



Chanandin v Chanandin & 3 others; Lacheka Lubricants Limited & another (Interested Parties); Lacheka Enterprises Limited (Judgment debtor); Safaricom PLC & 2 others (Garnishee) (Civil Suit 29 of 2005) [2025] KEHC 3385 (KLR) (Family) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3385 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 29 OF 2005
HK CHEMITEI, J
MARCH 20, 2025**

BETWEEN

ANJU CHANANDIN APPLICANT

AND

**JAHANGIR ALAUDIN CHANANDIN 1ST RESPONDENT
DILIP KUMAR PATEL 2ND RESPONDENT
PIYUSH PATEL 3RD RESPONDENT
CHAYABEN PATEL 4TH RESPONDENT**

AND

**LACHEKA LUBRICANTS LIMITED INTERESTED PARTY
FEMIDA ALAUDIN CHANANDIN INTERESTED PARTY**

AND

LACHEKA ENTERPRISES LIMITED JUDGMENT DEBTOR

AND

**SAFARICOM PLC GARNISHEE
PRIME BANK LIMITED KENYA GARNISHEE
SOUTHERN CREDIT BANKING CORPORATION LIMITED GARNISHEE**



RULING

1. There are four sets of applications herein which as directed by the court all the parties have filed their respective responses as well as written submissions. The court shall proceed to deal with them and deliver a consolidated ruling as the issues are generally intertwining.
2. The 1st application is dated 31st January 2024 by the applicant herein which I shall refer to Anju's application.
3. The second application is dated 14th June 2024 by the 2nd Interested Party which I shall refer to as Femidas application.
4. The 3rd application dated 21st June 2024 by Anju which I shall refer to as the Garnishee application
5. The 4th application is dated 24st June 2024 by Jahangir which I shall refer it as Jahangir's application.
6. The 1st application by Anju dated 31st January 2024 is seeking the following orders:-
 - a. That the court do issue orders directing M/S Pinaccl Valuers to value the properties namely LR NO 209/2888 AND 209/4965.
 - b. That Henry Smith Wilson be allowed to carry out audit accounts and examine books and statements relevant to this case.
 - c. That Regent Assessors be allowed to carry out assessments and valuation of motor vehicles numbers KAT 172Q, KAE 117K and KAH 232B and any other motor vehicle belonging to the company.
 - d. That upon carrying out the above assessments the reports be filed with the Deputy Registrar of the Family division.
 - (e) That upon the above valuations M/S Siuma Auctioneers be allowed to sell the said properties in a public auction or private treaty and the proceeds be shared out as directed by the Court of Appeal.
 - (f) That upon the above properties being sold the proceeds be deposited in court pending distribution to the parties or as the court shall direct.
 - (g) That the court does direct the Deputy Registrar of this court to execute the documents to facilitate the sale of the above properties.
 - (h) That the OCS Industrial Area be directed to supervise the above exercise.
 - i. That the Costs of valuation, assessments and auctioneers be met by the proceeds from the sale.
7. The application is based on the grounds thereof and the affidavit of Anju Chanandin of even date.
8. The substance of the above application is based on the decision of the Court of Appeal which awarded her 40 percent of shares in the properties contained in the two parcels of land. It was her case that all efforts to have the decree from the Court of Appeal executed has been delayed by the respondents rendering her to suffer serious loss.



