



**Suraya Sales Ltd & another v Oduor (Civil Appeal E097 of 2023)  
[2023] KEHC 19424 (KLR) (Commercial and Tax) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19424 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL APPEAL E097 OF 2023  
A MABEYA, J  
JUNE 30, 2023**

**BETWEEN**

**SURAYA SALES LTD ..... 1<sup>ST</sup> APPELLANT**

**MUGA DEVELOPERS LTD ..... 2<sup>ND</sup> APPELLANT**

**AND**

**CAROLINE ACHIENG ODUOR ..... RESPONDENT**

**RULING**

1. Section 34 of the *Civil Procedure Act* 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. Cap 21 Civil Procedure [Rev 2012] C17 - 20 (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees. (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court. For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.”

2. The net effect of the said provision is that all post judgment proceedings must be undertaken in the same suit or proceedings where the judgment was passed. It is for good reason in that the Court is



- aware of the entire history of a matter. There is no likelihood of a court making an embarrassing determination.
3. By post judgment proceedings, it means all execution proceedings including garnishee as well as objections to execution of the decree.
  4. On 30/3/2022, Hon D M Kivuti (PM) made a judgment in Milimani Civil Case No 3528 of 2020 whereby the respondent was awarded Kshs 6,735,963/04. On 12/7/2022, the respondent commenced a fresh proceedings under Misc Appl No E 994 of 2022 seeking to pierce the veil of the applicants by cross examining the directors with a view to finding whether the companies had any assets to be attached failure to which the directors become personally liable for the debt.
  5. That application came before Hon Opande (PM) for hearing whereby the applicants raised a preliminary objection to the effect that the said application breached the provisions of Section 34 of the [Civil Procedure Act](#). The trial court heard the objection and dismissed the same on the grounds contained in the ruling dated 4/5/2023.
  6. Aggrieved by that decision the applicants lodged a Memorandum of Appeal in this Court dated 26/5/2023 raising 5 grounds of appeal. Together with the Memorandum, the applicants lodged a Motion on Notice of even date seeking a stay of execution of the ruling and all consequent proceedings pending the determination of the appeal. The Motion was taken out under Order 42 Rule 6 of the [Civil Procedure Rules](#).
  7. The grounds were basically that the appeal had chances of success. That if the stay sought was not granted, the appeal will be rendered nugatory as the applicant's directors would have been harassed and prejudiced by the intended proceedings.
  8. The application was opposed on the grounds that that point had not been raised before the trial court. That these were not execution proceedings but discovery to aid execution. That the application was properly brought under Order 22 of the [Civil Procedure Rules](#). That it only sought to examine the directors of the applicants.
  9. The court has considered the entire record. At the beginning of this ruling, I set out what section 34 of the [Civil Procedure Act](#) provides. The spirit is that all proceedings concerning the same subject matter be undertaken within the same proceedings. This is to avoid a multiplicity of proceedings.
  10. In the present case, it is admitted that there is already a judgment that had been passed. That the Miscellaneous Application taken out by the respondent only sought to make discovery to aid the execution process in the main suit. The effect of the ruling of Hon Opande (PM) that is sought to be challenged on appeal is that the process of examination of the directors of the applicants can be proceeded with. That would be contrary to section 34 of the [Civil Procedure Act](#). It will be a process in aid of execution of a decree.
  11. I am alive to the fact that stay of proceedings should be sparingly given as they tend to limit a party's access to justice and lead to huge backlog. But in a case such as the present one which will lead to a blatant breach of an express statutory provision the Court will exercise its discretion and prohibit such a breach.
  12. I have considered that if the stay sought is not granted the applicant's directors will be vexed in an unlawful proceeding and in the event the appeal is successful, the wrongful act of breaching section 34 of the Act would not be undone. The justice of the case tilts in holding the proceedings pending the determination of the appeal.
  13. Accordingly, the application dated 26/5/2023 is allowed in terms of prayer Nos 2 and 3.



It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE, 2023.**

**A. MABEYA, FCIArb**

**JUDGE**

