



Shabaha Investments Limited v Dhanjal Investments Limited (Civil Suit 038 of 1997) [2025] KEHC 12093 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12093 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 038 OF 1997**

F WANGARI, J

MAY 22, 2025

BETWEEN

SHABAHA INVESTMENTS LIMITED DECREE HOLDER

AND

DHANJAL INVESTMENTS LIMITED JUDGMENT DEBTOR

RULING

1. For determination is the Notice of Motion application dated 30/10/2024. It is brought under the provisions Order 22 Rule 48 and Rule 77 of the [Civil Procedure Rules, 2010](#) and section 3A of the [Civil Procedure Act](#). In summary, the orders sought were as follows: -
 - a. Prohibition Order be issued against restraining the Respondent from transferring/ charging property known as LR. No. 1549/ Section 1 Mainland North Mombasa (CR 13445) (herein after referred to as the suit property).
 - b. Leave be granted to the Decree Holder to sell by way of public auction, by a court appointed auctioneer, the suit property mentioned herein above, in satisfaction of the decretal sum of Kshs. 144,396,796/=
 - c. That the costs of the application be provided for.
2. The grounds in support of the application are that the Decree issued on 17/06/2029 remains unsatisfied by the Judgment Debtor and the sale of the suit property would facilitate the Decree-Holder in realizing the fruits of its judgment. It was stated that the decree which was in the sum of Kshs 69,660,000/= as at 17/06/2019, now stands at Kshs. 144,396,796/=.
3. Despite demands to pay, the Respondent has refused to pay the decretal amount hence necessitating the filing of this application.



4. In the Replying Affidavit dated 13/05/2025, the Respondent stated that the application offends the provisions of Order 22 Rule 18 of the Civil Procedure Rules. Further, some of the Directors of the Respondent company were deceased and the suit property subject to contested succession proceedings, hence once the matter is resolved, the Respondent would be in a position to settle its debts. Indulgence of 3 years was sought in order to allow the succession matter be resolved.
5. It was further stated that the Respondent had paid full purchase price for the suit property and all that was remaining was payment of interest. Therefore, if the property is sold, the Applicant would end up having the full purchase price and the land, thus being prejudicial to the Respondent.
6. It was further stated that the Applicant was in breach of the doctrine of exhaustion as there were other avenues available for the execution of the decree. The Applicant was said not to be entitled to the reliefs sought hence the application should be dismissed.
7. The Respondent also filed a Notice of Preliminary Objection dated 20/02/2025 seeking to have the application struck out for offending the provisions of Section 20 of the Consumer Protection Act.
8. The application was canvassed by way of written submissions. Both parties filed their rival submissions.

Analysis and Determination

9. I have carefully considered the applications, the responses in the form of Replying Affidavit and the Notices of Preliminary Objection, the submissions for and against, the authorities cited as well as the law and I discern the following issues for determination: -
 - a. Whether the P.O has merits.
 - b. Whether the application has merits.
 - c. What is the order as to costs?
10. On the first issue, the Respondent filed the Notice of Preliminary Objection dated 20/02//2025. The Respondent did not prosecute the same and the Respondent's submissions did not mention the same. it is not the duty of the court to go fishing for evidence in support of the P.O. The same lacks merits and is hereby dismissed.
11. On the second issue, the Applicant seeks for a prohibitory order. Order 22 Rule 48 of the Civil Procedure Rules provides as follows;

“Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property”.
12. The suit property being the subject matter of this suit, and a decree for payment of money having been obtained in favour of the Applicant, the Respondent having failed to make good the judgment, the Applicant is justified to seek for the grant of prohibitory order as prayed. the Applicant is justified to seek for the grant of prohibitory order as prayed.
13. On whether the Applicant ought to be granted leave to auction the suit property, the Respondent has opposed the same stating that the suit property is subject to contested succession proceedings. The Succession is in respect to the estates of the deceased directors of the Respondent company.



14. In the celebrated case of *Salomon v Salomon* [1897] AC 22, the principle of separate corporate personality was established. A company is a legal entity separate from its shareholders and directors. I find that the suit property being the registered property of the corporate legal entity which is the Judgment-Debtor, is subject to auction to meet the decretal sum due.
15. The Respondent pleaded breach of doctrine of exhaustion on the part of the Applicant. It is on record that the Applicant has reached out to the Respondent severally to settle the matter. The court gave the parties time to try to resolve the matter out of court but the negotiations were unsuccessful. The Decree was issued in year 2019. This application was filed almost 6 years after the said decree. It cannot be said that the Applicant had failed to use other available means of execution, before filing this application.
16. Having found that the Applicant's orders sought are merited, I note that the Decree dated 17/06/2019 was for the sum of Kshs. 69,660,000/=. In the application, the Applicant states that the amount due as at filing of the application was Kshs. 144,396,796/=.
17. I do concur with the Respondent that the amount claimed differs from the amount in the decree. It cannot be said that almost 5 years later, the amount remains the same due to interest incurred over the years. This court cannot issue orders blindly. The Applicant ought to show how the decretal amount claimed was arrived at. The Applicant ought to comply with Order 22, Rule 7 which provides as follows;

Oral and written applications

- 7.(2) Save as otherwise provided by subrule (1) or by any other enactment or rule, every application for the execution of a decree shall be in writing, signed by the applicant or his advocate or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars—
 - (a) the number of the suit;
 - (b) the names of the parties;
 - (c) the date of the decree;
 - (d) whether any appeal has been preferred from the decree;
 - (e) whether any, and, if any, what payment or other adjustment of the matter in controversy has been made between the parties subsequent to the decree;
 - (f) whether any, and if any, what previous applications have been made for the execution of the decree, the dates of such applications, and their results;
 - (g) the amount with interest, if any, due upon the decree, or other relief granted thereby, together with particulars of any cross- decree, whether passed before or after the date of the decree sought to be executed;
 - (h) the amount of the costs, if any, awarded;
 - (i) the name of the person against whom execution of the decree is sought; and
 - (j) the mode in which the assistance of the court is required, whether—
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment and sale of any immovable property, or by the sale without attachment or by proclamation and sale immovable property;



- (iii) by the arrest and detention in prison of any person;
- (iv) by the appointment of a receiver;
- (v) otherwise, as the nature of the relief granted may require.

- (3) The court to which an application is made under subrule (2) may require the applicant
18. With the compliance of the above provision, both the court and the Respondent will be in a position to understand how the amount claimed by the Applicant has been reached.
19. On costs, it is settled that the same follows the event. However, the court retains discretion whether to grant them or not. Costs shall follow the final orders of the court after compliance as stated herein above.
20. Having found as above, the following orders flow therefrom: -
- a. The application dated 30/10/2024 is partially successful and on the following terms;
 - i. Order of Prohibition is hereby granted as per prayer no. 1 of the application.
 - ii. The Applicant to comply with Order 22, Rule 7 (2) of the [Civil Procedure Rules](#)
 - b. Costs to follow the outcome of the final orders.
 - c. Matter be mentioned on 9/07/2025 for further orders
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 22ND DAY OF MAY, 2025.

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F. WANGARI

JUDGE.

In the presence of:

M/S Wambui Advocate for the Plaintiff/ D.H

Dr. Aoko Advocate for the Defendant/ J.D

Mr. Barille, Court Assistant