9. That efforts by her advocate to have the matter settled has been made by resistance from the 1st respondent who indicated that the properties had been sold way back in August 2005 and that the only recourse was to pay her 40% after valuation and based on the amount as per the 2005 sale.
10. She deponed further that the effort to have the same valued were thwarted by the 1st respondent who proceeded to restrict the valuers from accessing the said properties hence this application.
11. The application was opposed vide the Preliminary Objection dated 5th June 2024 by the 1st respondent stating that in view of the provisions of Articles 162 and 165 of *the Constitution* this court was not sized to handle the issue of ownership of the two properties as it was a preserve of the Environment and Land Court.
12. Secondly that the issue of valuation of the respondents and the corresponding audit was not for this court and it therefore lacked the necessary jurisdiction.
13. The application by Femida dated 14th June 2024 on the other hand prays that:-
 - (a) An order do issue restraining the applicant and her servants/agents from entering into the 1st Interested Party business premises situate at LR No 209/2888 and 209/4965 for purported execution of a decree in the Court of Appeal Civil Case Number 444 of 2016 and 449 of 2018 herein pending the issuance of the final decree.
14. The application is based on the grounds thereof and the affidavit of Femida Allaudin Chanandin dated the same date.
15. Her averments while acknowledging the suits from this court to the Court of Appeal is of the view that the harassment by Anju's agents was completely unnecessary and unlawful as the decree of the Court of Appeal has not been issued and there was no settlement of terms.
16. In any case she contents, the application for valuation dated 31st January 2024 was still awaiting determination and thus the execution was premature in the circumstances.
17. The application was opposed by Anju vide her replying affidavit sworn on 2nd July 2024 as well as the preliminary objection dated 1st July 2024.
18. She argued that the applicant had no locus standi to file the application and the prayers sought had been dealt with by the Court of Appeal.
19. The 3rd application (Garnishee) by Anju seeks orders as hereunder;
 - (a) That the court be pleased to order attaching the monies in the following 1st and 2nd judgment debtors accounts held by the 1st and 2nd garnishees in satisfaction of the decree issued on 19th February 2017.
 - (i) 1st Garnishee Safaricom PLC pay bill number 535107
 - (ii) 2nd Garnishee Prime Bank Limited Kenya account numbers AS10XXX,55XXXX,55014XXXX and 200000XXXX.
 - (iii) 3rd Garnishee Southern Credit Banking Corporation Ltd account number 0012510368.
20. The application is based on the grounds thereof and the sworn affidavit of Anju Chanandin dated the same date.



21. She has deponed that based on the judgment of this court dated 19th February 2017 she was entitled to 50% of what was being held by the garnishee on behalf of the respondents.
22. Femida in her affidavit sworn on 2nd July 2024 has opposed the said application vehemently on behalf of the 1st and 2nd interested party. She argued that the divorce cause between the applicant and the 1st respondent is still yet to be concluded and it was therefore premature to seek the orders in question.
23. That this court did not have jurisdiction to deal with the matter as the same was commercial in nature and ought to be instituted in the Commercial Division so as to enforce her shares in the said company.
24. The last application is by Jahangir dated 24th June 2024 seeking the following reliefs:-
 - (a) (a), (b) and (c) spent.
 - (d) That the court be pleased to declare that the action by 1st respondent and M/S Baraza Siuma Auctioneers of unlawfully gaining ingress into parcels number LR 209/2888 and 209/4965 and Lacheke Enterprises Limited is unconstitutional, null and void.
 - (e) The court be pleased to direct the 1st respondent and M/S Baraza Siuma Auctioneers to vacate parcels number LR 209/2888 and 209/4965 and Lacheke Enterprises in toto until the divorce proceedings are concluded.
 - (f) That in the event the court establishes that the 1st respondent and M/S Baraza Siuma Auctioneers gained entry into parcels no 209/2888 and 209/4965 and Lacheke Enterprises Limited unlawfully the court be pleased to direct them both jointly and severally to pay damages to the extend of losses made by Lacheke Enterprises Limited during the period of their unlawful occupation.
25. The application is based on the grounds thereof and the sworn affidavit of the applicant dated the same date.
26. The basic disposition as contained in the above affidavit is that there were still pending divorce proceedings between the respondent and the applicant which was yet to be concluded and which shall give way to the division of the matrimonial property.
27. That despite the decision of the Court of Appeal which did not direct on execution the respondent unilaterally proceeded to attempt a takeover of the company situate within the above parcels of land.
28. The interference by the respondent has affected the company which has large clientele base and many employees and it has crippled the operations of the said company.
29. He went on to deponed that he was ready and willing to settle the decree of the court by paying off the respondent's 40% in the parcels and 50% of shares in Lacheke Enterprises Limited.
30. She accused the respondent of concentrating her efforts in the two properties and the company yet she was in control of LR No 7752/65(LR No 14425/9) which she was not willing to have it shared out.
31. By her replying affidavit dated 2nd July 2024 the respondent opposed the application citing the decision of the Court of Appeal. He denied that the said court directed the buying of her shares by the applicant in the manner he had deponed.
32. She denied the averments that she was shutting down the operations of the company as alleged by the applicant.
33. The parties each as expected prayed for the applications to be allowed or dismissed.



Analysis And Determination.

34. The court directed the parties to file their written submissions which they complied. I have perused the same dated 5th August 2024, 20th September 2024 and 26th September 2024 together with the attendant authorities.
35. The issues raised in the submissions and the threads thereof are in line with the four applications and the supporting affidavits.
36. The issue which I find running across the said submissions is the fact that none of them challenged the decision of the Court of Appeal dated 10th November 2023.
37. By an application dated 25th October 2024 the parties by consent endorsed the said decree and judgement of the Court of Appeal and that in my view sorted any argument on whether there is a decree or not. I say so because the application by Femida and Jahangir raised so much storm concerning the absence of a decree on board pursuant to the attempt by Anju to execute against the company in the manner she alleged to have done by sending the auctioneers to the business premises.
38. On the application dated 14th June 2024 by Femida, this court directed the Deputy Registrar to visit the scene which she did on 4th July 2024. The report which was filed in this court on 5th July 2024 by the said registrar concluded that;

“Conclusion/Observation”

The premises remained open since I observed two motorbikes carrying merchandise out of the premises, there was a truck in the compound loading merchandise as well. There was no sign of operation in the production zone since the machines had been switched off, only labelling was taking place. There was no sign of auctioneers physically present during the visit.”
39. This report in my considered view answers the question raised in the application dated 24th June 2024 as well. In other words, if there was an attempt by Anju then the same did not succeed as the said judicial officer did not find any evidence.
40. Be it as it may I find that any attempt by the applicant (Anju) her agents or servants if indeed it was true that they attempted to access the respondent company premises was illegal and premature for the simple reason that the Court of Appeal did not make any direct order in that manner. At the same time her application dated 31st January 2024 was still pending and it would have been premature and negated the spirit of the said application which was seeking a structured way of enforcing the Court of Appeal decision.
41. The above observations by extension deals with the prayers sought in the application dated 14th June 2024 by Femida. Any attempt by Siuma Auctioneers to access the premises was premature and therefore illegal.
42. I must add however that Femida Allaudin Chanandin by dint of the decision of the Court of Appeal was found to have no locus in this suit. I have extensively read the said decision and it appears to me that the evidence on board did not recognize her as having any right in the company.



43. Further, the court was very clear on the ownership of Lacheke Lubricants Limited and Lacheke Enterprises Limited (see paragraph 68 to 70 of the judgement) where the learned judges stated as follows;

“A was also able to produce documents that showed that Lacheke Lubricants Limited was operating in the same premises where Lacheke Enterprises Limited had been operating from, and that the plant and equipment of Lacheke Enterprises Limited were leased to Lacheke Lubricants Limited. It was A’s contention that Lacheke Lubricants Limited actually carried out the same business as Lacheke Enterprises Limited, and that it was incorporated with a view to transfer the assets of Lacheke Enterprises Limited to it, in order to hide the ownership of the property.

69. A stated that although she was a shareholder and director in Lacheke Enterprises Limited, J signed the lease agreement with an option to purchase the plant and equipment belonging to Lacheke Enterprises Limited without her knowledge. She also produced some documents that indicated that J was actually working in Lacheke Lubricants Limited. J did not adduce any evidence to dispel the contention by A that F was his sister or that P was the wife to C. Given the finding already discussed regarding the participation of Dilip and Femida in the transfer of LR. No. xxx/xxxx and LR. No. xxx/xxxx in a bid to put them beyond the reach of A, we have no doubt that the incorporation of Lacheke Lubricants Limited and the transfer of properties from Lacheke Enterprises Limited to Lacheke Lubricants Limited, was intended to achieve the same purpose. Although neither J nor A were shareholders in Lacheke Lubricants Limited, it is apparent that just like Lacheke Enterprises Limited, this company was actually a family enterprise. Though the apparent shareholders were D, Jane Wanjiku Wanyoike and Moses Muderu Maina, these were actually people who were under the control of J who was the beneficial ownership of the shares. Accordingly, we are satisfied that the shareholders were holding the shares in the company in trust for J and A who was entitled to 50% of the shares given that the origin of the company was Lacheke Enterprises Limited.

70. We find that the properties belonging to Lacheke Enterprises Limited and Lacheke Lubricants Limited were so intertwined with the matrimonial property as to justify the legal personality of the two companies being disregarded. Consequently, the learned Judge was right in declaring that A was entitled to half the value of the shares held by J in the two companies, and that A was entitled to any properties held by the two companies anchored on her 50% share in each of the companies.”

44. In view of the above observations, I do not find that Femida has locus in this matter and I strike out her application dated 14th June 2024.

45. The 1st interested party raised a preliminary objection on the grounds that the matter at hand ought to be litigated at the Environment and Land Court pursuant to the provisions of Articles 162 and 165 of *the Constitution*.

