



**Butt & another v Kenya Revenue Authority & 2 others (Environment & Land Case 67 of 2018) [2023] KEELC 858 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 858 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 67 OF 2018**

**J OMANGE, J  
FEBRUARY 9, 2023**

**BETWEEN**

**MOHAMED SHEHAZAN BUTT ..... 1<sup>ST</sup> APPLICANT**

**YASSART BUTT ..... 2<sup>ND</sup> APPLICANT**

**AND**

**KENYA REVENUE AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF LANDS ..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL OF KENYA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The notice of motion application dated April 7, 2022 is brought under section 1A, 1B and section 3A of the [Civil Procedure Act](#) sought for the following orders;
  - a. Spent
  - b. Spent
  - c. That pending the hearing and determination of the appeal, the Honourable Court be pleased to grant an injunction restraining the 1st Defendant/ Respondent herein, its servants and agents or otherwise from selling wither by way of auction or in any way purporting to exercise its power of sale in so far as it relates to all that property known as LR No 209/8381/ 2.
  - d. That costs be provided for.
2. The application is premised on the grounds that the applicants have filed an appeal against the Courts Judgement delivered on October 1, 2020 which appeal raises arguable issues of both fact and law. The 1<sup>st</sup> Respondent notified the applicants of intention to sell the suit property vide a letter dated January



- 28, 2022 notifying them of the intention to sell the suit property. The applicants aver that they are in occupation of the suit property which is where they earn their living.
3. The application is supported by the affidavit of Mohammed Shehazan Butt in which he recounts the steps the applicants have taken to follow up on the appeal. The applicant raised concern that the address that was used to notify the applicant of the intention to sell was the wrong address.
  4. A Relying Affidavit was sworn by Victor Mino who works t te 1<sup>st</sup> Respondents Corporate Tax Account Management Division. He deponed that following a tax audit that was carried out on Comecons Limited it was discovered that the company owed tax of Kshs 901,535,418. Consequently, a demand letter was issued. The notice was not honoured prompting the advertisement for sale of plot no LR No 209/8381/ 2 registered in the name of the tax payer. Simultaneously, the 1<sup>st</sup> Respondent registered its interests in the land by placing a caveat on the same.
  5. The applicants then filed this case seeking orders that the caveat be declared unlawful and the applicant be declared the legal owner of the suit property. The matter was heard. On the 15<sup>th</sup> September, 2020 the Originating Summon was dismissed with costs.
  6. The case having been finalized the 1<sup>st</sup> Respondents issued a notification of sale which prompted the filing of the present application. The 1<sup>st</sup> Respondent contends that the taxes have been outstanding since the matter was filed in court and the 1<sup>st</sup> Respondent is entitled to the fruits of its Judgement.
  7. Both counsel filed submissions which the court has duly considered. The Counsel for the plaintiff/ applicants submitted that the applicant has established a prima facie case for issuance of an injunction. Counsel for the 1<sup>st</sup> Defendant/ Respondent on his part submit that the applicant have not proven that the court should grant a stay of execution in their favour.
  8. The applicant filed this application seeking an injunction under section 1 A and 1 B of the [Civil Procedure Act](#). Even though the current application has been framed so as to invoke the courts inherent powers, the court would still need to exercise these powers judicially and not arbitrarily. The Court of Appeal had occasion to give guidance on the exercise of this power in the case of Kenya Power and Lighting Company versus Benzene Holdings T/A as Wyco Holdings in which the court recounted “The extent of inherent powers of the court was eloquently explained by the authors of the [Halsbury’s Laws of England](#), 4<sup>th</sup> Edn. Vol. 37 Para. 14 as follows;

“The jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ... In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper



vexation or oppression, to do justice between the parties and to secure a fair trial between them.” See also Meshallum Waweru Wanguku (*supra*)

9. The court summed it up thus “This inherent jurisdiction is a residual intrinsic authority which the court may resort to in order to put right that which would otherwise be an injustice.
10. The burden is on the applicant to establish that he is likely to suffer an injustice if the orders sought are not granted. The applicant have established that they have filed an appeal. However, he has not demonstrated the substantial loss or injustice that they are likely to suffer if the orders sought are not granted. Neither have they offered any security. I find that this is not a case that would merit exercise of the courts inherent jurisdiction
11. In view of the foregoing the application has no merit and is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 9<sup>TH</sup> DAY OF FEBRUARY 2023.**

**Judy Omenge**

**JUDGE**

**In the presence of: -**

**Mr. Athman for Mr. Khan for the Plaintiff**

**Steve - Court Assistant**

