



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 4 OF 2019

MARY AWINO KWEYU.....PLAINTIFF/APPLICANT

VERSUS

LAWRENCE MMATA CHORE

MELISA MUHONJA MMATA.....DEFENDANT/RESPONDENTS

RULING

This application is dated 17th December 2020 and is brought under sections 1A, 1B and 3A of the Civil Procedure Act and Order 51 rule 1 of the Civil Procedure Rules, 2010 seeking the following orders;

1. That further to order made in the ELC Case No. 81 of 2018 by this honourable court on 4th July, 2019, and more specifically the order numbered "5", the 1st defendant be ordered to henceforth have all monthly rental income derived from the land parcel number Butso/so/Shikoti/17938 and/or collected or received from tenants occupying the apartments thereon be deposited into this court's account so as to be held therein pending determination of this suit or further orders of this court.
2. That the 1st defendant be ordered to produce to this court and also serve upon the applicant herein a full and accurate account of all the rental income that has so far been derived from the land parcel number Butso/so/Shikoti/17938 and/or collected or received from the tenants occupying the apartments thereon as from the date of issuance of the order given by this honourable court in the ELC Case No. 81 of 2018 on 4th July, 2019 up to date for certification by this court.
3. That the 1st defendant be ordered to have all the total rental income as shall have been certified by this court as having been derived from the land parcel number Butso/so/Shikoti/17938 and/or as having been received or collected from the tenants occupying the apartments thereon as from the date of issuance of the order given by this honourable court in the ELC Case No. 81 of 2018 on 4th July, 2019 upto date be deposited into this court's account so as to be held therein pending determination of this suit or further orders of this court.
4. That Mr. Onganda Arnold (of LSK Practice Number P.105/2043/90 and who trades as Onganda & Associates) be ordered to appear before this honourable court on a date to be fixed by the court with a view to show cause, if any, why he should not be ordered to surrender or deposit into this court's account the sum of Ksh. 2,500,000/= that had earlier been deposited by the 1st defendant into the Onganda & Associate's account No. 078000044176 at Family Bank Limited on 10th January, 2019 as stated in the order given by this honourable court in the ELC Case No. 81 of 2018 on 4th July, 2019; and in default of him appearing before this honourable court and/or showing proper cause to the satisfaction of this honourable court, execution to issue against him for the recovery of the said sum of Ksh. 2,500,000/=.
5. That the 1st defendant herein to bear the costs of this application.

It is based upon the following grounds that on 4th July, 2019 this honourable court made a ruling that the sum of Ksh. 2,500,000/= deposited by the 1st defendant to Onganda & Associates' bank account No. 078000044176 at Family Bank Limited on 10th January, 2019 be transferred forthwith to a joint interest earning account to be opened by and in the names of the 1st and 2nd defendants' advocates on record as well as subsequent monthly rental income from the suit property and be held in such account pending determination of the suits or further orders of the court. That for virtually the entire period that the law firm of Onganda & Associates had been on record in this suit for the 1st defendant, it was the learned counsel Mr. Oscar Wachilonga Munyendo who appeared in court to hold brief for Mr. Onganda Arnold. There was no moment when the said Mr. Onganda Arnold, a substantive advocate in the aforesaid law firm, appeared in court in person in regard to this suit hence the inference that there was a lasting arrangement and constant communication between the two counsels, Mr. Oscar and Mr.

Arnold, in regard to the handling of this suit. On 8th July, 2019 the 1st defendant sought to remove the law firm of Onganda & Associates from the records by filing his Notice of Intention to Act in Person dated 8th July, 2019. That now the said Mr. Oscar Wachilonga Munyendo has come on record for the 1st defendant. That the applicant has not been able to trace the said Onganda & Associates to know the status of the account.

This court has considered the application and the submissions therein. It is clear that a new advocate has come on record for the 1st defendant. It is the applicant's contention that they cannot now trace Onganda & Associates to know the status of the account which is joint. This application has not been opposed by the new advocate on record. I find that same is merited and I grant the following orders;

1. That further to order made in the ELC Case No. 81 of 2018 by this honourable court on 4th July, 2019, and more specifically the order numbered "5", the 1st defendant be ordered to henceforth have all monthly rental income derived from the land parcel number Butsotso/Shikoti/17938 and/or collected or received from tenants occupying the apartments thereon be deposited into this court's account so as to be held therein pending determination of this suit or further orders of this court.

2. That the 1st defendant be ordered to produce to this court and also serve upon the applicant herein a full and accurate account of all the rental income that has so far been derived from the land parcel number Butsotso/Shikoti/17938 and/or collected or received from the tenants occupying the apartments thereon as from the date of issuance of the order given by this honourable court in the ELC Case No. 81 of 2018 on 4th July, 2019 up to date for certification by this court.

3. That the 1st defendant be ordered to have all the total rental income as shall have been certified by this court as having been derived from the land parcel number Butsotso/Shikoti/17938 and/or as having been received or collected from the tenants occupying the apartments thereon as from the date of issuance of the order given by this honourable court in the ELC Case No. 81 of 2018 on 4th July, 2019 upto date be deposited into this court's account so as to be held therein pending determination of this suit or further orders of this court.

4. Cost to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 24TH MARCH 2021.

N.A. MATHEKA

JUDGE