



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 205 OF 2016**

**HENRY NG'ANGA WAWERU.....1ST PLAINTIFF**

**JOSEPHINE MUKUHI NG'ANG'A.....2ND PLAINTIFF**

**VERSUS**

**DINARA DEVELOPERS LIMITED.....DEFENDANT**

**RULING**

1. Before me for determination is a notice of motion dated 24/9/2020 through which the plaintiffs/decreed-holders seek the following *verbatim* orders:

***3. That this honourable court be pleased to issue a warrant of attachment by way of a prohibitory order prohibiting Dinara Properties Limited, its servants and agents from transferring or charging in any way the following properties namely Land Reference Number 76/816 and this order be registered by the Chief Land Registrar on the relevant land register pending further orders.***

***4. That this honourable court be pleased to issue an order that Land Reference Number 76/816 be attached and sold by public auction in execution of the decree issued on the 15th day of November 2017.***

***5. That this honourable court be pleased to settle the terms of sale and issue such further orders as it may deem fit.***

***6. That the costs of this application be provided for***

2. The application is the second in a series of two applications, both seeking enforcement of the judgment rendered in this suit on 31/10/2017 and the consequential decree issued on 15/11/2017. It does appear the first application which was in form of garnishee proceedings did not yield the decretal sum.

3. The application under consideration was supported by an affidavit sworn on 24/9/2020 by Henry Ng'ang'a Waweru. The decree holders' case was that the judgment and decree herein remains unsatisfied. They had established that the judgment debtor was the registered proprietor of Land Reference Number 76/816 on which they had erected apartments. They were not aware of any other property owned by the judgment debtor.

4. The judgment debtor opposed the application through an affidavit sworn on 20/1/2021 by Andrew Kamau, a director of the judgment debtor. They confirmed that they were the registered proprietors of Land Reference Number 76/816. They had erected 30 apartments on the said land. They added that if the said property was to be attached and sold in execution of the decree herein, the purchasers and occupiers of the apartments would be prejudiced.

5. The application was canvassed through brief oral submissions. Mr Masese, counsel for the decree-holder submitted that the suit property belonged to the judgment debtor as confirmed by the official search. He added that the decree in this suit remained unsettled and there was no stay order in force. He urged the court to grant the orders.

6. Mr. Kori, counsel for the judgment-debtor submitted that the property was indeed owned by the judgment debtor and that the judgment debtor was a real estate company owning movable properties. He argued that the suit property had various units owned by other parties. He contended that the judgment debtor had not refused to settle the decretal sum. He further argued that the decretal sum was equivalent to only two units. He prayed for more time to sell the units and settle the decretal sum.

7. I have considered the application together with the response thereto and the rival submissions. The application seeks the enforcement of the judgment and decree in this suit. It was brought under the provisions of Order 22 rule 48 of the Civil Procedure Rules. The key question

falling for determination in the application is whether Land Reference Number 76/816 is available for attachment in satisfaction of the judgment and decree in this suit.

8. There is common ground that the immovable property which the decree-holders seek to attach and sell belongs to the judgment debtor. Secondly, there is no evidence of any genuine attempt to satisfy the more than three year old judgment in this suit. Thirdly, although the judgment debtor alleges there are unidentified parties with interest in the said property, there is no evidence to support the allegation. There is no encumbrance against the title.

9. Further, it is not lost to the court that the claim in this suit relates to monies paid to the judgment debtor by the decree holders under a contract under which the judgment debtor was to develop and convey to the decree holders some immovable properties (two apartments). The judgment debtor received the contractual sum way back in early 2015 but did not bother to perform their contractual obligations. The judgment debtor opposed the present application but did not propose reasonable timelines within which they planned to satisfy the judgment and the decree.

10. In the circumstances, the court is satisfied that the immovable property is available for attachment. In the absence of any *bona fide* alternative proposal on how the judgment and the decree are to be satisfied, the court will allow the notice of motion dated 24/9/2020 in terms of prayers 3 and 4. The Deputy Registrar of the court will set the terms of sale. The decree-holders/plaintiffs shall have costs of this application. Lastly, sale of the attached property shall stand stayed for 45 days from today during which period the judgment debtor will be at liberty to satisfy the decree together with accrued interest and costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 9TH DAY OF MARCH 2021.**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Masese for the Plaintiff/Decree holders

Court Assistant: June Nafula