



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 152 OF 2017 (O.S.)

**ISABELLA WANJIKU KARANJA (Suing in her capacity as a beneficiary and co-administrator of the estate of CHARLES KARUNGA KOINANGE-Deceased).....PLAINTIFF/
APPLICANT**

-VERSUS-

ASHFORD MURIUKI MUGWUKU t/a ASHFORD & ASSOCIATES

ADVOCATES.....DEFENDANT/RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 20th January, 2021 brought by the plaintiff/applicant, supported by the grounds set out therein and the facts stated in the affidavit of the **Jeremy Njenga**. The applicant is seeking the following orders:

- a) ***THAT for purposes of the instant application, Sheila Mugo t/a Sheila Mugo & Co. Advocates be enjoined as a party herein.***
- b) ***THAT the defendant/respondent be compelled by way of a mandatory injunction to disclose to the plaintiff's/applicant's advocates (J.M. Njenga & Co. Advocates) the details of the security box opened on or about August, 2020 with KINGDOM BANK and further ensure that the said law firm (J.M. Njenga & Co. Advocates) is made a co-signatory of the said deposit box which contains titles No. LR 20920 (Grant No. 104360) and deed plan Nos. 196068 and 196071.***
- c) ***THAT in lieu of such disclosure within such reasonable time as this Honourable Court shall deem appropriate, the defendant/respondent alongside the said Sheila Mugo t/a Sheila Mugo & Co. Advocates do unconditionally release the said No. LR 20920 (Grant No. 104360) and the two (2) deed plan Nos. 196068 and 196071 to the law firm of J.M. Njenga & Co. Advocates on the plaintiff's/applicant's behalf.***
- d) ***THAT the costs of the application be borne by the defendant/respondent and/or Sheila Mugo t/a Sheila Mugo & Co. Advocates.***
- e) ***THAT this Honourable Court be at liberty to issue such further or other orders as it may deem appropriate in the circumstances.***

2. The respondent opposed the Motion by filing the replying affidavits sworn separately by advocate **Sheila Murugi Mugo** on 9th March, 2021; advocate **Ashford Muriuki Mugwuku** on 20th April, 2021 and co-administrator, Peter Mbiyu Koinange on 20th April, 2021. The applicant rejoined with a supplementary affidavit sworn on 10th May, 2021 and a supplementary affidavit equally sworn by her advocate **Jeremy Njenga** on like date.

3. At the directions of this court, the parties filed and exchanged written submissions to the Motion.

4. I have considered the grounds set out in the Motion, the facts deposed in the affidavits supporting and opposing the Motion, and the rival submissions on record alongside the authorities cited.

5. A brief background of the matter is that the applicant being one of the administrators of the estate of Charles Karunga Koinange ("the deceased") instituted the suit against the respondent by way

of Originating Summons and sought *inter alia*, orders to the effect that the respondent delivers a fully itemized and detailed schedule of all properties/assets/documents/securities in his possession in respect to the estate of the deceased, as particularized in the plaint. Upon hearing the Originating Summons, this court in the judgment delivered on 14th November, 2019 allowed it and set out various conditions in order to protect the interests of the parties and that of the estate of the deceased. Among the conditions set out were that the administrators to the estate would ensure to pay any and all outstanding legal fees owing to the respondent and in the event that they are unable to do so, then the respondent be at liberty to retain such securities as may be sufficient to discharge his fee note.

6. From the instant Motion, it is clear that three (3) main orders are being sought, which I shall address hereunder.

7. The first prayer is the joinder of Sheila Mugo t/a Sheila Mugo & Co. Advocates as a party to the suit. On the part of the applicant, it is argued that since the aforementioned advocate participated in the execution of a consent regarding custody of the title documents particularized in the order, then she ought to be made a party for the purpose of enforcement of any orders against her. In the supplementary submissions, the applicant cites the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR** where the court reasoned that:

“...the main purpose of joining parties is to enable the court to deal with matter brought before it and to avoid multiplicity of suits. It is a fundamental consideration that before a person can be joined as party, it must be established that the party has an interest in the case. In addition, it must be clearly demonstrated that the orders sought in the suit would directly and legally affect the party seeking to be enjoined.”

8. The respondent through the respective replying affidavits filed states that, advocate Sheila Mugo at all material times represented and continues to represent its legal interest in the matter. In his submissions, the respondent contends that to seek to enjoin the aforementioned advocate as a party to the suit will not only constitute bad precedent but will serve no useful value.

