



Mwinzi t/a Kiberiti Apartments v Kimanzi & 2 others; Kiberiti Merchants Limited (Interested Party) (Civil Suit E011 of 2021) [2025] KEHC 2954 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT E011 OF 2021
HI ONG'UDI, J
MARCH 13, 2025**

BETWEEN

CAROLINE MUTWA KIMANZI MWENDE MWINZI T/A KIBERITI APARTMENTS PLAINTIFF

AND

GEORGE NGUI KIMANZI RESPONDENT

AND

THE REGISTRAR OF COMPANIES 1ST DEFENDANT

THE HON. ATTORNEY GENERAL 2ND DEFENDANT

AND

KIBERITI MERCHANTS LIMITED INTERESTED PARTY

RULING

1. The Notice of motion dated January 15, 2024 by the plaintiffs/applicants herein prays for the following orders;

SUBPARA (i-vii)

Spent.

(viii) Pending hearing and determination of this suit and/or issuance of further Orders, the OCS Menegai Police Station, Mwingi Police Station, Waita Police Station and Migwani Police Station be directed to provide security to the Applicant and/or her duly appointed representatives to enforce the Orders dated 2nd November, 2023 over all that property known as Kiberiti Apartments Phase 1 in Nakuru sitting on Njoro Ngata Block /4514 Kiamunyi , Kiberiti Apartment phase I and 11 in Mwingi Kitui, severally situate on various



parcels of land all registered in the name of Kiberiti Merchants Limited and known as Mwingi/ Kanzanzu/ 2883; Mwingi/Waita/ 2791, Mwingi/ Mwingi / 4963 and Migwani/ Kyamboo/2297 respectively.

- ix. This Court be pleased to Issue Notice to George Ngui Kimanzi to attend Court in person and show cause why he should not be cited for contempt and be detained in prison for a period not exceeding six (6) months or be fined Kshs 2,000,000/- or such other sums to be determined by Court for defying and frustrating implementation of the orders of this court dated 2nd November, 2023.
 - x. This Court be pleased to Order George Ngui Kimanzi to refund all monies collected as rent from all that property known as Kiberiti Apartments Phase | in Nakuru sitting on Njoro Ngata Block 1/4514 (Kiamunyi), Kiberiti Apartment phase I and II] in Mwingi Kitui, severally situate on various parcels of land all registered in the name of Kiberiti Merchants Limited and known as Mwingi/ Kanzanzu/ 2883 Mwingi/ Waita/ 2791, Mwingi/ Mwingi/ 4963 and Migwani / Kyamboo /2297 since April, 2021 to date.
 - xi. Pending hearing and determination of this suit, this court be pleased to issue Orders restraining George Ngui Kimanzi either by himself, his officers, servants, agents, assigns or any other person claiming under him, from interfering with, trespassing onto or in any way committing to waste. collecting rent, or interfering with or tampering with any equipment, infrastructure, fixtures, fitting servicing all that property known as Kiberiti Apartments Phase 1 in Nakuru sitting on Njoro Ngata Block 1/4514 Kiamunyi, Kiberiti Apartment phase I and II in Mwingi Kitui, severally situate on various parcels of land all registered in the name of Kiberiti Merchants Limited and known as Mwingi/ Kanzanzu/ 2883, Mwingi/Waita/ 2791, Mwingi/ Mwingi/4963 and Migwani /Kyamboo /2297.
 - xii. George Ngui Kimanzi be condemned to pay costs of this Application; and
 - xiii. The main suit be fixed for pretrial conference on priority.
2. The application is premised on the grounds on its face as well as the affidavit of the plaintiff/applicant sworn on even date. She deponed that the court on 29th September, 2022 pronounced itself in respect of her application dated 5th May, 2021. That the respondent has refused to obey the said orders and frustrated its implementation. Further, that given the fact that those orders remained in force, she tried to execute them but the respondent still did not comply and frustrated all her efforts and she was compelled to file for review and contempt. The same resulted in the orders dated 2nd November, 2023.
 3. She further deponed that the respondent had equally defied those orders and purported to lodge an Appeal out of time. That the same referred to non-existent orders and she had instructed her advocates to it to have it struck out. Further, that the orders of 2nd November 2023 had not been set aside, no appeal preferred against them but the respondent has continued to defy the said orders by handing over instruments of power. In addition, the respondent together with his brother Dr. Kalundu Kimanzi and one Justus Ronoh on 12th January 2023 went to Kiamunyi and harassed a tenant who had paid rent to her. She acknowledged that George Ngui Kimanzi had indeed disobeyed Court Orders but the court did not punish him for it. That the respondent's conduct was deliberate and actuated with mala-fides and a further attempt to disinherit the applicant. Thus, unless action was taken against the respondent, this suit would remain a mere academic exercise.
 4. In response the respondent filed a replying affidavit sworn on 30th January 2024. He averred that as per the Orders of 22nd November 2023, the court directed that the rental properties be managed jointly between them and the plaintiff/applicant. That he had not received any communication from the



applicant indicating the intention to appoint an estate agent, to manage the rental properties described as Kiberiti apartments both in Nakuru and in Mwingi, Kitui County. He added that he filed a Notice of Appeal against the said ruling and an application for stay of execution dated 11th December 2023.

