



REPUBLIC OF KENYA



**Arayason v Kinyungu & 3 others (Civil Case 20 of 2016)
[2024] KEHC 15061 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15061 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE 20 OF 2016
DO CHEPKWONY, J
NOVEMBER 22, 2024**

BETWEEN

NAFTALY ARAYASON PLAINTIFF

AND

JOSEPH NDUNGU KINYUNGU 1ST DEFENDANT

PAULINE WANJIRA NGURE 2ND DEFENDANT

WANGUI NGURE 3RD DEFENDANT

GEORGE MBUGUA KARANJA 4TH DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion application dated 12th October, 2022 which seeks the following orders:-
 - a. That this Honourable court do compel Githunguri Law courts and/or Executive Officer, Githunguri Law Courts to release the sum of Kshs. 230,000/= deposited in the Senior Principal Magistrate Court Civil Case No. 27 of 2007 by the Plaintiff herein to the Official Receiver of the Republic of Kenya.
 - b. That the said sum of Kshs 230,000/= be deposited to the Company Liquidation Account, National Bank of Kenya, Harambee Avenue, Account No. 0100xxxxx04300.
2. The Application is based on the grounds set out on its face and the Supporting Affidavit sworn by Judy W. Mugo on the instant date. According to the Applicant, on 12th October, 2018, Lady Justice Kasango (Rtd) delivered a Judgment which dissolved Ikinu Gichagi Merchants. The court also directed the Defendants/Applicants to propose the names of professional firms for appointment of liquidators to take accounts, collect all partnership property and distribute it to persons in terms of Section 42 of the Partnership Act.



3. It is the Applicant's case that through their Advocates, M/S Njoroge Wachira & Co. Advocates, they sent a letter dated 1st July, 2019 requesting to appoint an Official Receiver and the Official Receiver accepted the nomination vide a letter dated 3rd July, 2019. The said Advocates then filed a Notice of Appointment of Liquidator dated 4th July, 2019 in court. And on 16th July, 2019, the court appointed the Official Receiver as the Liquidator of Ikinu Gichagi Merchants hence placing it under liquidation pursuant to the Court Order dated 12th October, 2018.
4. The Applicants contends that the said Official Receiver took up the affairs of the Partnership in a bid to collect or preserve all the assets of the Partnership in order to realise the same for the benefit of the Partners and its Creditors, if any, in terms of Section 42 of the Partnership Act. The Applicant holds that the official receiver is seeking to have the rent proceeds deposited at Githunguri Law Courts in Senior Principal Magistrate Court Civil Case No. 27 of 2007 amounting Kshs. 230,000/= which forms part of the assets of the partnership to be transferred to the Company Liquidation Account held at National Bank of Kenya, Harambee Avenue Account No.0100xxxxx04300, which transfer will facilitate the already stalled liquidation process. The Applicant holds that no prejudice will be occasioned to any party if the orders are issued as prayed.
5. The Application is opposed through the Replying Affidavit of the Respondent, Naftaly Arayson sworn on 3rd February 2023 on the basis that it is defective, misconceived and bad in law. It is the Respondent's case that the Official Receiver has not filed and served a Notice of Appointment in the matter and he has not been enjoined in this matter while some of the parties are deceased. The Respondent has also stated that the receiver order to the Official Receiver was illegal as it is supposed to be audit firm and within 30 days of the Judgment of the High court.
6. The Respondent also prays for this court to review the Judgment as it in error having reduced the shareholders of the Partnership from 5 to 4, that the application is an abuse of the court process and the Applicant will not be prejudiced if the orders sought are not granted.

Analysis and Determination

7. Having read through the Notice of Motion application, the Supporting Affidavit, the Replying Affidavit and the annexures thereto, the court finds that the main issue for determination is whether the application herein has merit to warrant the orders sought be granted.
8. The court confirms that indeed the Judgment of the court delivered on 12th October, 2018 dissolved the partnership of Ikinu Gichagi Merchants Partnership, this court directed the Defendants to propose names of professional firms suitable for the appointment of liquidators to take accounts, collect partnership property and distribute it to persons in terms with Section 42 of the Partnership Act.
9. The court notes that the request to appoint the Official Receiver was made on 1st July, 2019 and the Notice of Appointment was filed on 4th July, 2019. That the court then made the appointment of Official Receiver as Liquidator of Ikinu Gichagi Merchants on 16th July, 2019. It is worth-noting that neither the Respondents nor any other party raised any issues or challenged the appointment of the Liquidator since the same was done. Therefore, this Court finds that it is too late in time for the Respondent to question the said appointment.
10. In the circumstances, the Notice of Motion application dated 12th October, 2022 is found meritable and the same is allowed on the following terms:-
 - a. That this Honourable Court hereby compels Githunguri Law Courts and/or Executive Officer, Githunguri Law Courts to release the sum of Kshs. 230,000/= deposited in the Senior



Principal Magistrate's Court Civil Case No. 27 of 2007 by the Plaintiff herein to the Official Receiver of the Republic of Kenya.

- b. That the said sum of Kshs. 230,000/= be deposited to the Company Liquidation Account, National Bank of Kenya, Harambee Avenue, Account No. 0100xxxxx04300.
- c. That there shall be no orders as to costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 22ND DAY OF NOVEMBER , 2024.

D. O. CHEPKWONY

JUDGE

