



Nyanja Holdings Limited v City Finance Bank Limited & another; Ndung'u Njoroge & Kwach Advocates (Third party) (Commercial Case 1506 of 2000 & Civil Case 993 of 2002 (Consolidated)) [2022] KEHC 16289 (KLR) (Commercial and Tax) (30 November 2022) (Directions)

Neutral citation: [2022] KEHC 16289 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 1506 OF 2000 & CIVIL CASE 993 OF 2002 (CONSOLIDATED)
DO CHEPKWONY, J
NOVEMBER 30, 2022

BETWEEN

NYANJA HOLDINGS LIMITED PLAINTIFF

AND

CITY FINANCE BANK LIMITED 1ST DEFENDANT

TRIPPLE EIGHT INVESTMENTS (K) LIMITED 2ND DEFENDANT

AND

NDUNG'U NJOROGE & KWACH ADVOCATES THIRD PARTY

DIRECTIONS

1. When counsels for the parties appeared before this court on October 26, 2022, it clearly came out that the only pending issue in the matter was whether the Court Appointed Receiver having managed the Plaintiff Company Decree Holder for past fourteen (14) years and filed a report and statement of accounts, should be discharged and the case closed.
2. Mr Maina, Counsel for the Court Appointed Receiver supported the view that the Receiver should be discharged and case closed although he acknowledged that the Plaintiff had opposed the discharge of the Receiver on account that he had not accounted for some monies and ought to do so before he is discharged. However, Mr Maina added that the Receiver had filed an affidavit stating why some of the monies had not been accounted for. Unfortunately, Mr Maina's call dropped while he was going on with his submissions and the court adjourned the matter to November 28, 2022.
3. When the court reconvened on November 28, 2022, Mr Maina did not log onto the platform and the Plaintiff's counsel, Mrs. Kyalo was of the view that since the Receiver's counsel had been served with



the notice and had failed to show up, and the Plaintiff having filed a response on the Receiver's Report, the court should direct that the parties appoint an auditor to audit the KCB Accounts the Official Receiver was managing.

4. It is noted that in its Replying Affidavit, the Plaintiff avers that the report is marred with errors and although the Receiver has given rough figures, he has not given detailed accounts for the rent collected for the 166 months he collected rent. He failed to give relevant documents to prove the disbursements incurred, that his expenses and costs are inflated and has even ignored to account for some months. Therefore, according to the Plaintiff, the Receiver has not accounted for a total of Kshs 39,213,677.05 and should be called upon to account for the same.
5. Having laid the background as above, in my considered view, a Receiver being an agent of the Company, has an equitable duty to account to the Company as well as to court how he has managed the same, if the need arises. Consequently, a Receiver is enjoined to keep full and detailed accounts of his management and avail the same whenever he is required to do so, before he seeks to be discharged of his duties.
6. In the present case, although the Receiver seeks to be discharged and case be closed, the Plaintiff Company opposes the request, and has advanced among other grounds that the Receiver ought to first account for at least Kshs 39,213,677.05 he has factored in his report but which he has in one or the other, failed to account for. In reaching that amount, the Plaintiff has argued that the Receiver double compensated himself and applied exorbitant rates to his fees and disbursements. No receipts to prove the disbursements have been offered, and in the Plaintiff's view. these expenses are not justified and should be accounted for. The Plaintiff also alleges that there are various months which the Receiver has not accounted for and should first comply with this before being discharged.
7. I have taken all the arguments by the Plaintiff into consideration and it is my view that the Plaintiff Company has raised justifiable and bonafide ground for which the Receiver should be called upon to justify.
8. In the premises, this court finds that the most appropriate order to issue is for summons to issue upon the Court Appointed Receiver for cross-examination on the shortfalls as pointed by the Plaintiff Company. Consequently, an order be and is hereby issued for summoning the Court Appointed Receiver herein, SM Njihia for cross examination on the loopholes raised in the Plaintiff Company Director's affidavit dated April 21, 2022. The date for cross-examination to be mutually agreed by the subject to court's diary.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF NOVEMBER, 2022.

DO CHEPKWONY

JUDGE

In the presence of:

Mr Kurgat holding brief for Mr Wanyama Peter for the Plaintiff

M/S Nyakundi holding brief for Mr Mwangi for 1st Defendant – City Bank

Court Assistant - Sakina

