Managers be and are hereby ordered to provide the copies of agreement entered into with the security firm guarding the property known (as) L.R NO. 209/11396(I.R 505103) and the garbage collecting firm since appointment by the court on 20th December 2019.
 5. The OCS Huruma Police Station do supervise audit tenant in occupation of and the rental income over L.R NO. 209/11396(I.R 505103).
2. The application is anchored on the grounds on its face and the supporting affidavit sworn by Paul Mwangi Njuki on 14th December 2023. The plaintiff averred that the receiver managers appointed by



the court on 20th December 2019 have kept both the plaintiff and the court in the dark on the status of the tenants in occupation of the suit property by refusing to give an account of the payment of land rates and insurances of the suit premises and payment of utilities.

3. The plaintiff further contended that the defendant has the full facts of the suit property by virtue of her living thereon, and that the plaintiff was the one who was disadvantaged.
4. In opposing the motion, the defendant filed a replying affidavit sworn by herself on 8th February 2024. The main depositions were that the plaintiff's motion is an abuse of the court process as the joint account opened by advocates for both parties was readily available, the OCS has no jurisdiction over taking of accounts, the matter raised is res judicata having been previously adjudicated upon by the court and the plaintiff was side-tracking the conclusion of this trial to serve collateral purposes in a criminal process.
5. It was the defendant's argument that the plaintiff had not exhibited that it had made requests for the information sought from the alleged Receiver Managers and had been denied. After all, the alleged Receiver had not been enjoined in the instant motion.
6. Learned counsel for both parties made brief oral submissions. It was submitted for the plaintiff that it was in the interest of justice that an audit be carried out in order to uphold the integrity of the rent collection proceeds. For the defendant it was submitted that the main suit was partly heard, that the plaintiff had testified and was cross-examined. That the instant application was made in bad faith as it had taken the trial back to the pre-trial stage. And further that a party cannot seek to take accounts when they are joint signatories to the said account.

Analysis and Determination

7. I have had a chance to peruse the record herein and I must say this matter, which is fairly old, has been significantly delayed by a myriad of applications. So, when the hearing of the main suit finally commenced, one would have thought that the same would go on seamlessly so that the real issues outstanding would be comprehensively determined. I say so because a look at the reliefs sought in the amended plaint, once determined will to a large extent address the orders sought in the instant application.
8. Therefore, bringing the instant application in the middle of the testimony of the plaintiff only contributes to delay in the hearing and conclusion of this matter. I also note that the respective counsel for parties herein are signatories to a joint account which is part of what is sought to be audited, hence the plaintiff can be appropriately advised.
9. I am persuaded by the arguments advanced by the defendant that the plaintiff's application is brought in bad faith and is for disallowing.
10. Consequently, the plaintiff's application dated 14th December 2023 is found to have no merit and is dismissed with costs to the defendant. The parties to set the matter down for further hearing on priority basis.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF AUGUST 2024.

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P. MULWA
JUDGE



In the presence of:

Ms. Mwikali h/b for Mr. Murimi Murango for plaintiff

Mr. H. Kinyanjui for defendant

Court Assistant : Lilian

