



**Johana v Precepts Holding Limited (Environment & Land Case
8 of 2020) [2022] KEELC 15184 (KLR) (6 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15184 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 8 OF 2020
EM WASHE, J
DECEMBER 6, 2022**

BETWEEN

NGENO KIPYEGON JOHANA APPLICANT

AND

PRECEPTS HOLDING LIMITED RESPONDENT

RULING

1. The applicant filed a notice of motion application dated July 5, 2022(hereinafter referred to as “the present application”) seeking for the following Orders; -
 1. That the matter be certified urgent and be heard on a priority basis. (Spent)
 2. That pending hearing and determination of this application, this court be pleased to grant the applicant herein a stay of execution as he stands to suffer irreparable damage If the same is not granted. (Spent)
 3. That pending hearing and determination of this matter, the court be pleased to issue the applicant herein an enlargement of time to make payments to be able to pay the due amount as ordered under the judgement delivered on January 24, 2022. (Spent)
 4. That pending the hearing and determination of this matter, the court be pleased to issue the applicant herein with a new schedule and workable payment plan to be able to offset his debt owed as per the judgement dated January 24, 2022. (Spent)
 5. That pending hearing and determination of this application, the court be pleased to issue a temporary injunction against the respondent by itself, its servants, agents and/or any other person acting under its instructions evicting the applicant from the parcel of land registered as Transmara/kiminitet “C”/65 pending the hearing and determination of this application. (Spent)



6. That the court be pleased to issue the Applicant herein with a new schedule and workable payment plan to be able to offset his debt owed as per the judgement dated January 24, 2022.
7. That costs of this suit be provided for.
2. The applicant has provided the substantive grounds in support of the prayers hereinabove in the body of the present application and collaborated the same with the supporting affidavit sworn on the 5th of July 2022.
3. The main grounds in support of the prayers contained in the present application are as follows; -
 - i. The court delivered its judgement on the 24th of January 2022 directing the applicant herein to deposit the balance of the purchase price amounting to KShs 23,000,000/- into a joint interest earning account within 60 days from the date of judgement.
 - ii. The applicant at the time of pronouncing the judgement was in a financial skint and consequently therefore did not comply with the Orders of the court.
 - iii. The applicant is now in a position to pay the remaining purchase price if the court can give a workable payment plan and schedule.
 - iv. In the event the court does not grant the prayers sought in the present application, the execution of the judgement which is eviction will lead to irreparable financial loss to the applicant.
4. The respondent was duly served with the present application and filed a replying affidavit sworn on the 3rd of October 2022.
5. The respondent opposed the present application on the following grounds; -
 - i. That indeed, the applicant was ordered to deposit a sum of KShs 23,000,000/- which is the balance of the purchase price into a joint account of the advocates within 60 days from the date of the judgement.
 - ii. The applicant failed to comply with the Order mentioned hereinabove and was served with a Completion Notice on the 28th of March 2022 giving him 21 days to settle the said balance of KShs 23,000,000/- which he also failed.
 - iii. Consequently therefore, the respondent has commenced execution proceedings of the judgement delivered on the 24th of January 2022 which is eviction to be undertaken by MOCO Auctioneers.
 - iv. Similarly, the respondent has denied the allegation that the applicant was in any financial distress and referred the court to the testimony adduced during the hearing which pointed to the fact that the Applicant was ready and capable of settling the said balance of KShs 23,000,000/-
 - v. The respondent also stated that there has been no payment of KShs 2,700,000/- as alleged by the applicant save for some KShs 600,000/- which was deposited in the joint account and thereafter withdrawn on the applicant's instructions.
 - vi. The respondent informed the court that he is no longer interested in the sale transaction of the suit property to the applicant due to his conduct and intends to proceed with the execution process as directed by the court.



