



Kabiruri t/a Janetek Enterprises v Warutere & 4 others (Civil Case 68 of 2020) [2024] KEHC 11171 (KLR) (Civ) (25 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11171 (KLR)

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

CIVIL

CIVIL CASE 68 OF 2020

JN MULWA, J

SEPTEMBER 25, 2024

BETWEEN

JANE WANJIKU KABIRURI T/A JANETEK ENTERPRISES APPLICANT

AND

PAUL MWANGI WARUTERE JUDGMENT DEBTOR

AND

MERCY WANGUI GICHEMA 1ST DEFENDANT

JAMES WARUTERE NJEGE 2ND DEFENDANT

NEWTRAL ENTERPRISES LIMITED 3RD DEFENDANT

TOPMAX MEIDA LIMITED 4TH DEFENDANT

RULING

1. There are two Applications for determination before the court dated 4/01/2024 and 9/01/2024.
2. The Judgment Debtor/Plaintiff in the Motion dated 4/01/2024 seeks orders of injunction to restrain the 2nd and 3rd Respondents from disposing selling or in any manner disposing of land parcels NO. Ngong/Ngong/91031 and Ngong/Ngonong/91032 pending hearing and determination of the application and supported by the grounds on its face and supporting affidavit of Jane Wanjiru Kabirwi the applicant.
3. By application dated 9/01/2024 the J/D Paul Mwangi Marutere sought courts intervention under Section 1A, 1B and 3A and 38 of the *Civil Procedure Act*, and orders 9 Rule 9, 22 Rule 34, 49 Rule 7 and 51 Rule 1 of the *civil procedure Rules 2010* for Orders:-



1. Spent
2. That the firm of Michael Were & Associates advocates be allowed to come on record for the Judgment Debtor/applicant after judgment
3. That an order of stay of execution of warrants of arrest against the JD issued on 7/12/2023 be stayed.
4. That the Judgment Debtor be granted leave to appeal against the trial courts decision dated 7/12/2023

Upon grounds stated on its face and affidavit of the JD sworn on 9/01/2024.

4. The application is opposed by a Replying Affidavit sworn on 22/03/2024 by the Plaintiff Jane Wanjiru Kabiruri through her Advocate, Mugo & Associates Advocates.
5. On 13/01/2024 the plaintiff filed a Notice of Preliminary Objection (PO) to the hearing of the motion dated 9/01/2024 on grounds that:-
 1. Section 6 of the *Civil Procedure Act* offends the hearing of the application.
 2. That at date of the Preliminary Objection the motion dated 4/01/2024 had not been withdrawn, and therefore the motion dated 9/01/2024 is misconceived, bad in law and an abuse of court process.
6. The court has considered the Preliminary objection and the application dated 9/01/2024 by the supporting and opposing affidavits as filed as well as submissions filed by the plaintiff.
7. As stated above the motion dated 4/01/2024 was withdrawn by the applicant by a notice of withdrawal dated 10/01/2024 and further orally in court on 16/01/2023.

That being the case, I see no point of further interrogation of the motion dated 4/01/2024.

Though served with the Preliminary Objection the Respondent did not file a response thereto before withdrawal of the same. No costs will be granted to the Respondents.

Notice of Motion dated 9/01/2024

8. The applicant seeks three orders;
 1. Leave to act for the judgment debtor post judgment
 2. Stay of warrants of arrest against the applicant issued on 7/12/2023
 3. Leave to appeal out of time of the judgment of the trial court dated 7/12/2023.
9. On the matter of leave to come on record for judgment debtor after entry of judgment, is trite by dint of Order 9 Rule 9 of the CPR 2010 that a party seeking to change its representation after judgment must obtain leave of court for the change to be effected, either by order of the court or by consent of the parties. Upon obtaining such leave, the party may act in person or through his new advocate by filing a notice of appointment of advocates.
10. The law firm of KCN Advocates LLP did not file submissions on the motion dated 9/021/2024. Instead, it filed a motion dated 17/05/2024 and did not approach the court for directions on the motion nor did it obtain a hearing date for the said application. The last proceedings before this court were on 23/05/2024 whereof the parties were directed to file submissions on the motion dated 9/01/2024 and on the Preliminary Objection.



11. Though the motion dated 17/05/2024 was filed before the last proceedings of 23/05/2024 the court was kept in darkness as of its existence. The Respondents were likewise unaware of the said motion and if they were did not bring it to the court's attention.
12. That being the case and having considered submissions by the judgment debtor, and there being a Notice of Appointment of Advocates by KCN Advocates LLP, purportedly for the Judgment Debtor, it is safe to hold that no submissions were filed, and more particularly that prayer no. 2 of the motion dated 9/01/2024 cannot be granted to the applicant Judgment Debtor.
13. What it means therefore and evidently submitted to by Mugo & Associates advocates for the Plaintiff is that the motion dated 9/01/2024 is fatally defective for having been filed by a stranger and therefore of no probative value.
14. In the circumstances, the court is constrained to find no merit thereof and proceed to dismiss the application dated 9/01/2024 with costs to the plaintiff.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2024.

JANET MULWA

JUDGE.

