



REPUBLIC OF KENYA



**Karuga v Sakish Flora Limited & another (Civil Case  
11 of 2004) [2022] KEHC 3046 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3046 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE 11 OF 2004  
HK CHEMITEI, J  
JUNE 23, 2022**

**BETWEEN**

**GADSON GATARI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF  
THE LATE SAMUEL KARUGA) ..... APPLICANT**

**AND**

**SAKISH FLORA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**STANDARD CHARTERED BANK ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant's amended Notice of Motion dated 30<sup>th</sup> May 2021 prays for the following reliefs:
  - a. Spent
  - b. That the honourable court does issue an order for the Standard Chartered to give a partial discharge of the title No 9770/11 originally 9770/6/2 to allow the excision of 10 acres fronting the Nakuru-Eldoret Highway for registration in the applicant's name.
  - c. That the Chief Land Registrar do register the excision of 10 acres from LR NO 9770/11 originally 9770/6/2 in the name of the applicant Samuel Karuga.
  - d. That costs be in the cause.
2. The application is supported by the applicant's affidavit sworn on the same date and the grounds on the face of it.
3. The issues raised in the said affidavit and on the face of the application are clear and straight forward. It is averred that the applicant successfully obtained orders from the excision of 10 acres from LR 9770/6 in a judgement delivered on 20<sup>th</sup> July 2017, that the surveyor had excised the same as per the decree of the court and the deed plan had been created. That upon attempting registration of the 10 acres, the



plaintiff discovered African Blooms had taken a loan at Standard Chartered Bank which has registered a charge over the whole parcel of land 9770/6 now 9770/11.

4. It was averred further that the Chief Land Registrar was unable to register the 10 acres in the applicant's name due to the existence of a charge by Standard Chartered Bank in favour of a loan to African Blooms. That the partial discharge to enable registration of the 10 acres in the applicant's name from parcel number 9770/6 shall not prejudice anybody as it will be an execution of a legal court order.
5. Only the 2<sup>nd</sup> respondent responded to the application through the replying affidavit sworn by the Head of Legal Kenya and East Africa Dr. Davidson M. Mwaisaka, sworn on 26<sup>th</sup> February 2021. He vehemently opposed the application on several grounds the most significant being that the applicant's application was mischievous and an abuse of the court process as the plaintiff should have joined the 2<sup>nd</sup> respondent in the main proceedings leading to the judgment delivered on 20<sup>th</sup> July 2017 and not unilaterally join it in these proceedings for purposes of enforcing a judgement against it in proceedings which it was not a party to.
6. He averred that L.R. NO.9770/11 (Original Number 9770/6/2 Nakuru) was registered in the name of Africa Blooms Limited who were also not a party to the proceedings leading to the said judgment. That the said company was a customer of the 2<sup>nd</sup> respondent and upon various applications, it had over time advanced various financial facilities to Africa Blooms Limited and to secure the finance it took a Charge over L.R.NO.9770/11 (Original No.9770/6/2/ Nakuru).
7. He averred further that during all times material to these proceedings and to the registration of the 2<sup>nd</sup> respondent's charge against the title, there was no encumbrance or restriction registered against the title and thus the application dated 26<sup>th</sup> January 2021 was bad in law and should be dismissed with costs.
8. When the matter came up for hearing the court directed that the same be disposed by way of written submissions but only the plaintiff complied.

### **Plaintiff/Applicant's Submissions**

9. The plaintiff/applicant submitted that the litigation was between the 2<sup>nd</sup> defendant/respondent which had entered into an agreement with the deceased who had sold to it 90 acres of land registration number LR No. 9770/11. That the title for the said land had been held as security for a loan granted to the deceased and the 1<sup>st</sup> defendant/respondent paid the said loan and granted the deceased Kshs. 500,000/= . That further, the 2<sup>nd</sup> defendant/respondent did not pay the deceased Samuel Karuga the balance of Kshs. 1,000,000/=, neither did it incorporate him as a business partner in the flower growing business which it was to embark on.
10. The plaintiff/applicant submitted further that the 2<sup>nd</sup> defendant/respondent acted in bad faith by failing to pay the balance of the purchase price and did not excise 10 acres along the Nakuru- Eldoret highway which was to go to the deceased. That the 2<sup>nd</sup> defendant/respondent also acted in a fraudulent and illegal manner by charging the said parcel of land title to 1 & M Bank and proceeded to take a loan with the same bank.
11. The plaintiff/applicant went on to submit that the deceased was surprised to see that 1<sup>st</sup> respondent had been taken over by Delloitte Consulting Ltd as receivers who were notified of his claim on the suit land. It is his view that the said receivers never acted diligently despite knowing the pendency of the present suit and as such the Africa Blooms Ltd bought the property under receivership and signed to the purchasers the whole parcel to the Africa Bloom who took a loan with the 2<sup>nd</sup> Respondent.



12. It is further the plaintiff/applicant's submission that he was surprised Africa Blooms Ltd had taken a loan with Standard Chartered Bank. He argued that there was a judgment and decree in this case which had decreed 10 acres from LR No. 9770/6 fronting the Nakuru/Eldoret highway be excised and registered in his name. That however, the said excision cannot be done until Standard Chartered Bank discharges title deed for the whole parcel to enable the surveyor issue title for 10 acres which has already been excised on the ground and beacons erected therein clearly demarcating the said land. That further, it was not possible for the Chief Land Registrar to issue a title to him for the 10 acres due to the existing charge.
13. He concluded by submitting that he had proved his case on a balance of probability and thus their application was meritorious. He placed reliance in the cases *Jeremiah Matoke v Kenya Commercial Bank Ltd & Another* [2020] eKLR, *Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers* [2016] eKLR and *Hunker Trading Company Limited v Elf Oil Kenya Limited* [2010] eKLR.

### **Analysis and Determination**

14. The court has perused the said application and the orders being sought. The said orders are far reaching as it intends to wrestle from the respondent part of land parcel number 9770/11. Legally speaking the bank is the holder of the rights to the same by virtue of the charge it is holding.
15. There seemed to have been a lot of on goings in respect to the said parcel. It is not disputed that the applicant has a valid decree. The said decree however is against the 1<sup>st</sup> defendant and not the 2<sup>nd</sup> defendant /respondent and by extension not against Africa Blooms ltd.
16. The net effect therefore is that should this court allow the application then it shall have condemned the bank and Africa Blooms limited unheard. The court has perused the entire court proceedings and does not find any evidence that the two participated in the proceedings. They are being enjoined at the execution stage.
17. Further the charge has not been disputed or in any way impugned. To this extent the bank has a first priority over the title against all the parties including African Blooms ltd. As to how the chargee acquired the suit land for now is not for this court to determine.
18. Consequently, this court agrees with the objection by the respondent that it was never involved in these proceedings from the first day and if the orders are granted it shall run foul the principles of natural justice and it may incur the wrath of Africa Blooms limited the chargee and owners of the suit property.
19. The upshot is that the applicant who is in valid possession of the decree and has already taken out steps to excise the 10 acres must find another route to secure the same. For now, the respondent is in law the owners of the same until the charge is discharged or the loan is paid.
20. The application is otherwise dismissed with costs to the applicant to be borne by the 1<sup>st</sup> defendant.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 23RD DAY OF JUNE 2022.**

**H K CHEMITEI**

**JUDGE**

