



**Meduprof-SBV v Odhiambo; African Banking Corporation Ltd & 2  
others (Interested Parties) (Miscellaneous Application 302 of 2017)  
[2025] KEHC 1781 (KLR) (Commercial and Tax) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1781 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION 302 OF 2017  
FG MUGAMBI, J  
FEBRUARY 7, 2025**

**BETWEEN**

**MEDUPROF-SBV ..... APPLICANT**

**AND**

**ALFRED OTIENO ODHIAMBO ..... RESPONDENT**

**AND**

**AFRICAN BANKING CORPORATION LTD ..... INTERESTED PARTY**

**THE DENTAL AND MAXILLOFACIAL IMAGING CENTRE  
LTD ..... INTERESTED PARTY**

**NAIROBI IMAGING SOLUTIONS LTD ..... INTERESTED PARTY**

**RULING**

**Background and introduction**

1. This Ruling determines the application dated 20<sup>th</sup> December 2022. It is brought under Sections 1A, 18, 3A, 38 and 44 (1) of the *Civil Procedure Act* 2010, Order 18 Rules (2) and (3) and Order 22 Rule (18) of the Civil Procedure Rules.
2. The applicant seeks amongst others, a prohibitory order in respect of Mavoko Town Block 3/2141 (the subject property), registration of a charge on the property for Kshs.43,694,056/= in its favour and an order ranking and subordinating the charge, prioritizing the 1<sup>st</sup> interested party (the Bank) and the applicant, respectively. It is also the applicant's prayer that the subject property be sold to recover the amount secured under the charge as well as the decretal amount. To facilitate this, the applicant prays for an access order and settlement of terms.



3. The applicant also seeks a prohibitory order against the respondent's 1 ordinary share in the 2<sup>nd</sup> interested party (DMIC), as well as 1,000 ordinary shares in the 3<sup>rd</sup> interested party (NISL), which are registered in the respondent's name. It seeks to have the rights accruing from this shareholding marked for its benefit until settlement of the decree in full.
4. The application is opposed by the respondent and the interested parties. The Bank also raised a preliminary objection to the application. Pursuant to directions issued by this court, parties also filed respective submissions which I have equally considered.

### **Analysis and determination**

5. I have distilled the following issues for determination:
  - i. Whether the preliminary objection is meritorious;
  - ii. Whether the orders sought can issue in respect of the subject property, which the Bank holds a charge over; and
  - iii. Whether an attachment of the respondent's shares in the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties should issue.

#### **(i) The preliminary objection:**

6. The Bank's preliminary objection is based on the assertion that the application contravenes Section 34 of the *Civil Procedure Act* which provides as follows:

“(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”

7. The Bank argues that this court has no jurisdiction to entertain the present application as it is not premised on any suit. The subject of the present application arose from the recognition of a foreign decree from an arbitration award by the High Court in Kampala. This fact is uncontroverted. The recognition of an international award follows the procedure provided for under Section 36(2) of the *Arbitration Act*. By dint of Rule 9 of the Arbitration Rules (2022), an application under Section 36 shall be made by summons in chambers and does not require the support of a separate suit.

8. Section 2 of the *Civil Procedure Act* defines a suit as all civil proceedings commenced in any manner prescribed. Section 34(2) of the Act further provides with reference to Section 34(1) that:

“The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.”

9. In my understanding, the legal text establishes that the court handling a decree retains the authority to manage all matters related to its enforcement. It also reserves the power to treat certain enforcement proceedings as suits or vice versa. In this context, the proceedings before this court, where the foreign arbitral award was recognized as a judgment of this court and a decree was issued, should be deemed a suit for enforcement purposes, even though they were initially filed as a miscellaneous application. Accordingly, these proceedings are the proper forum for any application related to the enforcement of the award.



10. The principle that a miscellaneous application may be recognized as a suit for purposes of Section 34(1) of the *Civil Procedure Act* was affirmed by Majanja, J, in *Agriculture Food & Fisheries Authority V Joseck Ibrahim Okwemwa*, *CA 21/2018* where he held:

“Since the vehicle was sold as a result of the execution of the orders in Kisii Misc. Civil Application No. 185 of 2016, any application seeking to set aside, vary or in any way implicate those orders should be filed in that case. The decision by the trial magistrate is underlined by the provision of Section 34 (1) of the *Civil Procedure Act* which deem such proceedings to be a suit for that purpose. ...”

