



**Kairanya v Kairanya & another; Kairanya Investment Limited (Interested Party)  
(Civil Suit E007 of 2021) [2023] KEHC 21493 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21493 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL SUIT E007 OF 2021  
TW CHERERE, J  
JULY 27, 2023**

**BETWEEN**

**MARTIN KAIRANYA ..... PLAINTIFF**

**AND**

**JEREMIAH KIMATHI KAIRANYA ..... 1<sup>ST</sup> DEFENDANT**

**MWENDA JACOB KAIRANYA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**KAIRANYA INVESTMENT LIMITED ..... INTERESTED PARTY**

**RULING**

1. By a ruling dated June 17, 2022, Otieno J granted orders among others an order referring the dispute over the running and management of the affairs of the Interested Party to arbitration as per the Articles of Association.
2. By application dated March 8, 2023, supported by the affidavit of 1<sup>st</sup> Applicant sworn on even date and his supplementary affidavit sworn on March 15, 2023, Applicants pray for leave to access and withdraw KES. 700,000/- from the Interested Party's Account No. 011XXXX00 with Cooperative Bank of Meru for payment of bills and salaries owed by the Interested party company all totaling KES. 1,758,403/- and alternatively an order reviewing the order dated August 10, 2022 by which the Interested Party's Account No. 011XXXX900 with Cooperative Bank of Meru was frozen.
3. Respondent opposes the application vide his replying affidavit and further affidavit sworn on March 15, 2023 and March 20, 2023 respectively in which he contends that Applicants have not annexed the statement of account to demonstrate that there are funds in the Interested Party's Account No. 011XXXX00 with Cooperative Bank of Meru to satisfy the pending bills owed by the Interested Party.



He argued that the dispute herein is pending before an arbitrator but has stalled due to the Applicants' failure to disclose the Interested Party's bank account balances.

### **Analysis and Determination**

4. I have considered the notice of motion dated in the light of affidavits on record As clearly pointed out by the Respondent, Applicants have not demonstrated that Interested Party's Account No. 011XXXX00 with Cooperative Bank of Meru has funds enough to pay the sum of KES. 700,000/- that they seek to withdraw or that the Interested Party has employees whose salaries have not been paid and for what period of time.
5. In the absence of evidence of the bank balances, I find that the order for access and withdrawal of KES. 700,000/- lacks merit for the reason that the Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people. (See v. Attorney General [2004] 1 KLR 431).
6. It is to be remembered that in this court's ruling dated October 27, 2022, (erroneously dated 2021) this court reminded the parties that they have an obligation to submit the dispute concerning the running and management of the affairs of the Interested Party to arbitration as was reiterated in an earlier ruling by Otieno J. dated June 17, 2022.
7. The Respondent's averments that the arbitration proceedings have stalled due to the Applicants' failure to provide the bank statements for the Interested Party's Account No. 011XXXX00 with Cooperative Bank of Meru has not been controverted.
8. In my considered view, the matters concerning the running and management of the affairs of the Interested Party include payments of dues owed by the Interested party and ought to be heard by the arbitrator.
9. I shall not belabor the point concerning review of the orders dated August 10, 2022 by which the Interested Party's Account No. 011XXXX00 with Cooperative Bank of Meru was frozen the same having been canvassed and declined in an earlier ruling.
10. From the foregoing, I find that the Applicants have not made out a case for leave to access and withdraw KES. 700,000/- from the Interested Party's Account No. 011XXX00 with Cooperative Bank of Meru or alternatively for an order reviewing the order dated August 10, 2022 by which the Interested Party's Account No. 011XXXX00 with Cooperative Bank of Meru was frozen.
11. Consequently, the application dated is dismissed with costs to the Respondent. The parties are once again reminded that they are bound by the Articles of Association of the Interested Party and no number of applications to this court will take away the jurisdiction of the Arbitrator to determine the dispute concerning the running and management of the affairs of the Interested Party.
12. Mention on December 14, 2023 to confirm whether the dispute in this suit herein has been settled.

**DATED IN MERU THIS 27<sup>TH</sup> DAY OF JULY 2023**

**T.W. CHERERE**

**JUDGE**

**Appearances**

Court Assistant - Morris Kinoti



For Plaintiff - Mr. Mwirigi for Mwirigi Kaburu & Co Advocates

For Defendants - Mr. Wambua for Maitai Rimita & Co Advocates

For Interested Party - Mr. Gichunge for Gichunge Muthuri & Co. Advocates