46. I respectfully disagree with the above line of argument. That question of jurisdiction ought to have been raised when the matter began in this court and at best at the Court of Appeal. I find that what



this court is doing is simply carrying out for lack of better word, execution of the directives from the Court of Appeal having varied the judgement and decree of this court.

47. It will be onerous for the parties to file another suit at the Environment and Land court asking the said court nothing but to implement the decision of the Court of Appeal. The appellate court has already determined who are the owners of the said parcels of land and I doubt the ELC court will have any contrary view noting the superiority of the appellate court.
48. The said appellate court found that both Anju, the wife, and Jahangir, the husband owned the property and apportioned them at 40% and 60% respectively as regards the company and 50% each in the other developed matrimonial property. What else is pending to be considered by the Environment and Land court except to delay this 20-year-old matter.?
49. The same goes with the second issue of auditing the books of accounts of the company. Having found that what the company owned was matrimonial property there is nothing left but to simply carry out simple accounts so that the parties can take up the ratio as directed by the Court of Appeal. Taking the matter to the commercial court appears plausible but I do not think in the interest of justice parties need to subject themselves to another round of litigation noting the findings of the appellate court.
50. As a matter of fact, there is no interference with the issue surrounding the company and specifically breaching the company laws. What is expected of the audit is the current value etc. of the company. As to the shareholding the appellate court made a determination on that and the record is there for all and sundry to see.
51. Further and in line with the decisions of the appellate court and which none of the parties has appealed against or asked it for review, it is expected that should there be any interference in the shareholding, then the same ought to be aligned with the court's decision.
52. The saving grace is that the issues of shareholding and any transfers must be dealt with in accordance with the Company's Act and Rules and nothing out of it.
53. The respondents have raised issue with the fact that the issue of sharing out the properties has to await the outcome of the divorce cause. The parties in their submissions admitted that the law applicable was the Married Women's Property Act 1882. Our Matrimonial Causes Act came into effect in 2013 therefore necessitating that the subsequent matters ought to be filed under the new Act.
54. In JOO versus MBO *Petition No 11 of 2020* the Supreme Court of Kenya stated on this point that;

“This court has itself previously addressed the question of the retrospective effect of statutes in the Samuel Kamau Macharia case where we held:

“(61 As for non-criminal legislation, the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature.”

59 We also stated in Daniel Shumari Njjiroine v Naliaka Maroro, SC Motion No 5 of 2013; [2014] eKLR that:

“(36) ... it is a general principle that laws, where enacted or promulgated, are progressive in nature. Where the legislature intends a law to apply retrospectively, it will expressly say so. While *the Constitution* is not, in its



essence, to be interpreted like a statute, if and where it intends a particular provision to apply retrospectively, the makers will expressly have stated so.”

We reiterate the above holdings and further note that for legislation to have retrospective effect, the intention must be clear and unambiguous from the words of such statute or legislation. Having perused the act in contention and considered the submissions by parties as well as the law as expressed above, we have come to the conclusion that there is no retrospective application of the Matrimonial Property Act and hold that the applicable law to claims filed before the commencement of that act is the Married Womens Property Act,1882.”

55. I believe the above observation by the Supreme Court accords well with Section 17 of the Married Women Property Act.
56. In view of the above observation, it will only be fair to state that the circumstances of this case militate against the argument that the parties in order to implement the decision of the appellate court must await the outcome of the divorce proceedings which went silent for twenty years.
57. Even for argument’s sake and in view of the doctrine of stare decisis, I wonder how this court which is handling the divorce proceedings will surmount the Court of Appeal decision which already has apportioned the properties to the parties in the manner it did. None of them has appealed the said judgement.
58. Of course, if there are other properties which do not form part of the ones contained in the judgment then the divorce court will pronounce itself afresh.
59. While at it one wonders why the issue of awaiting the conclusion of the divorce was never raised during trial and at the appellate level and only came at this penultimate stage.
60. In my considered view, respectfully, I find that this is where the principles alluded to under Article 159 of the Constitution apply. The same states that:-

“In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

- (a) justice shall be done to all, irrespective of status;
- (b) justice shall not be delayed;
- (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
- (d) justice shall be administered without undue regard to procedural technicalities; and
- (e) the purpose and principles of this Constitution shall be protected and promoted.” (Underlining mine)

61. I reiterate the above constitutional imperatives underlined above taking into consideration the time this matter has stayed in the corridors of justice which I guess has taken a toll on the parties not to mentioned the judicial time. In other words, the court must look at the overall objective of parties coming to the court, and that is to obtain justice. Now that the appellate court has spoken, then the best approach is to deal with the matter once and for all or else this implementation or execution stage risks remaining in these corridors for another decade.