6. The parties were directed to canvass the present application by way of written submissions which parties complied.
7. Referring to the prayers sought in the present application, the court notes that Prayer No.1, 2, 3 and 5 were drawn to subsist during the pendency of the present application and not after the determination.
8. Consequently therefore, at the writing of this Ruling, the same were spent and/or overtaken by events.
9. As regards Prayer No. 4, the same was to be issued pending the hearing and determination of this suit which was done on the 24th of January 2022.
10. Similarly, Prayer No. 4 is therefore spent and/or overtaken by events.
11. The only remaining prayer for determination is Prayer No.6.
12. In Prayer No.6, the applicant is seeking the Court to issue him with a new schedule and workable payment plan to be able to off-set his debt owed as per the judgement dated January 24, 2022.
13. The main ground in support of this prayer is the fact that the applicant was not in a financial position to liquidate the judgement amount of KShs 23,000,000/- at the time it was pronounced but can now do so if the court grants a new schedule and/or workable payment plan.
14. It is important for the court to reiterate that the judgement pronounced on the January 24, 2022 was a self-executing judgement.
15. The court went into great strides in outlining the manner and methodology of implementing the said judgement pronounced on the 24th of January 2022.
16. A perusal of the pleadings and evidence adduced at the hearing, the applicant was very clear that he was in a capacity to complete payment of the purchase price if the completion documents would be availed to facilitate the Transfer process.
17. This was the fundamental reason that the court directed the opening of a joint account and further gave clear directions how the Transfer process would be undertaken.
18. There was no time either according to the pleading and/or during the hearing of the suit where the applicant informed the court of his financial challenges and/or limited capacity to liquidate the balance of the Purchase Price of Kenya Shillings 23,000,000/-.
19. Similarly, going through the present application, the applicant has not adduced any documentary evidence to demonstrate his limited ability to liquidate the balance of the purchase price as Ordered by the court on the January 24, 2022.
20. It is clear from the Sale & Purchase Agreement dated July 14, 2020 that the applicant had committed to settle the entire purchase price within 60 days from execution of the same.
21. It is now over 24 Months since the Sale & Purchase Agreement dated July 14, 2020 was executed and 12 months since the judgement in this suit was pronounced on the 24th of January 2022.
22. During all this time, the applicant has been in occupation and continues to enjoy the benefits of the suit property belonging to the respondent without payment of the purchase price.
23. The applicant has not provided any documentary evidence to show any attempt and/or willingness to liquidate the balance of the purchase price of KShs 23,000,000/- as ordered by the court on the 24th of January 2022.



24. Clearly therefore, the present application before the court is an after thought and/or an effort by the applicant to delay and/or frustrate the respondent from realising the fruits of its judgement pronounced on the January 24, 2022.
25. The applicant has indeed filed the present application with dirty hands to say the least.
26. It is important to also state that this Court has no mandate and/or authority to make any schedule and/or payment plan to facilitate the applicant liquidate the balance of the purchase price amounting to Kshs 23,000,000/- as suggested by the applicant.
27. If indeed the applicant was serious about this proposal, then an application giving the timeframe and amount of instalments could have been made and documentary evidence to demonstrate the applicant's financial ability produced in court as a show of good will and commitment so that the same can be considered.
28. Unfortunately, the applicant in the present application purported to shift such personal commitments and/or undertakings to the court which would essentially mean that the court has now reviewed its judgement illegally and/or rewrite the Sale & Purchase Agreement dated July 14, 2020 in terms of the payment plan.
29. This court cannot be drawn into the litigation arena of the parties in this suit.
30. In conclusion therefore, the court makes the following Orders as appertains the notice of motion application dated July 5, 2022;-
 - A. The Notice of Motion Application dated July 5, 2022 be and is hereby dismissed.
 - B. The Costs of the Application shall be awarded to the Respondent herein.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON DAY OF 6TH DECEMBER 2022.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT:

ADVOCATE FOR THE APPLICANT:

ADVOCATE FOR THE RESPONDENT:

