



REPUBLIC OF KENYA



KENYA LAW
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Karani v Bundi (Civil Case 105 of 2011) [2024] KEHC 3177 (KLR) (Civ) (2 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3177 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL CASE 105 OF 2011

AN ONGERI, J

APRIL 2, 2024

BETWEEN

ROBERT THORONJO KARANI PLAINTIFF

AND

JEREMY MIRITI BUNDI RESPONDENT

RULING

1. The application dated 9/5/2023 was filed by the plaintiff/ applicant under Order 22 Rules 48, 55 and 56 of the [Civil Procedure Rules, 2010](#) and all other enabling provisions of the law seeking the following orders;
 - i. That the honourable court be pleased to hear prayer 2 herebelow exparte in the first instance due to its nature and urgency.
 - ii. That the honourable court be pleased to issue an order of inhibition against the land parcels No Mwimbi/Murugu/4618 and Mwimbi/Murugu/2742 prohibiting the judgment debtor from transferring or charging them in any way until the hearing and determination of the application herein inteparties.
 - iii. That the honourable court be pleased to order the attachment and sale by public auction of land parcels No Mwimbi/Murugi/4618 and Mwimbi/Murugu/ 2742 and the proceeds thereof be used to satisfy the decretal sum herein which stands at Kshs 3,695,741/=.
 - iv. That the honourable court be pleased to order that the public auction be carried out by Viewline auctioneers.
 - v. That the earlier execution ordered by the Court by way of arrest and committal to jail of the judgment debtor be set aside.



- vi. That the costs of this application be provided for.
2. The application is based on the following grounds;
 - i. That the defendant/judgment debtor is the registered owner of land parcel Mwimbi/Murugu/4618 & 2742.
 - ii. That the defendant/judgment debtor has not made good on the judgment in favour of the applicant/judgment creditor.
 - iii. That Kshs 3,695,741/= is the sum owed to the applicant/judgment creditor as of the filing of this application.
 - iv. That the defendant/judgment debtor has not shown any intention of settling the decretal amount and has gone into hiding. That it has become impossible to execute the warrant of arrest issued by the court.
 - v. That it is in the interest of justice to allow the application by the court.
 3. The application is supported by the affidavit of the applicant sworn on 9/5/2023 in which the applicant deposed that the Defendant/Judgment Debtor is the registered owner of Land Parcels Mwimb1/Murug1/4618 & Mwimb1/Murug1/ 2742.
 4. Further, that this matter was concluded in favour of the applicant and the Defendant/Judgment Debtor was ordered to pay me a sum of Kshs 3,695,741/=.
 5. That there was a Notice to show cause dated 1st October, 2021 and a Warrant of arrest issued but the respondent has not been arrested since he has gone into hiding.
 6. That the total sum owed is Kshs 3,695,741/= which is inclusive of interests.
 7. That the Respondent/Judgment Debtor has not been able to pay the decretal amount and applicant now wants to proceed by way of public auction to attach and sell Land Parcel Mwimbi/Murugi/ 4618 & 2742 which is registered in the names of the Defendant/Judgment Debtor.
 8. That Defendant/Judgment Debtor has not shown any intention of settling the awarded decretal amount.
 9. That despite making a proposal date to settle the decretal amount the defendant/judgment Debtor has not made any effort to pay the same and the intended auction will put to rest this matter and bring it to an end.
 10. The respondent Jeremy Miriti Bundi filed a replying affidavit dated 28/7/2023. In it he deponed that the parcel of land known as Mwimbi/Murugi 4618 is ancestral land that was registered in favour of Lucy Kaimuri Miriti and the respondent by their late Mzee Burine M'Inoti to hold in trust for the minors, Dennis Peter Muthomi, Rita Gakii Miiriti and Kevin Munene Miriti all who are not parties to this suit in any capacity.
 11. The beneficiaries' rights cannot be taken away in execution proceedings that they were not aware of and should the same be attached for purposes of executing the Decree, they will be condemned to loss of property rights, a constitutional right without having been heard.
 12. He deponed further that the parcel of land known as Mwimbi/Murugi 2742 was owned by the late Mrs Julia Mukwairu M'Thambu and was dedicated to a relative Charles Murithi Njabani which was later subdivided and registered the resulting subdivisions, Mwimbi/Murugi 3770 in the name of Catherine



Njeri Kamundi whereas Mwimbi/Murugi 3771, Mwimbi/Murugi 3772, Mwimbi/Murugi 3773 and Mwimbi/Murugi 3774 are in his name held in trust for their family lineage children.

