



Interchem Co Ltd & 6 others v Kenya Planters Cooperative Union (Commercial Case 269 of 2006) [2024] KEHC 4517 (KLR) (Commercial and Tax) (8 March 2024) (Ruling)

Neutral citation: [2024] KEHC 4517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 269 OF 2006
DO CHEPKWONY, J
MARCH 8, 2024**

BETWEEN

INTERCHEM CO LTD & 6 OTHERS PLAINTIFF

AND

KENYA PLANTERS COOPERATIVE UNION DEFENDANT

RULING

1. Before the court is the Amended Notice of Motion application dated 6th April, 2022 filed by the Plaintiffs under Orders 51 Rule 1 and 22, Rule 5 of the *Civil Procedure Rules 2010*, Sections 1A, 1B, 3A, and 63 (e) all of the *Civil Procedure Act*, Section 432(2) of the *Insolvency Act* 2015 and Sections 64 and 66, both of the Cooperatives *Societies Act*.
2. The Application seeks the following orders:-
 - a. Spent;
 - b. That in furtherance of the Order of Attachment and Prohibitory Order given by the Deputy Registrar herein before there be and is hereby issued an Order of Sale by public auction of the Judgment-Debtor's /property known as Nakuru/ Municipality Block 8/2 in execution of the decree herein and settlement of terms of its sale as hereunder;
 - c. That the Defendant is directed to hand over the Certificate of Lease to property known as Nakuru/Municipality Block 8/2 to the Decree Holder's Advocates or purposes of the intended sale and by public auction;
 - d. That Moran Auctioneers are appointed as Bailiff and auctioneers to carry out the intended sale by public auction of the Judgment-Debtor's property



known as Nakuru/ Municipality Block 8/2 and shall issue a public notice of the intended sale of the subject property under Order 22 Rule 57 (2) of the [Civil Procedure Rules, 2010](#) upon the decree holder and the Judgment debtor.

- e. That Moran Auctioneers shall thereafter issue an advertisement of the intended sale of Nakuru/ Municipality Block 8/2 once in the Daily Nation Newspaper on a week day and costs of advertisement and all expenses incurred to carry out the sale shall be costs of the sale to be recovered from the proceeds of sale of the said property.
- f. That the property Nakuru/Municipality Block 8/2 shall be sold with or without a reserve price as shall be ordered by the court at a time and place that shall also be deemed fit and just by the court.
- g. That costs of the application be to the Plaintiffs/Applicants.
- h. That leave be and is hereby granted to the Plaintiffs to continue this suit and the execution of the decree herein against the Liquidator Kenya Planters Cooperative Union Limited, the Defendant and New Kenya Planters Union Public Limited Company to who be transferred the property known as Nakuru/Municipality Block 8/2.

3. The Application is based on the grounds as set out on the face of it which are as follows:-

- i. The Defendant's property known as Nakuru/ Municipality Block 8/2 was attached by this court in execution of the decree herein before the Defendant was placed under liquidation.
- ii. Thereafter the liquidator, despite the attachment of the property above in execution of the decree herein which placed the said property known as Nakuru/Municipality Block 8/2 beyond the liquidator's jurisdiction and mandate, the liquidator acted on over the same property and transferred it or caused it to be transferred to another entity New Kenya Planters Union Public Limited Company.

4. In the Amended Notice of Motion, the applicant sought to rely on the Supporting Affidavit of Andrew Ombwayo, an Advocate sworn on 27th April, 2020.

5. The Application has been opposed through a Replying Affidavit of Stephen Kamau Njoroge sworn on 5th May, 2022 in his capacity as the Liquidator of the Respondent.

6. The Respondent holds that the application is misconceived and an abuse of the court process. It is stated therein that the Respondent ceased to be a body corporate following a cancellation order of the Commissioner of Cooperatives vide [Gazette Notice No. 7963](#) of 23rd August, 2019 where the Commissioner ordered the cancellation of the Respondent as a union and ordered for the liquidation of the Respondent. The Respondent holds that its liquidation was challenged and is subject of the Civil Appeal No.412 of 2020.

7. The Respondent also contends that the Court of Appeal in Civil Application No. 76 of 2020, [Stephen Kamau Njoroge and 2 Others –vs- Cabinet Secretary Ministry of Trade & Industry and 7 Others](#) [2021] eKLR directed that the *status quo* of all matters pending before the High court be maintained and therefore holds that this matter ought to be stayed too, pending the hearing and determination of the Appeal.



8. The Respondent holds that the application herein is untenable following the cancellation and liquidation order of 23rd August, 2019. According to the Respondent, it ceased being a body corporate and since there is liquidation, all the assets vest on the liquidator hence the Respondent does not hold any assets to satisfy the order sought. He further holds that the Application is fatally defective since it is not supported by an Affidavit as required under the Civil Procedure Rules. Subsequently, the Applicant has urged the court to dismiss the application with costs to the respondent.
9. In response, the Applicant filed a Further Affidavit which was sworn on 31st May, 2022 by Andrew Ombwayo. He confirms the cessation of the Respondent as a cooperative society but maintains that it did not affect the persona of the Respondent which was also registered as a limited liability company. He holds that the liquidation of the Respondent has never been done to date and it is therefore entitled to settle the decree.
10. The Applicant holds that it is entitled to proceed with execution since the court decree already issued on 5th December, 2017 prohibiting any sale, alienation or transfer of the property. It maintains that the subject property is available for settlement of terms and contends that the Respondent has not denied transferring the subject property to New Kenya Planters Union Public Limited Company which is a scheme to illegally and irregularly evade execution by the court. Therefore, the Applicant has urged the court to allow its application.

Analysis and Determination

11. Having considered the Application, the Replying Affidavit, the Further Affidavit, alongside the Applicant's Submissions dated 28th June, 2022 and the Respondent's submissions dated 14th July, 2022 the following issues arise for determination:-
 - a. Whether there is/was a stay of all matters affecting the Respondent issued by the Court of Appeal.
 - b. Whether the Application has merits to warrant the orders sought.
 - c. Whether the Respondent has the capacity to be sued in this case.

Whether there is/was a Stay of all Matters Affecting the Respondent Issued by the Court of Appeal.

12. According to the Respondent, there is a Court of Appeal Order in Civil Application No.76 of 2020 which has stayed all cases pending the hearing and determination of the Appeal. The Respondent has attached evidence of the said Ruling of the Court of Appeal issued on 19th March, 2021. Upon reading through the said ruling, this court notes that although there is no information on the current status of the Appeal, it is confirmed that proceeding of all matters affecting the Respondent were stayed by the Court of Appeal and hence it cannot make any further orders in the application in respect to the second and third Issues herein until the determination of the said Appeal.
13. It therefore follows that after the determination of the Appeal, the parties should move this court for further orders in the application.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 15TH DAY OF FEBRUARY 2024.

D.O CHEPKWONY

JUDGE



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 8TH DAY OF MARCH 2024.

ALFRED MABEYA

JUDGE

