



Asset Recovery Agency v Muriithi & 4 others; NCBA Bank Kenya PLC (Interested Party) (Anti-Corruption and Economic Crimes Civil Suit E027 of 2021) [2023] KEHC 836 (KLR) (Anti-Corruption and Economic Crimes) (9 February 2023) (Ruling)

Neutral citation: [2023] KEHC 836 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E027 OF 2021
EN MAINA, J
FEBRUARY 9, 2023

BETWEEN

ASSET RECOVERY AGENCY PETITIONER

AND

PETER WANGAI MURIITHI 1ST RESPONDENT

GOLDENSCAPE TREES AFRICA LTD 2ND RESPONDENT

GOLDENSCAPE GREENHOUSES LTD 3RD RESPONDENT

SILVERSTONE PROPERTIES LTD 4TH RESPONDENT

GOLDENSCAPE GROUP LTD 5TH RESPONDENT

AND

NCBA BANK KENYA PLC INTERESTED PARTY

RULING

1. Hannah Gathoni Njeri, Fidelis Njeri Mbugua and Annah Wambuki Kairu the 1st, 2nd and 3rd Proposed Interested Parties respectively have sought orders to be enjoined to these forfeiture proceedings.
2. The Applicants also seek an order for a declaration that they have an interest in the assets of the 1st to 5th Respondents and also that this court ought to stay these proceedings pending hearing and determination of the application. The Applicants allege that their interest in the assets of the Respondents flows from judgments and decrees issued in MCCC No E5062 of 2020 Hannah Gathoni Njeri v Goldenscape Group Limited and 3 others and MCCC No E5028 of 2020 respectively.



3. In opposition to the application the Respondents filed grounds of opposition dated October 14, 2022 in which they state as follows:-

- “ 1 The 1st to 3rd Proposed Interested Parties have not exhausted the execution mechanisms provided for under Order 22 of the *Civil Procedure Rules, 2010*, so as satisfy this Honourable Court that they have been unable to realize their Judgement.
2. The Orders sought in the application are incapable of being granted, as the application does not specify the particular Respondent against whom the alleged sought satisfaction of the Decree should be made.
3. The Orders sought in the application are incapable of being granted, as the application does not identify the particularly properties against whom the alleged sought satisfaction of the Decrees should be made. The Properties subject to these proceedings are not all jointly owned by the Respondents.
4. The 1st to 3rd Proposed Interested Parties do not have any contractual relationship with the 1st, 2nd, 3rd and 4th Respondents. The bundle of documents produced by the 1st to 3rd Proposed Interested Parties as “annexure AWK 1a to 1c” are documents exhibited a contractual relationship between the 1st to 3rd Proposed Interested Parties and the 5th Respondent.
5. Consequently, the 1st to 3rd Proposed Interested Parties have no legal basis or justification to lay the alleged claim of interest against the 1st to 4th Respondents herein and their properties.
6. The application is incompetent, fatally defective and an abuse of the Court process in so far as the 1st to 3rd Proposed Interested Parties seek Orders of declaration in a Notice of Motion. This Honourable Court’s jurisdiction to issue declarations cannot be invoked through a Notice of Motion.”

4. I have considered the application, the supporting affidavit, the Grounds of opposition and Replying Affidavits, the rival submissions and the law. On whether the Proposed Interested Parties ought to be enjoined to these proceedings the ARA/Applicant has intimated that it has no objection. The application is however vehemently opposed by the Respondents who alleged that the proposed Interested Parties ought to exhaust other execution of decree procedures instead of coming to this court as they have done. I have seen one of the attachments which is a partial decree against the 1st Respondent. The same discloses that the concerned proposed interested party may indeed have “an interest” in the assets of the Respondents herein. However, this court cannot make a full assessment of that interest as the full judgments/decrees have not been annexed. Sections 90, 91, 93 and 94 provide that this court ought not to make a forfeiture order without first considering the interests of third parties more so when an application to that effect has been brought to its attention. It would therefore, only be fair and just that the proposed interested parties be enjoined to these proceedings. Their application to be so enjoined is therefore allowed.
5. In regard to the application for stay of these proceedings my reading of that prayer (See Prayer 2 of the Notice of Motion) is that the stay sought was for the period pending the hearing and determination of this application and as that has occurred that prayer is spent and hence cannot form the subject of a determination.



6. In the premises the application dated August 26, 2022 is allowed but only to extent that the three Proposed Interested Parties are enjoined to the proceedings. The prayer concerning the extent of their interests shall be adjudicated at the same time as the application for forfeiture. Orders accordingly.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF FEBRUARY 2023.

E N MAINA

JUDGE

