



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

HIGH COURT CIVIL CASE NO.208 OF 2004

NAKURU TEACHERS HOUSING CO-OP SOCIETY.....APPLICANT

-VERSUS-

KIANJOYA ENTERPRISES LIMITED.....RESPONDENT

NINE SISTERS LIMITED.....OBJECTOR

RULING

1. This is a ruling on application dated 4th November 2019. It seeks the following orders:

i. That Emenkei Techno Services Limited to excise 1 acre out of parcel number LR Miti Mingi Mbaruk Block 8/2514(KIANJOYA”D”) to satisfy bill of costs taxed on 20th May 2015 at kshs.2,599,847

ii. That the Deputy Registrar be ordered to sign all relevant mutations, consents and transfers in place on Nine sisters the proprietor of Miti Mingi Mbaruk Block 8/2514 (KIANJOYA”D”)

2. Grounds on the face of the application are that the bill of costs was agreed by consent on 8th September 2015 and despite several reminders to the respondent to pay, the costs have not been paid; that **Kianjonya enterprises** has nothing on the ground that can be attached to satisfy the bill of costs hence the application to attach one acre of the said parcel that belong to **Nine Sisters Ltd** whose directors are the same ones as those of **Kianjonya Enterprises**; that the respondent will not suffer any prejudice if the application is allowed.

3. The application is supported by affidavit sworn by **Nancy Wanjiku Njoroge** Advocate. She averred that judgment was delivered on 29th January 2015 where the court granted the defendant option of compensating the plaintiffs with land equivalent to what was acquired by **Kenya Airports Authority** or in the alternative pay the plaintiff the sum equivalent to the value of land.

4. That parties agreed that the value of land was kshs.58,575,000 which parties agreed by consent to be paid by the defendants plus kshs.2,599,847 as agreed costs. She annexed the decree and certificate of costs; she averred that the defendant failed to pay and **Kianjonya Enterprises** farm had nothing to be attached which prompted the plaintiff to seek order from court to excise 6.82 Hectares from **Nine Sisters Company** owned by **Honourable Maina Wanjigi** and his wife **Mary Wambua Wanjigi**

5. That the court allowed the excise of the 6.82 Hectares out of Miti Mingi Mbaruk block 8/1604 (KIANJOYA “D”). She attached the ruling dated 6th April 2017; that 13.18 Hectares remained of the said parcel of land.

6. She averred that efforts to get the defendants pay Advocates costs have failed; and the amount that was taxed by consent at kshs.2,599,847 has now risen to kshs.4,126,417; that there is no hope that the defendant will pay the said costs unless this court allows the Applicant to excise one acre from the said parcel of land herein.

7. In response the defendant objected filed grounds of opposition stating that costs consent at kshs.2,599,847 has not been varied to kshs.4,126,417 as claimed by the applicant.

8. The respondents further stated that the applicant has already excised 6.8Ha to satisfy the decree of kshs.58,575,000 and costs of kshs.2,599,847 and that the respondent should not be punished twice.

9. The respondents further prayed for a period of 30 days to carry out valuation of the 6.82 Ha known as Miti Mingi Mbaruk Block 8/1604 and value of one of property now known as Miti Mingi Mbaruk Block 8/2514 (KIANJOYA “ D”).

10. Parties filed written submissions and argued orally. Counsel for the applicant restated averments in the affidavit filed in support of the

applicants and counsel for respondent restated grounds in opposition of the application.

ANALYSIS AND DETERMINATION

11. It is not disputed that parties consented to costs of ksh.2,599,847. It is not also disputed that the defendant was unable to pay value of land it was ordered to compensate the plaintiff and the plaintiff was allowed to excise 6.82Ha from the 2nd respondent's land. The issue is was that meant to cover both the compensation and Advocate's costs?

12. On perusal of ruling delivered on 6th April 2017, I note that it sought to have the defendant directed by court to provide plaintiff with an equivalent suitable portion of land for residential purposes within 60 days and in default the defendant to refund the plaintiff value of the land at market prices which should be assessed by valuer mutually agreed on by parties.

13. I note from the ruling that the defendant was to pay kshs.60,275,000, which is made up of agreed sum of kshs.58,970,000 plus interest. Consent was filed on 18th June 2015. From the ruling certificate of valuation of property was mutually agreed at kshs.58,975,000 and consent filed on 18th June 2015; a certificate of costs was issued at kshs.2,559,847 on 28th September 2015.

14. From the foregoing it is evident that the costs had not been assessed at the time consent for valuation of land was agreed and consented to on 18th June 2015. Costs were not therefore included at the time 6.82 Ha was excised and valued.

15. It cannot therefore be true that the kshs.58,975,000 agreed by the parties was to cover costs.

16. Valuation was mutually agreed and there is no reason to allow the respondent time to have the property valued again.

17. On amount the applicant is entitled to costs consented to plus interest from the time consent on costs was recorded.

18. The court note that the parties agreed that the value of the land as assessed was kshs.60,275,000 as at 18th June 2015. The issue of lifting of the veil in the objector's company was dealt with by **Judge Mulwa** in the ruling delivered on 4th April 2015. She found that the directors of the defendant and objector are the same and this is a good case for lifting of corporate veil and move for attachment of objectors property. I adopt her finding in respect to that issue.

19. The respondent has not made any commitment on payment of costs. I have no reason not allow prayers sought.

20. FINAL ORDERS

1. One of parcel number LR MITI MINGI MBARUK BLOCK 8/2514(KIANJOYA "D") to satisfy costs taxed at kshs.2,599,847 plus interest at court's rate from the date of consent being 28th September 2015.

2. The said one acre to be sold at current market price.

3. Balance of sale to be released to the respondent.

4. Costs of this application to the applicant.

Ruling dated, signed and delivered via email at Nakuru This 30th day of April 2020

TO:

RACHEL NGETICH JUDGE

Nancy Njoroge Advocates – Counsel for Applicant

Kembi Gitura Advocates – Counsel for Respondent