13. He indicated that he has not gone into hiding to evade arrest nor has he left the country in the past 10 years. He has made a proposal to settle the decretal sum and intends to lodge an appeal against the judgement and decree delivered on 19/6/2020.
14. The Plaintiff/judgment Creditor/Applicant swore a supplementary in which he stated that the affidavit sworn by Jeremy Miriti Bundi is full of falsehoods and the same ought not to be believed.
15. That Mr. Jeremy Miriti Bundi and Lucy Kaimuri are holding Land Parcel Mwimbi/Murugi/4618 in minors Dennis Peter Muthomi, Rita Gakii Miriti and Kevin Niunene Miriti. This averment is only meant to frustrate execution of the Decree.
16. That registration of the respondent and Lucy Kaimuri as holding Land Parcel Mwimbi/Murugi 1/4618 in trust for minors Dennis Peter Muthomi, Rita Gakii Miriti and Kevin Munene Miriti was done on 7th July, 2023 long after the judgment was entered in my favour and after the Application before Court was filed and served upon him.
17. That in respect to Land Parcel Mwimbi/Murugi /2742 the Defendant/Judgment) Debtor/ Respondent avers that has already been subdivided to give rise to Land Parcels Mwimbi/Murugi3771-3774 it is also crystal clear that the subdivision and new registrations were done on 7th July, 2023 long after the judgment was entered and after the Application before Court was filed and served upon the Defendant, Judgment Debtor/Respondent.
18. That the new registration of Land Parcel Mwimbi/Murugi/4618 and subdivision of Land Parcel Mwimbi/Murugi/2742 to give rise to Land Parcels Mwimbi/Murugi/1371-2774 is a well calculated move by the defendant/judgment Debtor/Respondent meant to frustrate and deprive me fruits of the judgment.
19. The parties filed written submissions as follows; the defendant/judgement debtor filed submissions and addendum submissions and he argued that it was deposed and proved that he does not own the said properties.
20. What he holds in his name is jointly held property which is also held in trust for some beneficiaries. The application herein therefore cannot be allowed and he relied on the reasoning of Eboso J in [*Nancy Nyambura Karori v John Githere Karanja & 2 others*](#) [2018] eKLR where it was held;

“29. Secondly, the decree in Nairobi CMCC 9881 of 2002 did not in any way challenge the plaintiff’s joint title to the suit property. The plaintiff was not a judgment debtor in the decree. It therefore follows that the Land Registrar had absolutely no legal basis for altering the register of a jointly held parcel of land. He did not have any valid decree upon which he was entitled to deregister the plaintiff as a joint proprietor of the suit property. Alteration of the land register by the registrar was therefore illegal.

30. The defendants have taken the position that the auction of the suit property was sanctioned by the court and that the plaintiff’s objection was dismissed. I do not agree with them. The 1st defendant held a monetary decree against Patterson. He was obligated by law to execute the decree against Patterson. He had no right to execute it against the plaintiff. The Chief Magistrate Court did not decree that the judgment be executed against the plaintiff. The plaintiff’s objection was a protestation to the 1st defendant to the effect that



he was engaged in illegalities. The 1st defendant ignored that protestation and proceeded to actualize his illegal actions. In my view, a proper cause of action accrued upon the illegal sale and purchase of the suit property by the 1st defendant.”

21. The defendant/judgement debtor submitted that he has filed an application at the court of appeal for leave to appeal out of time. The defendant argued if both applications are allowed, would render the appeal nugatory. The defendant/judgement debtor contended that the court has inherent power to ensure that the possible conflict of decisions does not happen.
22. The issues for determination in this application are as follows;
 - i. Whether the court should order prohibiting the judgment debtor from dealing with land parcels No Mwimbi/murugu/4618 and Mwimbi/murugu/2742 pending determination of this application.
 - ii. Whether the court should order the sale of the said parcels of land by public auction to satisfy the decretal sum of Kshs 3,695,741.
 - iii. Whether the warrant of arrest and committal to civil jail issued against the judgment debtor should be set aside.
23. There is evidence that is not controverted that land parcel No Mwimbi/Murugu/4618 is held by Lucy Kaimuri in trust for minors. The same cannot be attached or sold.
24. There is also undisputed averment that land parcel No Mwimbi/murugu/2742 was subdivided to give way to Mwimbi/Murugu/1377 – 3774.
25. The said parcels cannot be attached and sold. I also find that there is no reason to set aside the warrant of arrest and committal to civil jail issued against the judgment debtor.
26. The application dated 9/5/2023 is dismissed.
27. Each party to bear its own costs of this application.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
2ND APRIL 2024.**

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Respondent

