



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

FK v KPT (Civil Case E019 of 2021) [2024] KEHC 8754 (KLR) (19 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8754 (KLR)

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

CIVIL CASE E019 OF 2021

MA ODERO, J

JULY 19, 2024

BETWEEN

FK PLAINTIFF

AND

KPT DEFENDANT

RULING

1. Before this Court for determination is the Notice of Motion dated 5th May, 2023 by which the Applicant Tandstad Limited seeks the following orders:-
 - “1. That leave be granted to Tanstad Limited To be joined as the Interested Party in the suit.
 2. That the annexed defence and witness statement be deemed to have been duly filed by Tanstad Limited as filed with leave of the court.
 3. That costs be in the cause.
2. The application was premised upon Order 1 Rule 10 of the Civil Procedure Rules, 2010, Section 3A of the *Civil Procedure Act* and the inherent powers of the court, and all enabling provisions of the law and was supported by an Affidavit of even date sworn by the KPT a Director of the Applicant Company.
3. The Respondent FK opposed the application vide a Replying Affidavit sworn on 30th May, 2023. The application was canvassed by way of written submission. The applicant did not file any submissions whilst the Respondent relied on her written submissions dated 27th July, 2023.



Background

4. The plaintiff FK and the Defendant KPT got married to each other in Nairobi Kenya on 26th July, 2003. During the subsistence of the marriage the couple acquired property in Kenya which property was registered in the name of a company Tandstan Limited (the Applicant herein).
5. The Couple then moved to Norway where their marriage fell apart and they divorced on 12th December, 2019, Judgment on division of Community (matrimonial) property was issued by the Sunmore District Court in The Kingdom of Norway and under the terms of that judgment the plaintiff was ordered to pay to the Defendant 1,034,798 Norwegian Kronor (NOK).
6. On his part the Defendant was ordered to sign and contribute to the issuance of free title of Plot No. Ngong/Ngong/25217 to the Plaintiff. The said Ngong Property is currently registered in the name of Tandstad Limited which is a company jointly owned by the Plaintiff and the Defendant.
7. The plaintiff avers that she has fully complied with the terms of the judgment of 12th December, 2019. However she claims that the Defendant has been stalling in fulfilling his own obligations under the judgment.
8. The plaintiff then filed a suit in Norway seeking to compel the Defendant to comply with the judgment. The courts in Norway however ruled that since the Ngong Property was located in Kenya which is a foreign country only the courts in Kenya could enforce that aspect of the judgment.
9. The Plaintiff then approached the High Court in Kenya vide a Plaint dated 4th May 2021 seeking the following orders:-

“ 1. That the judgment of the Sunmore District Court of the Kingdom of Norway dated 12th December 2019 is adopted as a judgment of this Honourable Court and Decree issued in terms of that judgment.

1. That an order issued from this Honourable Court directing the Lands Ministry of the Republic of Kenya to transfer Ngong/Ngong/25217 to Florence Kimanzi and the Deputy Registrar to sign the requisite forms in satisfaction of that judgment as adopted by this court.
2. That the Defendant pays 50% of the costs of transferring the land to the Plaintiff.
3. That the Defendant reimburses the Plaintiff on the expenses she has incurred in enforcement of the Norwegian judgment as set out in the plaint as follows;-
 - a. NOK 23,077.23/= in obtaining a certified translation of the Norwegian judgment, for court filing fees to enforce the judgment in Norway, for service of the demand letter on the defendant in Norway and for notary public fees to certify the documents.
 - b. NOK 49,125.00/= on advocate fees for her Norwegian advocates from the date of judgment



until 25/03/2021 in trying to enforce the judgment.