5. He further averred that the orders of 22nd November 2023 were stayed by this court on 14th December 2023 pending the hearing and determination of that application for stay of execution. That in considering the plaintiff/applicant's application, the court would be reducing the Appeal at the Court of Appeal to a mere academic exercise and the same shall also be rendered nugatory. He added that the main suit was yet to be heard and determined and so the plaintiff/applicant would still have their day in court.
6. The applicant filed a further affidavit dated 14th February 2024 where she denied the averments in the respondent's replying affidavit
7. The application was canvassed by way of written submissions.

Plaintiff/applicant's submissions

8. These submissions were filed by Sabaya & Associates Company Advocates on 14th February, 2024. Counsel gave brief facts of the case and identified three (3) issues for determination.
9. The first issue is whether there is an appeal against the orders dated 2nd November 2023 and issued on 28th November 2023. Counsel submitted that an order for stay of execution pending appeal could not be granted where there was no appeal. That the notice of appeal was merely a gimmick meant to trick this court into issuing orders of stay pending appeal. She cited Rules 2, 77 and 84 of the Court of Appeal Rules, 2022.
10. The second issue is whether there is an order for stay of execution of the orders dated 2nd November 2023 and issued on 28th November 2023. Counsel submitted that there are no such orders and what they seek are the orders of 2nd November 2023 and issued on 28th November 2023, being executed.
11. The third issue is whether the orders sought in the application dated 15th January 2024 are merited. Counsel submitted that unless the orders they sought are granted the suit property would continue to go to waste thus occasioning her great loss. Further, that the deliberate defiance of court orders by the respondent was an affront to the rule of law and impaired the fair and efficient administration of justice. She urged the court to punish the respondent for being in contempt of the said court orders and to direct the officers commanding police stations in Kiamunyi in Nakuru county, Mwingi, Migwani and Waita in Kitui county to offer security to the applicant and/or her representative to enforce the orders. She placed reliance on the decisions in James Wahome Ndegwa vc Zachary Mwangi Njeru & 8 Others [2021] eKLR, Yatani v Raso (Civil Suit E029 of 2021) KEHC 2150 (KLR) (CIV) (16th March 2023) and Embu E.L.C No. 61 of 2014 Formerly Kerugoya 49 of 2014 Namu Wachira & 2 Others v Njeru Wachira [2015] eKLR.

Respondent's submissions

12. These were filed by Karanja Mbugua & Company Advocates on 6th May, 2024. Counsel gave a brief background of the case and identified two issues for determination.
13. The first issue is whether the orders sought could be granted at this stage. Counsel submitted that the court in allowing the applicant's application would be reducing the application for stay of execution dated 11th December 2023 and the intended appeal to a mere academic, exercise and that the Appeal would be rendered nugatory.



14. The second issue is at what instance the police are involved in enforcement of civil orders. Counsel submitted that the only instance where police assistance can be ordered by a court is where the court itself through its officers is required to execute the judgment and decrees granted in favour of the party applying for police assistance. He placed reliance on section 24 of the Police Service Act and the decision in *Namu Wachira & 2 others v Njeru Wachira* [2015] eKLR. He urged the court to strike out the applicant's application with costs to the 1st, 2nd and 5th defendants.

Analysis and determination

15. I have considered the application together with the affidavits and the submissions by the respective parties. I find the issue for determination to be whether the application dated 15th January, 2023 is merited.
16. In the said application, the applicant seeks among other orders the enforcement of the orders dated 2nd November 2023 and issued on 28th November 2023 and for the respondent to be held in court contempt of the said orders. It is not in dispute that this court on 24th July 2024 delivered a ruling staying the said orders pending hearing and determination of the appeal. This was on condition that the respondent deposits kshs. 5,000,000/= in the parties' advocates joint interest earning account within 30 days. It was also this court's order that failure by the respondent to comply would lead to an automatic lapse of the stay of execution orders.
17. From the date of the said ruling approximately seven (7) months have lapsed and no evidence of compliance of the orders issued on 24th July 2024 has been demonstrated by the respondent or his advocate. Clearly, the stay orders granted on that date automatically lapsed after thirty (30) days from the date of the ruling and the applicant was at liberty to execute the orders of 2nd November 2023 without reference to this court. There is no doubt that what the applicant now seeks in this application was addressed by the ruling of 24th July 2024, Thus, it is my view that the said application has been overtaken by events.
18. For the said reasons, this court finds the application dated January 15, 2023 to be devoid of merit and the same is hereby dismissed.
19. Costs to be in the cause.
20. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 13TH DAY OF MARCH, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

