



**Rutto & 2 others v Board of Trustees Postal Corporation of Kenya Staff Pension Scheme (Civil Case 308 of 2008) [2023] KEHC 116 (KLR) (Commercial and Tax) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 308 OF 2008  
A MABEYA, J  
JANUARY 20, 2023**

**BETWEEN**

**MOSES KIPROTICH RUTTO ..... 1<sup>ST</sup> PLAINTIFF  
LUCY WANJIRU KANJUI ..... 2<sup>ND</sup> PLAINTIFF  
JOHN KENNEDY OMANGA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**BOARD OF TRUSTEES POSTAL CORPORATION OF KENYA STAFF  
PENSION SCHEME ..... DEFENDANT**

**RULING**

1. This ruling determines the application dated 7/1/2022. It was brought under sections 34, 1A, 1B, 3 and 3B of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, sections 33 and 57 of the [interpretation and General Provisions Act](#) Cap 2 Laws of Kenya, section 39 of the [Limitation of Actions Act](#) CAP 22 Laws of Kenya and Order 50 Rule 4 of the [Civil Procedure Rules](#) 2010.
2. The application sought to have the court exercise its jurisdiction under order 34 of the [Civil Procedure Act](#) and determine questions that arose pursuant to the judgment delivered on 15/12/2021. The questions were; whether the dismissal of the suit invalidated the Letter of Offer dated 22/5/2008, whether time to accept the offer to buy the suit property stopped running after the court issued the temporary injunction of 10/6/2008 and whether the plaintiffs had the right to accept the offer to buy the suit property at Kshs.7,000,000/- after the court turned down their counter offer of Kshs. 5,500,000/-.
3. The application was premised on the grounds on the face of it and the affidavit dated 7/1/2022 sworn by Moses Kiprotich Rutto. It was contended that after the delivery of the judgment, the plaintiff filed



acceptance forms for the purchase of the suit property and paid 10 percent of the purchase price. That the defendant informed the plaintiffs that the suit property was no longer available for sale since the court had turned down the plaintiff's counter offer. That the time stopped running when the court issued the injunctive orders and resumed after the delivery of the judgment therefore the defendant should not state that the suit property was not available for sale.

4. The application was opposed by the respondent in a replying affidavit dated 28/3/2022 sworn by Elijah K Kosgey. He contended that no questions had arisen in the suit relating to the execution, discharge and satisfaction of the decree. That the questions raised by the plaintiff sought to introduce new issues after judgment which were not addressed at the trial. He further averred that the application was the plaintiffs attempt to vary and introduce a new cause of action after the matter had been heard to its conclusion and judgment delivered. That after dismissal of the suit, the defendant was at liberty to sell the suit property to members of the public and at such price as it would deem fit.
5. It was contended that the temporary injunction was not mandatory in nature and it failed to address the issue of the letters of offer issued to the plaintiffs and that the defendant was in the process of refunding the deposits tendered by the plaintiffs without consent or approval by the defendant.
6. The application was canvassed by written submissions which I have considered. The main issue for determination is whether any questions have arisen for determination as contended by the applicants.
7. The application is founded on section 34 (1) of the Civil Procedure Rules which provides: -
  - “(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”
8. It is clear from the foregoing that, the law prohibits filing of a separate suit on any question touching on execution, discharge or satisfaction of the decree. What is before Court for determination is whether the issues raised by the plaintiffs fall under the ambit of section 34(1) of the *Civil Procedure Act* to warrant this court's attention.
9. The plaintiffs have moved the Court seeking answers to the questions whether the Letter of Offer dated 22/8/2008 was invalidated by the judgment and whether the injunction had stopped the time within which to accept the offer and purchase the suit property at Kshs. 7,000,000/.
10. From the record, the defendants offered to sell the suit property to the plaintiffs by various Letters of Offer dated 22/5/2008 at a purchase price of Kshs. 7,000,000/- and the plaintiffs made a counter offer of Kshs 5,500,000/-. The defendants declined to accept the plaintiffs offer and the plaintiffs instituted a suit against the defendants via a plaint dated 9/6/2008 seeking to be allowed to purchase the properties at Kshs. 5,500,000/-. In a judgment delivered on 15/12/2021, the court dismissed the plaintiffs' suit.
11. From the foregoing, it is clear that there was an offer for sale of the houses at Kshs.7 million by the defendant which the plaintiffs declined by giving a counter-offer of Kshs.5.5 million. They had sought that the Court declares the offer of Kshs.7 million null and void. The Court declined. There was also an injunction seeking to bar the defendant from selling the properties to members of the public. There was no prayer seeking to bar the withdrawal or cessation of the offers made in 2008. Those were issues that were not placed before the Court at the trial. Had those prayers been made, the current issues raised by the plaintiff would have been appropriate.
12. The foregoing being the case, it cannot be that the Letters of Offer given in 2008 would still be alive. They had a time frame. They ceased the moment the Court declined to declare them a nullity. By



seeking the Court to interpret the validity of those letters of offer post judgment, the applicant's are introducing a completely new cause of action.

13. Section 34 (1) of the *Civil Procedure Act* strictly deals with all questions relating to execution and satisfaction of the decree. The plaintiffs' claim is by no way covered by that section and therefore, the Court lacks the jurisdiction to revisit the issues arising out of the transactions between the plaintiffs and the defendants. That notwithstanding, on an advisory, level the offer lapsed when the plaintiffs made a counter offer and cannot be expected to now rely on the said offer which they rejected years ago.
14. In the premises, the Court finds that the application lacks merit and is therefore dismissed with costs to the defendants.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2023.**

**A. MABEYA, FCIArb**

**JUDGE**

