



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL CASE NO 24 OF 2018

HONESTY KANYUA & KIOGORA MUTAI

(Suing legal representatives of the estate of

STEPHEN MUTAI M'IMANYARA).....PLAINTIFF/APPLICANTS

VERSUS

FARMERS CENTER LTD.....1ST DEFENDANT/RESPONDENT

KOTNIS CENTRE LTD.....2ND DEFENDANT/RESPONDENT

GILBERT M. KITHENDU.....3RD DEFENDANT/RESPONDENT

AND

LEE KIMATHI NJUE.....INTERESTED PARTY

RULING

1. I have considered the representations by Learned Counsel Mr. Mwanzia has applied for the extension of the exparte order made on 20/09/2018 freezing the 1st defendant's Account No. 121-781-2687 at KCB Branch, Meru.
2. On record is an application by the Defendants to vary or set aside the said order. That application and the main motion dated 19/09/2018 have not been heard.
3. In both applications, the affidavits in support have made various counter allegation between the parties herein. There is also a serious issue as to whether the Plaintiffs are entitled to the orders sought in view of the fact that they are only interested with the shares of the deceased for whose estate they have a limited grant. There is also an allegation that there is pending before this court a succession cause for the full grant for the estate of the deceased which the plaintiff's did not disclose to this court.
4. This court notes that the plaintiff's rights are as regards the shares of the deceased in the company. The account in question belongs to the 1st defendant who is a limited liability company with a separate and distinct personality. However, it has been alleged on oath that the 3rd defendant has been running the affairs of the 1st and 2nd defendant in an opaque manner and that the interest of the estate in the companies is at risk. They leave obtained an order to preserve he funds in the subject account.
5. On the other hand, the defendant have been very candid with the court. They have disclosed the court the liabilities and obligations due from the 1st defendant. It is alleged. Those obligations can only be dealt with through the frozen account. There is also the issues of the employees of the 1st defendant who have not been paid their September, 2018 salary because of the freezing of the account. They are all innocent in the dispute between the plaintiff and the management of the 1st and 2nd defendants
6. Mr. Mutuma has also raised the issue of jurisdiction to entertain the matter before it. That an issue the court can only address when it is dealing with the main application not a collorary aspect like the efficacy of extending the exparte orders or not.
7. As I have already said, the defendants have acted in utmost bonafides with the court. Not only did they disclose fully the obligations of the company they have this morning supplied the court with the entire statement of account for the subject account for the entire period in dispute. That may not be a conduct of a trickster or fraudulent litigation.

8. Be that as it may the court notes that there is apprehension on the part of the plaintiffs about losing the value of the estate. On the other hand the company must run and continue doing business for the shares of the estate of the deceased to have any meaning or value at the end of the day.

9. The amount of the obligations of the 1st defendant as at 19/10/2018 has been placed at Kshs. 15,181,092/0 by the defendants excluding the salaries. On the other hand the amount outstanding to the credit of the company in the subject account as at 22/09/18 is Kshs 8, 690,030/35.

10. I have not seen any notice on record where the plaintiffs, have either as administrators of the estate of the deceased have requested the 3rd defendant or company secretary to call for either an AGM or special meeting and the 3rd defendant declined. Neither have I seen any requisition for such a meeting and it was held or aborted.

11. In the circumstance of this case, the company must be left to deal with its properties, including the subject account for its benefit. The plaintiffs must on the other hand feel safe as for the investments of the deceased in the said company through safeguarding the value of the shares.

12. Accordingly, I make the following directions: -

a) The order made herein on 20/09/2018 and extended on 26/09/18 is hereby varied as follows: -

i. The 1st defendant is allowed to continue operating the said account by making payments thereto that are issued in favour of the 1st defendant.

ii. The 1st defendant is allowed to make payments therefrom to a maximum of kshs 6 million or more PROVIDED ALWAYS that the net balance on the account shall not go below Kshs. 2,800,000/= at any given time.

b) This order is to remain in force for a period of 10 days from today

c) The applications pending and dated 19/09/2018, 24/09/18 and 25/09/2018 be and are hereby consolidated.

d) The said applications are to be disposed off by way of written submissions.

e) The Plaintiffs applicant to file and serve their written submissions within 3 days, in any event not later than 01/10/2018.

f) The respondents to file and serve their submissions within 3 days of 01/10/2018.

g) The applicant in the application dated 25/09/2018 is to file and serve his submissions on or before 01/10/2018 to be responded to with 3 days thereof.

h) The consolidated ruling to be on 08/10/2018.

A. MABEYA

JUDGE

27/09/2018