



**Ambwere T. S & Associates v Karama (Miscellaneous Civil Application
E011 of 2020) [2023] KEHC 1591 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1591 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION E011 OF 2020**

**G MUTAI, J
MARCH 10, 2023**

BETWEEN

AMBWERE T. S & ASSOCIATES APPLICANT

AND

MOHAMED SWALEH KARAMA RESPONDENT

RULING

1. The application before me is dated November 21, 2022. The same was filed by Ambwere T S and Associates Advocates against Mohamed Swaleh Karama. It is expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Orders 21 Rule 18, 22 Rules 9, 29(2) and 48 of the *Civil Procedure Rules, 2010* and paragraph 11 of the *Advocates (Remuneration) Order* and all other enabling provisions of the law.
2. The Applicant seeks the following 3 orders: -
 - a. The Ruling of the Deputy Registrar delivered on November 10, 2022, declining to sign the warrants of sale of immovable property – ½ share of Title No Mombasa/Block XVII/1232, be set aside, reviewed, varied and or overturned by this honourable court;
 - b. The decision by the Deputy Registrar of this court in refusal to sign the warrants be wholly set aside and or varied and an order issued for signing of the warrants; and
 - c. Costs of the application be provided for.
3. The Applicant taxed his costs against the Respondent who had been his client. The Bill was assessed at the sum of Kes 429,041/-. The Respondent did not settle the same forcing the Applicant to attempt execution firstly, by way of committal of the Respondent to civil jail, and thereafter through sale of the Respondent's immovable property whose details have been given. In order to sell the said property the Applicant sought to have the Deputy Registrar of this honourable to sign the warrants of sale



of immovable property and made an application in that respect. The application was rejected by the Court with no orders as to costs. The basis of the said rejection was that the property the Applicant sought to execute against was jointly owned by the Respondent and another individual with no nexus to this case.

4. The Applicant was aggrieved by the said decision of the Deputy Registrar and filed the instant application.

5. In her ruling the learned Deputy Registrar found as follows:-

“I have considered the application It is based on sale of Title Number Mombasa/Block XVII/1323. The title deed shows that the property is owned by two individuals one being the judgment debtor. I am unable to grant the order considering that the parcel of land is not owned solely by the judgment debtor and any order to sell the land would be prejudicial to the other party. I proceed to dismiss the application with no orders as to costs.”

6. The said application came up for hearing before me on February 20, 2023. Despite the fact that the date had been taken in the presence of Mr Ambwere and Mr Mangaro, only the former was present when the cause was called. As there was no reason to adjourn the matter I allowed Mr Ambwere to canvass the application in the absence of Mr Mangaro.

7. Mr Ambwere urged this court to review and set aside the orders of the Deputy Registrar. He stated that the learned Deputy Registrar had refused to sign the warrants for sale of the Respondent’s half share of Title Number Mombasa/Block XVII/1323 (which land is registered in the names of Mohamed Swaleh Karama Hantoosh (½ share) and Omar Awad Karama (½ share), both of P O Box 81793 Mombasa.

8. Learned counsel submitted that the law permits sale of half shares in immovable properties. He further submitted that the possibility of disputes over the said parcel of land was not a ground not signing the warrants. He submitted that if the Respondent has no money his half share could be sold without involving the owner of the other half share.

9. I have considered the application the submissions by Mr Ambwere in support of his application I have also taken note of the applicable law.

10. I must point out at the outset that this is not a taxation reference. I note that the matter was taxed by the Hon J M Nyariki, Deputy Registrar on June 16, 2021 and a Certificate of Taxation was issued accordingly for the amount of Kes 429,041/-. The Applicant was satisfied with the said determination. It is in fact that determination that led to the matter now before me.

11. Had the Applicant not be satisfied with the taxation he would have had the right to the remedy available under Rule 11 of the Advocates (Remuneration) Order. Vide the said Rule he would have been required to first ask the Taxing Officer, within 14 days of the latter’s decision, to provide reasons for his decision. If the reasons provided by the Taxing Officer were unconvincing to him, he would then have had the right to approach this court by way of Chamber Summons within 14 days thereof, for appropriate orders. As we have seen, he was satisfied with the decision.

12. The impugned decision of the learned Deputy Registrar arose in the course of the execution. The Applicant sought to execute against the ½ share that the Respondent has in the subject parcel of land. That being the case the Deputy Registrar was exercising the powers that the Deputy Registrar has under Order 49 Rule 7(1)(b)(x) the [Civil Procedure Rules, 2010](#).



13. The manner in which an appeal against the decision of the Registrar exercising her power under the said Order, is provided for in Order 49 Rule 7 (2) and (3) which provides as follows: -
- “(2) an appeal from a decision of the Registrar under the orders referred to sub rule (1) shall be to the Judge in chambers;
- (3) the Memorandum of Appeal setting out the grounds of the Appeal shall be filed within seven days of the decision of the Registrar”.
14. The Applicant did not comply with the said provision of the Rules. In addition no appeal was filed within the stipulated period or at all. Although this is enough to dispose of this matter I shall proceed to consider the merit of the application.
15. I have considered the ruling by the Deputy Registrar on its merits. I find no fault with it. My opinion is that it is not possible to execute against the Respondent’s portion of the land without falling foul of Section 91 (6) of the [Land Registration Act](#), Act No 3 of 2012 that provides as follows: -
- “No tenant in common shall deal with that undivided share in favour of any person other than a tenant in common, except with the consent in writing of the remaining tenants, but such consent shall not be unreasonably withheld.”
16. As earlier shown the Respondent is an owner in common with a Mr Omar Awad Karama. I haven’t seen evidence of consent by Mr Omar Awad Karama to the proposed transaction.
17. In my opinion a requirement for a consent of a fellow owner in common isn’t unreasonable. Tenants in common should ordinarily to be in good terms. Ownership in common is for all intents and purposes partnerships. I do not think partnerships, without the consent or the goodwill of the partners, is good or advisable.
18. For the foregoing reasons I find no merit in the application before me. The same is dismissed. I make no orders as to costs as the Respondent’s counsel did not appear in court to oppose the application despite being aware of the same.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 10TH DAY OF MARCH 2023

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GREGORY MUTAI

JUDGE

Delivered via Microsoft Teams in the presence of:-

Mr. Ambwere for the Applicant

The Respondent absent