62. Turning now to the Garnishee application I find the same to be premature. The applicant ought to have been patient till her application of 31st January 2024 is determined. I say so because that application gave a roadmap on how the appellate courts decision was to be implemented as I shall demonstrate shortly.
63. In the premises I do not find any merit in the said application. It shall be useful, if need be, once everything has crystalized.
64. As regards the full implementation of the appellate courts judgement, the portion (supra) cited above is self-explanatory and I did not find the parties unable to understand the entitlement of each of them as per the ratios given. The duty of this court is to execute the said judgement as it is the implementing court.
65. The only way to go about it is to carry out valuation of the said assets and share out in the ratio directed. The respondent submitted that the applicant was keen on the three properties including the company but left out the one that she was in control. The applicant did not counteract this line of submission and I think for a good measure since she is aware that she must cede 50% of LR No 7752/65 Kibagare to the respondent.
66. The willingness of the parties to settle the matter amicably is evident in various correspondence among themselves. For example, in his affidavit sworn on 24th June 2024 Jahangir states among others that;
- “... Lacheke Enterprises Limited respects the judgements of the Court of Appeal and has engaged the 1st respondent for a sit down in respect of paying her rightful shares held in the company but the 1st respondent is persistent in taking over possession and control of the company.”
67. Paragraph 15 goes on to state;
- “...yet I have not refused to pay the 40% of the value of parcels number LR 209/2888 and 209/4965 and 50% of the total shares in Lacheke Enterprises Limited.”
68. I find therefore that the best approach is to have the assets valued, that is parcels and the shares in the company and thereafter shared out in the manner directed by the appellate court. The action taken by Anju was unilateral and was not with the consent of the respondent. It is true that the company is the family cash cow and for that matter it ought to be secured even as the parties implement the judgment.
69. In view of this therefore the parties shall mutually appoint a valuer to assess the capital assets, an assessor to assess the motor vehicles and an auditor to carry out an audit on the company.
70. Once undertaken, the parties shall be at liberty to buy out each other within an appropriate time frame and in default an auctioneer be appointed mutually to sale the same by private treaty or in a public auction.
71. As regards the shares of the company, once an audit has been undertaken the same shall be disposed in line with the provisions of the [Companies Act](#) and the proceeds shared out in line with the appellate courts’ judgement.
72. There was some allegation that the properties were sold out way back in 2005. I think the appellate court dwelt on the matter and I do not think it is within the purview of this court at the moment to discuss the same. The parties have had the advantage of reading the entire judgement where the learned judges rendered themselves over that line of argument.



73. The costs of the above exercise shall be met from the sales that shall be undertaken.
74. Even as I conclude, being a family matter, the parties herein are at liberty without any coercion or undue influence to undertake a “home grown” solution to the style and manner they wish to implement the appellate courts decision which this courts as long as it is consented to by all shall definitely have no objection.

Conclusions

75. After going through the applications above the court finds that the best approach to aid the parties and therefore execute the appellate courts decisions is as directed below:-
- (a) The parties within 30 days from the date herein shall mutually appoint a duly registered and reputable valuer, auditor and motor vehicle assessor and in default the Deputy Registrar of this court be at liberty to appoint them.
 - (b) The above (a) professionals shall within 30 days after their appointment carry out valuations and assessments of the following;
 - (i) Land parcels numbers 209/2888,209/4965 and 7752/65;
 - (ii) Motor vehicles registration number KAE 117K, Nissan Patrol, KAH 232B, Land Rover, KAK 393F Daewoo saloon, KAT 172Q PRADO.
 - (c) Shares held at Lacheke Enterprises Limited and Lacheke Lubricants Limited.
 - (d) The parties shall grant unhindered and unlimited access to the above properties to all the above experts and in the event of any obstacles the parties be at liberty to apply.
 - (e) Pending the above exercise there shall be no interference by any party herein and their servants and or agents in the running of the company’s operations whatsoever.
 - (f) The Deputy Registrar of this court shall be at liberty to execute any transfer instrument in the event that any party is unable or refuses to execute it.
 - (g) The application dated 14th June 2024 and 21st June 2024 are hereby dismissed.
 - (h) Each party shall meet their respective costs.

20TH DAY OF MARCH 2025.

H K CHEMITEI

JUDGE

