Housing Finance Company of Kenya Limited v Kenya Broadcasting Corporation & another; Kensko Agro Products (Third party) (Environment & Land Case 282 of 2013) [2022] KEELC 3477 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3477 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE 282 OF 2013

NA MATHEKA, J

JULY 28, 2022

BETWEEN

HOUSING FINANCE COMPANY OF KENYA LIMITED ..... PLAINTIFF

AND

KENYA BROADCASTING CORPORATION ..... 1ST DEFENDANT

ATTORNEY GENERAL ..... 2ND DEFENDANT

AND

KENSKO AGRO PRODUCTS ..... THIRD PARTY

RULING

1. The application is dated May 24, 2021 and is brought under order 40 rules 1, 2 and 3 order 51 rules 1 of the *Civil Procedure Rules (2010)* sections 1A, 1B, 3A & 63 (e) of the *Civil Procedure Act* (cap 21) Laws of Kenya seeking the following orders;

    1. That this honourable court be pleased to order the release to the applicants advocates all the monies and interest held in account number 05xxxx at Housing Finance Corporation Limited in the joint names of the applicants advocates Ms Kanyi J & Company Advocates and Kale Maina & Bundotich Advocates.

    2. That this honourable court be pleased to condemn the respondents to pay costs of this Application.

2. It is based on the grounds that vide the honourable court judgement of February 14, 2018 judgement was entered for the plaintiff/applicant and the 1st defendant ordered to pay kshs 25,000/- from October, 2005 until vacant possession was given to the plaintiff. That vide a consent order of May 8, 2018, the parties herein agreed that the 1st defendant would deposit a sum of kshs 3,975,000/- in a joint

interest earning account in the names of the advocates on record for the parties pending the outcome of appeal. That vide a judgement dated March 7, 2019, the 1st defendant's appeal was dismissed. That the 1st defendant has declined to have the amounts released despite a request made on July 21, 2020 so to do hence the application.

3. This court has considered the application and submissions therein. The applicant submitted that they filed suit against the 1st and 2nd defendants seeking *inter alia* orders that the plaintiff was entitled to possession and occupation of the suit property, vacant possession, loss of mesne profits amongst other prayers vide a judgement of honourable A Omollo of February 14, 2018, the honourable judge entered judgement of the plaintiff as prayed and awarded to plaintiff mesne profits of kshs 25,000/- per month from October, 2005 till payment in full. (Copy of Judgement attached as JKK-1 in the supplementary affidavit.) That the 1st defendant/respondent being dissatisfied with the judgment of the honourable court sought to appeal against the said judgement by filing Civil Appeal no 82 OF 2018. parties then agreed vide a consent of May 8, 2018 to have the mesne profits deposited in a joint account of the parties advocates at Housing Finance pending the outcome of the appeal, 'JKK-1' annexed to the supporting affidavit shows Statement of Accounts. On March 7, 2019 the 1st defendants appeal was dismissed. Annexture 'JKK-1' in the further affidavit of February 18, 2022 is the said Order. On July 21, 2020, a letter was written to the 1st defendant which was received on July, 23, 2020 requesting the 1st defendant to release deposited sums in the joint account to the plaintiff 'JKK-4' of the Supporting Affidavit is the said letter. The 1st defendant did not respond to the said letter and has not responded to date.

4. The defendants and third party were served but did not file any Replying Affidavit or grounds of opposition the said application and the same stands unopposed. I have perused the court record before me and indeed find that vide a judgement of honourable A Omollo of February 14, 2018, the honourable judge entered judgement of the plaintiff as prayed and awarded to plaintiff mesne profits of kshs 25,000/- per month from October, 2005 till payment in full. (Copy of Judgement attached as JKK-1 in the supplementary affidavit.) That the 1st defendant/respondent being dissatisfied with the judgment of the honourable court sought to appeal against the said judgement by filing Civil Appeal no 82 OF 2018. On March 7, 2019 the 1st defendants appeal was dismissed and a copy of the judgement is attached. The applicant states that the parties then agreed vide a consent of May 8, 2018 to have the mesne profits deposited in a joint account of the parties advocates at Housing Finance pending the outcome of the appeal. This application was not opposed. I find that this application is merited and I grant the same with no orders as to costs as the same was undefended.

   It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF JULY 2022.

N A MATHEKA

JUDGE