9. Upon my consideration of the above rival positions, I am convinced that since advocate, Sheila Mugo, is the advocate at all material times on record for the respondent and therefore acting in her professional capacity in the suit. It would therefore be unnecessary and untenable to have her enjoined as a party therein. In so finding, I am guided by the following decision by the Supreme Court in the case of **Peter Odiwuor Ngoge t/a O P Ngoge & Associates Advocates & 5379 others v J Namada Simoni t/a Namada & Co Advocates & 725 others [2014] eKLR** quoted in the submissions of the respondent:

“It is clear to us that, when an advocate represents his or her client in any matter, his or her position rests on a purely professional platform; and such advocate should not, as a player of a professional role governed by law, be enjoined as litigant, whether in that very matter, or on appeal, in respect of any acts or omissions in the conduct of the cause. The advocate, on the question of such joinder, will benefit from a cover of privilege, even though he or she remains amenable to suit for any professional negligence or malpractice, in a personal capacity, and in separate action, in the relevant trial Court.”

10. The second prayer seeks a mandatory injunction. On the part of the applicant through her affidavits and that sworn by Jeremy Njenga, the position is that despite the existence of negotiations and a consent to the effect that the parties' respective advocates open a joint safe deposit box account for the purpose of storing the title documents particularized above, the advocate for the respondent has unilaterally gone ahead to open such account in the name of Sheila Mugo & Co. Advocates to the detriment and disadvantage of the applicant, and for which she is the sole signatory. The applicant further submits that in view of the existence of the consent dated 17th July, 2020 and the apparent breach of the same by Sheila Mugo, there is need to grant the injunctive order sought.

11. On her part, Sheila Mugo in her replying affidavit stated that while there had been ongoing discussions on the opening of a joint account in the names of the parties' respective advocates, no consent was filed. The advocate stated that she had made proposals to Jeremy Njenga, the advocate for the applicant, on suitable banking institutions with which to open a joint safe deposit box account but that the

said advocate was not satisfied hence no consent was recorded. The deponent further denies ever opening an account with Kingdom Bank (formerly Jamii Bora) for that purpose, and her averment is echoed in the replying affidavit of Ashford Muriuki. In his submissions, the respondent argues that the account being referred to by the applicant is non-existent.

12. Upon perusal of the record and material presented before me, I have not come across anything to indicate or confirm the existence of the account referred in the instant Motion held by the firm of Sheila Mugo & Co. Advocates with Kingdom Bank. Moreover, while it is apparent from the record that the advocates for the parties herein had previously been engaged in discussions on the opening of a joint account for the purpose of depositing the abovementioned title documents, the consent being referred to by the applicant and dated 17th July, 2020 was hand written and there is no credible evidence to show that the same or any other consent was filed to that effect and/or adopted as an order of the court. As such, I am not convinced that the present circumstances are suitable for the granting of mandatory injunctive orders.

13. The third and final order sought relates the unconditional release of the relevant title documents by advocate Sheila Mugo, to the advocate for the applicant. The applicant is of the view that given the current circumstances, it would be fair to have the title documents/securities released to her advocate since there is no justification for the respondent's advocate to continue holding them unilaterally. Her view is supported by the averments made in the supplementary affidavit of Jeremy Njenga.

14. In reply, the respondent states and submits that the title documents can only be released upon settlement of his bills since the said titles are being held as security for legal fees.

15. From the record, it is apparent that there are some outstanding legal fees owing to the respondent by the applicant and that taxation proceedings in respect to such fees is ongoing. In the judgment delivered on 14th November, 2019 this court had ordered that in the event of unsettled fee notes/bills, the respondent was at liberty to retain such securities as may be sufficient to discharge such fee notes. In the circumstances, it would not be a proper exercise of my discretion to order the release of the relevant title documents at this stage.

16. The outcome therefore is that the Motion dated 20th January, 2021 is hereby dismissed. That notwithstanding, I deem it necessary to make the following orders in view of earlier negotiations between the parties and in the interest of the parties, and of substantive justice:

a) The title documents pertaining to the titles known as No. LR 20920 (Grant No. 104360) and the two (2) deed plan Nos. 196068 and 196071 shall be deposited in a security/safe deposit to be held in the joint names of the parties' advocates with a reputable bank to be agreed upon between the parties within 45 days from today, pending full settlement of the legal fees of the respondent by the applicant.

b) In the circumstances of the Motion, a fair order on costs is that the respective parties shall their own costs.

DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF JULY, 2021.

A. MBOGHOLI MSAGHA

JUDGE

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 29th day of July 2021.

J. K. SERGON

JUDGE

In the presence of:

Mrs. Wambua for plaintiff/ applicant Ms. Mugo for Respondent for Respondent