



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA.**  
**CIVIL CASE NO. 11 OF 1999.**  
**(FORMER BUNGOMA HCC. NO. 1 OF 1997)**

**WYCLIFF M. OMBALE.....PLAINTIFF/APPLICANT**

**VERSUS**

**ARMSTRONG KASUKU..... DEFENDANT.**

**GARDEN SQUARE 2001 LTD.,.....OBJECTOR/RESPONDENT.**

**R U L I N G.**

Wycliffe M. Ombale filed the Notice of Motion dated 4.7.2013, through M/S. Ipapu P. Jackah & company Advocates for orders;-

1. That proceedings conducted before Hon. M. Njagi, Resident Magistrate, between 13.7.2011 to 7.9.2011, be declared null and void for being ultra vires the court's jurisdiction.
2. That execution of taxed costs be allowed to proceed.

The application is based on three grounds on the face of the application summarized as follows;-

1. That the Resident Magistrate did not have jurisdiction to hear and determine objection proceedings as this was a High Court case.
2. That the case had not been transferred to the Lower Court.
3. That Respondent's counsel misled the lower court to hear a matter that was beyond its jurisdiction.

During the hearing, Mr. Ipapu appeared for the Applicant and made his submissions. Mr. Juma for the Respondent was allowed to make submissions on issues of law as he had not filed any papers in respect of the application. He took the opportunity to disclose that a similar application had been before the Resident Judge on 7.5.2011, when it was withdrawn and the current application filed.

I have carefully considered the grounds on the face of the application and submission by counsel. I also had the proceedings covering the period of 6<sup>th</sup> April, 2011 to 7<sup>th</sup> September, 2011 typed to enable the court understand better what transpired during that period. The court finds as follows;-

1. That the costs were taxed at Kshs.71,611/= by the Deputy Registrar, Hon M.W. Njagi on 20.4.2011.
2. That a warrant of attachment was then issued on 9<sup>th</sup> May, 2011 and proclamation made by EShikoni Agency Auctioneers.
3. That Garden Square 2001 Limited, through J.V. Juma advocate filed a notice of objection to

- attachment dated 27.6.2011. The Deputy Registrar then issued stay orders on the same date.
4. The Plaintiff (Decree holder), through his advocates, M/S. Ipapu P. Jackah & company advocates, filed the notice of intention to proceed with the execution dated 1.7.2011 together with a notice of preliminary objection of the same date.
  5. That the counsel appeared before the Deputy Registrar Hon. M.W.Njagi on 13.7.2013 when the objector's/Respondent's counsel, Mr. Juma, asked the court to strike out the execution proceedings commenced by M/S. Ipapu & company advocates as Mr. Ipapu did not have a current practicing certificate.
  6. That Order 49 Rule 7 (b)(x) of Civil Procedure Rules clearly shows that the Deputy Registrar has jurisdiction to hear and determine matters relating to Order 22 of Civil Procedure Rules except matters under Rules 28 and 75.
  7. That the matters dealt with by the Deputy Registrar in the proceedings of July, 2011 to September, 2011 did not fall under Order 22 Rules 28 and 75 of the Civil Procedure Rules and therefore the Deputy Registrar had jurisdiction.
  8. That the Deputy Registrar had the powers to entertain the preliminary objection raised by Mr. Juma on the capacity of Mr. Ipapu to prepare, file and prosecute execution proceedings on behalf of the Plaintiff/Decree holder when he did not have a practicing certificate for the relevant period.
  9. That the Deputy Registrar's ruling of 7<sup>th</sup> September, 2011 has not been successfully appealed against, nor was any application to review the same filed and prosecuted, to date.
  10. That no judicial review application to call into this court the relevant proceedings and or ruling have been preferred, and in any case the period for such an application has lapsed in view of the provisions of Order 53 Rule 2 of Civil Procedure Rules.
  11. That a High Court file need not be transferred to the Lower court for the Deputy Registrar to deal with applications and other processes authorized by the law like in the instant case.
  12. That the Deputy Registrar gave Mr. Juma and Mr. Ipapu the opportunity to present the documents they had. That Mr. Juma filed an affidavit annexing a letter from Law Society of Kenya dated 9.6.2011 showing Mr. Ipapu did not have a practicing certificate for 2011. He also annexed a copy of a letter from the then Registrar High court, dated 20.7.2011, to the effect that Mr. Ipapu had last obtained a practicing certificate on 7.5.2009 and that the copy of the practicing certificate for 2011 produced in court was a forgery.
  13. That in view of the finding above, there is no merit to the claim that Mr. Juma had misled the lower court on jurisdiction.

Having found as above, the Plaintiff/Applicant's application dated 4.7.2013 and filed in court on 30.7.2013 is without merit and is dismissed with costs.

**S. M. KIBUNJA,**

**JUDGE.**

**DATED AND DELIVERED ON 27<sup>TH</sup> DAY OF NOVEMBER, 2013 AT BUSIA.**

**IN THE PRESENCE OF;**