



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 4931 of 1993

GEORGE CHEGE NICHOLAS PLAINTIFF

VERSUS

FRIENDS COURT APARTMENTS LTD 1ST DEFENDANT

WAMBUGU & CO. ADVOCATES 2ND DEFENDANT

AND

MOUNT ESTATE AGENCY LIMITED THIRD PARTY

RULING

Before court is an application dated 14th March, 2008 brought by the Defendants/Judgment debtors by way of a Chamber Summons. The same is supported by the affidavit of one *John Wacira Wambugu* and on the grounds on the face of the application.

The application is seeking for orders that:-

1. An order for stay of any execution proceedings of the decree given on 7th June, 2000 in this matter pending hearing and determination of this application.
2. An order that the parties to reconcile the accounts and prepare all necessary inquiries within sixty (60) days
3. In the alternative an order that parties herein file and serve proper accounts within sixty (60) days
4. Any other order that the court may deem fit
5. The costs of this application be provided for.

The Plaintiff/Decree holder vehemently opposed the application and filed a Replying Affidavit dated 24th June, 2008 and a Further Replying Affidavits dated 29th May, 2009.

The Applicants/Judgment debtors contend that decretal amount has been paid in full but the Respondent/decree holder maintains that there is a balance outstanding. The applicants/Judgment debtors contend further that at some point the sum of Kshs.460,240/= was deposited in court which amount the

Respondent/Decree holder has failed to consider in computing the decretal amount. The applicants/Judgment debtors therefore pray for reconciled accounts from the Respondent/Decree holder or an order that each party to prepare accounts within 60 days.

On his part the respondent/decree-holder maintains that there is an outstanding balance standing at Kshs.1,298,141.60/= as at 11th July 2009 and that the decree as drawn took into account the sum of Kshs.460,240/- initially paid into court. That the affidavits in opposition have set out details of amounts paid so far and the balance. Finally he contends that the applications is an abuse of the court process

I have made an attempt to have the counsel sit together to iron out the differences and to reconcile the accounts but in vain. The applicants' advocate seems to have difficulties obtaining instruction or reconciling the accounts with his clients.

I have considered the pleadings before me and the submissions by counsel for both sides.

The Respondent/Decree Holder's affidavit has a detailed account of the amounts owing and the monies so far received by themselves. It is also clear from the record that the amount due and owing is not disputed. Further that the sums paid into court and later released to the Respondent/Decree-holder was reduced from the decretal sum. See the Judgment on page 26. In the circumstances I find that the application before the court is just but an attempt to delay this matter further. The case was instituted way back in 1993 and I see no reason to delay execution any further. The application is frivolous and vexatious and border on being an abuse of the court process and dismiss the same with costs.

Dated and delivered at Nairobi this 23rd September, 2009

ALI-ARONI

JUDGE