



**Crossley Holdings Limited v Saxena & 3 others (Civil Case 459 of 2008)  
[2024] KEHC 13072 (KLR) (Commercial and Tax) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13072 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 459 OF 2008  
JWW MONG'ARE, J  
OCTOBER 25, 2024**

**BETWEEN**

**CROSSLEY HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**NAGENDRA SAXENA ..... 1<sup>ST</sup> DEFENDANT**

**JOHN GITAU KIMANI ..... 2<sup>ND</sup> DEFENDANT**

**MIWANI SUGAR COMPANY LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**MIWANI SUGAR COMPANY (1989) LIMITED (IN RECEIVERSHIP) .... 4<sup>TH</sup>  
DEFENDANT**

**RULING**

1. The Plaintiff/Applicant filed the notice of motion dated 14<sup>th</sup> March 2023, under Sections 3A, 3B and 27 of the Civil Procedure Act, Order 22 Rules (4), 14 and 15(B) and Order 51 Rules (1) and (3) of the Civil Procedure Rules, seeking the following orders:-
  - a. That the application be certified urgent and be heard on priority to any other application due to its potentiality to likely determination of the whole case.
  - b. that the Honourable Court be pleased to enter satisfaction of the decree herein and mark the matter as finally and fully settled.

or in the alternative

Send the decree herein to Kisumu Environment And Land Court Petition No. 6 Of 2020 between Crossley Holdings Limited V The Cabinet Secretary, Ministry Of Agriculture Livestock & Fisheries & 6 Others.



- c. That costs of the motion be provided for.
2. The application is supported by the grounds on its face, the annexed affidavit sworn by the Plaintiff's director, Sukwinder Singh Chatthe on 14<sup>th</sup> March 2023 and written submissions dated 26<sup>th</sup> September 2023.
  3. The application is opposed by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants through a replying affidavit sworn by their Advocate on record, David Otieno, on 16<sup>th</sup> October 2023 and written submissions dated 22<sup>nd</sup> April 2024.
  4. The background to the application is that this suit was dismissed for want of prosecution and the Defendants were awarded costs taxed at Kshs. 11,206,480/= and a certificate of costs issued.
  5. The Plaintiff filed Kisumu Environment & Land Court (ELC) Petition No. 6 of 2020 and was awarded costs of Kshs.480,137,610/=, with the only common party in that suit being the 4<sup>th</sup> Respondent herein, Miwani Sugar Company (1989) Limited (In Receivership) alongside 4 others.
  6. Through the instant application, the Plaintiff is seeking to set off the Decree obtained against it in this suit for Kshs.11,228,080/=, against that obtained in its favour in Kisumu Environment & Land Court Petition No.6 of 2020 for Kshs.480,137,610/=.

### **Analysis and Determination**

7. I have considered the application, the grounds, the parties' respective affidavits, evidence, submissions and authorities. The issue for determination is whether the Plaintiff has made a case for the set off of the decree against it in this suit for Kshs.11,228,080/=, against that obtained in its favor in Kisumu Environment & Land Court Petition No.6 of 2020 for Kshs.480,137,610/=.
8. The conditions that must be met by an applicant for the grant of an order of attachment or set off of a decree in satisfaction of another decree are set out under Order 22 Rule, 14 of the Civil Procedure Rules which provides as follows:-

“ 14. Execution in case of cross-decrees

- (1) Where applications are made to a court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then- (a) if the two sums are equal, satisfaction shall be entered upon both decrees; and (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.
- (2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself. (3) This rule shall not be deemed to apply, unless- (a) the decree-holder in one of the suits in which the decrees have been made is the judgment- debtor in the other



and each party fills the same character in both suits: and (b) the sums under the decree are definite.

- (4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.”

9. From the above, it is clear that for a set-off of cross-decrees as requested, each party should be a decree-holder in one suit and a judgment debtor in the other suit.
10. I have read the Decree dated 30<sup>th</sup> September, 2021 and the Certificate of Costs dated 26<sup>th</sup> January, 2022 annexed to the Plaintiff's Supporting Affidavit. I have ascertained that in this case, the Plaintiff is the Judgment Debtor, having been condemned to pay the costs of Kshs.11,228,080/= . In Kisumu ELC Petition No. 6 of 2020, the Plaintiff is the Decree Holder, having been awarded Kshs. 480,137,610/= against the Defendants. Among the Defendants/Judgment Debtors is the 4<sup>th</sup> Defendant in this suit, Miwani Sugar Company (1989) Limited.
11. The Applicant urged that it has satisfied the conditions set out under Order 22 rule 14(3) in that the 4<sup>th</sup> Defendant/Respondent is the Judgment Debtor in the Kisumu Petition whereas the Applicant is the judgment creditor (Decree holder).
12. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents contended that the Plaintiff has not satisfied the requirement that each party has the same roles in both cases; that since only the 4<sup>th</sup> Defendant in this suit, was the only party sued in Kisumu ELC Petition No. 6 of 2020 and that the 3<sup>rd</sup> Defendant Miwani Sugar Mills Limited was not a party to that suit and is thus not bound by that Decree.
13. However, under Order 22 Rule 14 (4) a decree-holder with a judgment against multiple parties jointly and severally may treat it as a cross-decree concerning a decree held against him individually by one or more of these parties. Therefore, the contention cannot hold. I thus find and hold that the Plaintiff has satisfied the conditions under Order 22 Rules 14(3) and 4.
14. The Plaintiff asserted that the sums claimed are definite and that where applications are made for execution of cross-decrees, one for a larger sum and the other for a smaller sum, execution should be taken out only for the difference. It therefore urged the Court to exercise its inherent jurisdiction to grant a set-off for the ends of justice.
15. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents however contended that the Decree dated 30<sup>th</sup> September, 2021 together with the Certificate of Costs dated 26<sup>th</sup> January, 2022 arising from Kisumu ELC Petition No.6 of 2020 are not definite. This is because they are the subject of appeals lodged in Kisumu Court of Appeal Civil Appeal No. E207 of 2021 and Kisumu Court of Appeal Civil Appeal No. E218 of 2022, both of which are pending determination, hence still an active subject of litigation.
16. I have perused the References, Ruling, Notices of Appeal and Order granting leave to appeal as annexed to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents' Replying Affidavit. I am not satisfied that there is a definite decree as was submitted by the Plaintiff.
17. To my mind, the pendency of the hearing and the determination of the subject Appeals renders the Decree indeterminate. See *Musee Mati v Baridi Felix Mbevo (High Court Election Appeal No. 1 OF 2018)* [2021] eKLR
18. I note that the Plaintiff failed to disclose these facts. I also note that the Plaintiff did not produce any evidence to controvert the pendency of the Appeals. Therefore, I find that the condition that the decrees must be definite has not been satisfied by the Plaintiff.



19. In conclusion, therefore, the Plaintiff's application dated 14<sup>th</sup> March 2023 is premature. It is struck out with costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF OCTOBER 2024**

.....

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

1. Mr. Wesley Gichaba for the Plaintiff/Applicant.
2. Ms. Atieno holding brief for Mr. Otieno for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents.
3. Godfrey - Court Assistant

