



**Kairanya v Kairanya & another; Kairanya Investment Limited (Affected Party)
(Civil Suit E007 of 2021) [2022] KEHC 14572 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL SUIT E007 OF 2021
TW CHERERE, J
OCTOBER 27, 2022**

BETWEEN

MARTIN KAIRANYA PLAINTIFF

AND

JEREMIAH KIMATHI KAIRANYA 1ST DEFENDANT

MWENDA JACOB KAIRANYA 2ND DEFENDANT

AND

KAIRANYA INVESTMENT LIMITED AFFECTED PARTY

RULING

1. By a ruling dated June 17, 2022, Otieno J granted orders among others an order freezing the affected party's Account No 011200xxxxxx with Cooperative Bank of Meru
2. By a notice of motion dated September 8, 2022 and filed on September 9, 2022, defendants pray that the order freezing the affected party's account be reviewed. The application is supported by an affidavit sworn by the 1st defendant on September 8, 2022 in which he avers that the freezing order will stall the operations of the interested party by failing to meet its statutory and contractual obligations such as payment of utilities such as water, electricity; workers and KRA dues.
3. Applicant opposes the application *vide* his replying affidavit sworn on October 12, 2022 in which he contends that defendants have not filed any evidence in support of the affected party's financial obligations.

Analysis and Determination

4. I have considered the notice of motion dated September 8, 2022 and filed on September 9, 2022 in the light of affidavits on record and the court ruling dated June 17, 2022.



5. The issue in question is whether applicants have satisfied the threshold for grant of an order of review. Order 45 of the *Civil Procedure Rules* which as follows:
 1. (1) Any person considering himself aggrieved-
 - (b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
6. In the case of *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR, the Court of Appeal stated: -

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should require no elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
7. I have considered the affidavit in support of the application and deponent has not demonstrated discovery of new and important matter or evidence which, after the exercise of due diligence, was not within their knowledge or could not be produced by them at the time when the order in issue was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
8. Other than mere averments, defendants have as contended by applicant not filed any evidence in support of the affected party's financial obligations.
9. Consequently, the notice of motion dated September 8, 2022 and filed on September 9, 2022 is found to have no merit and it is hereby dismissed with costs to the applicant.
10. In conclusion, the parties are reminded that they have an obligation to submit the dispute concerning the affected party to an arbitrator in terms the articles of association of the affected party and as reiterated by the court in its ruling dated June 17, 2022.
11. Mention on December 15, 2022 to confirm whether the dispute herein has been referred to an arbitrator.

DATED IN MERU THIS 27TH DAY OF OCTOBER 2022

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 Parties - Mr. Gichunge for Gichunge Muthuri & Co. Advocates