- c. Kshs. 986,000 on advocate fees for her Kenyan Advocates to enforce the Norwegian Judgment in Kenya.
 4. That the defendant pays interest on the above at court rates from the date of the judgment by the Sunmore District Court of the Kingdom of Norway on 12th December 2019 until the defendant's full compliance with this honourable court's judgment.
 5. Costs of these proceedings in this honourable court.
 6. Any other order this court deems fit and just to grant the plaintiff considering the case as a whole.
 7. That the costs of the Summons be provided for.
10. Before the Plaintiff's suit could be heard the Applicant Tandstad Limited filed this present application seeking to be enjoined in the suit as an 'Interested Party'.
 11. In the supporting Affidavit the Defendant who is a Director of the Applicant Company stated that although he and the Plaintiff are both Shareholders of the Company, the Company is an entity which is separate and distinct from the Shareholders. That the properties which by the judgment delivered in Norway are to be transferred to the Plaintiff are assets which in actual act belong to the Applicant which is a Company registered in Kenya.
 12. The Defendant further argues that if the judgment is enforced as prayed then the Applicant Company's property rights will be violated. That the judgment in question is in direct conflict with Kenyan law as it disregards the concept of the separate legal personality of a company. That since the property in question is located in Kenya then Kenyan Law ought to apply.
 13. For the above reasons the Applicant prays to be enjoined as an Interested Party in the suit.
 14. In opposing this application the Plaintiff states that all issues pertaining to the property and the company were settled by the Norwegian Courts.
That the Defendant has not filed any appeal against the said judgment.
 15. In her Replying Affidavit the plaintiff avers that the plaintiff and the Defendant are the sole Shareholders/Directors of the said Company.
That the application for joinder is mischievous and is an attempt by the Defendant to hide behind the company in order to evade/obstruct implementation of the judgment of the Norwegian Courts. That this present application for joinder is frivolous vexatious and amounts to an abuse of court process. She prays that the application be dismissed.

Analysis And Determination

16. I have considered the application before this court, the reply filed thereto as well as the written submissions filed by the parties. The only issue for determination is whether this application for joinder is merited.



17. The Applicant claims to be an Interested Party in the suit filed by the plaintiff Blacks Law Dictionary 9th Edition Page 1232 defines an Interested Party as “A party who has a recognizable stake and therefore standing in the matter”
18. In Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR, Mativo. J. explained the circumstances when an interested party ought to be enjoined in a proceeding, as follows:-

“ A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty”.
19. In the case of Communications Commission of Kenya & 4 others v Royal Medial Services Limited & 7 others [2014] eKLR the Supreme Court of Kenya held that;

“

“(22) in determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.....”
20. Similarly, in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

“(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) Joinder to prevent a likely course of proliferated litigation.
21. It is not in dispute that Tandstad Limited, the Applicant herein is a limited liability company and therefore a legal entity separate and distinct from either the Plaintiff or the defendant who were the parties to the marital union in question.
22. There are a plethora of cases in Kenya where it has been held that any property registered in the name of a company even where the only share-holders of the company are a married couple should be dealt with in accordance with the *Companies Act*. In the case of Mereka -vs- Mereka Civil Appeal No. 236 of 2001 the Court of Appeal held that shares in a company where the couple were the Shareholders, ought to be dealt with in accordance with the respective shareholding of each individual.



- 23. There is no evidence of any resolution passed by the company authorizing the Defendant to file this application on its behalf. The purported resolution dated 5th May, 2023 is signed by the Defendant alone with no involvement of his co-director (the plaintiff herein) [see page 10 of the Application]. Such ‘unilateral’ resolution cannot be taken as a valid and / or genuine resolution of the Applicant company.
- 24. Further I note that neither the company nor the Defendant herein filed any appeal to challenge the judgment in the Norwegian Courts regarding division of property
- 25. Based on the above I am of the opinion that the Applicant Company is not a necessary party in this matter. The issues arising which involves division of matrimonial property can be determined without the involvement of the Applicant as a party. I reiterate that the marriage involved the plaintiff and the Defendant ONLY. The Applicant was not a party to said marital union and cannot be enjoined in a suit brought under Section 17 of the Matrimonial Property Act Cap 152 Laws of Kenya. In the circumstances I find no merit in the Notice of Motion dated 5th May, 2023. The same is dismissed in its entirety. Costs to be met by the Applicant.

DATED IN NYERI THIS 19TH DAY OF JULY, 2024.

.....

MAUREEN A. ODERO

JUDGE