11. The Bank has not demonstrated that the arbitral award was recognized or that the decree was issued in any other proceedings apart from the present ones. Its only contention is that there is no suit to support the application, implying that it is brought in a legal vacuum. I reiterate that for purposes of Section 34 of the *Civil Procedure Act*, the proceedings before this court are presumed to be a suit. As such, the preliminary objection is dismissed with costs.

**(ii) The prohibitory and other orders sought with respect to the subject property:**

12. The applicant does not dispute that the subject property is charged to the Bank. In response to the application, the Bank asserts that, for this very reason, the property is not available for attachment or the issuance of a prohibitory order by any party. To support this position, the Bank has provided a copy of the charge dated 21<sup>st</sup> March 2013. Clause 6.6 thereof states as follows:

No further encumbrance

“Save for this charge, the chargor and/or borrower will not during the subsistence of this security, without the prior consent in writing by the Bank, create or attempt to create or permit to subsist any charge or charge upon or permit any lien or other encumbrance to raise on or affect any part of the charged property.”

13. The plain terms of this clause make it clear that the charged property cannot be subjected to any further encumbrance until the existing charge in favor of the Bank has been discharged. Moreover, the Bank has demonstrated that the respondent is already in arrears, further reinforcing its vested security interest.
14. Granting the prohibitory and other orders sought would therefore directly interfere with the Bank’s rights over the property. Additionally, the request for the property to be sold is legally untenable, as it would infringe upon the Bank’s statutory power of sale. Accordingly, I find that the orders sought with respect to the subject property cannot be granted.
15. With respect to the reliefs sought against the interested parties, they argue that no execution can be issued against them since they were not parties to the suit in which the decree was issued. Additionally, they contend that the applicant has no right to interfere with the respondent’s shareholding in the two companies, as each company is a separate legal entity distinct from its shareholders. They further assert that granting the orders sought would curtail the business operations of the companies and should therefore be dismissed.
16. I disagree with these submissions. Shares owned by the respondent constitute a monetary investment in the companies and, as such, may be attached as his property to satisfy a decree. The law expressly allows for the attachment and sale of shares under Order 22, Rule 40(1) through the issuance of a prohibitory order.



17. Order 22, Rule 40(1) provides as follows:

“In the case of—

- (a) a share in the capital of a corporation; or
- (b) ...

for the attachment of which specific provision is not made by these Rules the attachment shall be made by a written order prohibiting—

- i. in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon; or ...”

18. What is crucial is that the applicant demonstrates that the shares in question indeed belong to the judgment debtor. In this case, the applicant has provided official records from the Registrar of Companies for the two companies, confirming that the respondent holds one (1) share in the 2<sup>nd</sup> interested party and 1,000 shares in the 3<sup>rd</sup> interested party. Notably, the respondent has not disputed this fact.

19. I therefore find that the respondent’s shares in the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties are attachable under Order 22, Rule 40 of the Civil Procedure Rules. However, since no sufficient basis has been provided to justify the production of accounts by the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties, I am unable to grant that particular prayer.

### **Disposition**

20. Accordingly, the application dated 20<sup>th</sup> December 2022 is allowed to the extent that the following orders do hereby issue:

- i. In execution of the decree herein, a prohibitory order hereby issues restraining any dealings or interference whatsoever in respect of one (1) ordinary share in The Dental and Maxillofacial Imaging Centre Limited (CPR/2010/17043);
- ii. In execution of the decree herein, a prohibitory order hereby issues restraining any dealings or interference whatsoever in respect of 1,000 ordinary shares in The Nairobi Imaging Solutions Limited (C.103780) registered in the name of the respondent;
- iii. That the rights, benefits and/or dividends attached to the one (1) ordinary share in the Dental and Maxillofacial Imaging Centre Limited (CPR/2010/17043) and the one thousand (1,000) ordinary shares in the Nairobi Imaging Solutions Limited (C.103780) registered in the name of the respondent shall be marked for the benefit of the applicant until execution of the decree herein in full; and
- iv. The applicant shall have the costs of this application against the interested parties. The prayers against the Bank are dismissed with costs to the Bank.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY 2025.**

**F. MUGAMBI**

**JUDGE**

