



Sepal Gardens Ltd v Rexe Roofing Products Ltd & 2 others (Civil Appeal 242 of 2022) [2023] KEHC 17797 (KLR) (Civ) (11 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17797 (KLR)

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

CIVIL

CIVIL APPEAL 242 OF 2022

JN MULWA, J

MAY 11, 2023

BETWEEN

SEPAL GARDENS LTD APPLICANT

AND

REXE ROOFING PRODUCTS LTD & 2 OTHERS RESPONDENT

RULING

RULING ON APPLICATION DATED 12/04/2022

1. The Applicant Sepal Gardens Ltd approached the court vide a motion dated April 12, 2022 seeking orders;
 - a. Spent
 - b. That the court be pleased to issue orders restraining the 1st Respondent (Rexe Roofing Products Ltd) it's agents, servants or workers from selling or transferring the properties listed under the Notification of sale dated 6/04/2022 or any other of the Applicant's properties pending hearing and determination of this application.
 - c. That the court be pleased to issue orders saying the execution of the Warrants of Attachments or further proclamation, attachment and/or sale of the applicant's properties pending hearing of this application.

Prayers (d) and (f); the applicant seeks some orders as at (b) above, pending hearing and determination of the Appeal herein.
2. The subject suit subject of the Decree and the Warrants of attachment is CMCC No 5872 of 2017 before the Nairobi Chief Magistrates Court. The impugned ruling on objection proceedings was delivered on the September 13, 2021 apparently without notice to the applicant as it had been



- adjourned on two occasions, on the 2/06/2021 and 2/07/2021. As deponed to by the Advocates on records for the applicant, no such notice was found to exist in the court file upon perusal of the same.
3. The decretal sum is stated as Kshs 6,229,186/= as seen from the supporting affidavit sworn by a Director of the applicant on the April 20, 2022, who further depones that judgment had been entered against the Respondents and decree dated May 29, 2020.
 4. The application is not opposed by the 2nd and 3rd respondents.
 5. The 1st respondent opposes the application by a replying affidavit sworn on the May 27, 2022 by one Irene Wanjiru, the Managing Director of the 1st Respondent. In her depositions, she states that the judgment sum was Kshs 4,276,085.57 as at the May 29, 2020 plus other charges as well as costs of the suit.
 6. A perusal of the court record and in particular the applicants supporting affidavits show that numerous objection applications had been filed, heard and determined, and others never followed up by the respondents, leading to the applicant obtaining warrants of attachment and sale of the applicant's properties.
 7. In particular, by a warrant of attachment and sale of the applicant's properties dated 6/10/2020, and notification of sale dated December 16, 2020, a sum of approximately Kshs 1.9 million was recorded, leaving a balance of Kshs 6,949,343.80 as shown in the subsequent warrants of attachment dated 7/02/2022 and proclamation dated February 21, 2022.
- It is the 1st Respondent's deposition that the 2nd and 3rd Respondents are one and the same but hiding under different names and are only frustrating the collection of the decretal sum by the numerous applications and objections.
8. There is a Memorandum of Appeal dated April 20, 2022 and filed on even date. It is against the ruling and orders of the trial court dated September 13, 2021. Without a doubt, the Memorandum of Appeal was filed well outside the statutory period of 30 days from date of the impugned ruling as provided under Section 79G of the *Civil Procedure Act*.
 9. The applicant in the trial court in CMCC No 5862 of 2017, is the Appellant in this Appeal and the objector in the Objection proceedings, and in this instant application is the applicant.
 10. At prayer (e) of the application, the Applicant expressly seeks an order to restrain the 1st Respondent from further proclamation, attachment and/or sale of its properties pending hearing and determination of the appeal herein. As I have stated earlier in this ruling, the appeal was obviously filed out of time. Further, as ably captured in the Applicants Supplementary Affidavit by S R Patel Director of the Applicant Company, the applicant was neither a party to the trial court proceedings nor the Judgment debtor therein, and cannot therefore be embroidered in the manner of the settlement of the decretal sum by the judgment debtor in the trial court.
 11. Whichever way however, unless this court is fully appraised as to whether leave to appeal out of time was applied for and obtained, it is this court's finding that there is no competent appeal on record, upon which prayer no (e) may be granted.
 12. Coming to orders of stay of execution of the Warrants of Attachment as stated under prayer (c) of the application, this court notes that an order was issued on the April 20, 2022 (Meoli J) whereof the applicant was granted a conditional stay upon depositing a sum of Kshs 1 million within 21 days of the date of the order. From the court record, it is also not clear whether or not the conditional stay order was complied with. The respondents did not complain about this.



13. Be that as it may, and upon consideration and interrogation of the parties' pleadings and submissions, and having pronounced myself as above, I find and hold that, without a competent appeal on record, the court would be issuing an order in futility as there would be no further action in the matter which would greatly prejudice the 1st Respondent.
14. Assuming that the conditional stay order was complied with by the applicant, then the decretal sum would still be outstanding less the amount of Kshs one million deposited in court.
15. Consequently, the court determines the Applicant's application dated April 12, 2022 as follows: -
 - I. Prayer (b) and (c) are now spent, upon this determination of the application.
 - II. Prayer no (d) is denied the court having found that there is no competent appeal on record.
 - III. Prayer no (e) is likewise denied for the same reason that no competent appeal is on record.
 - IV. Costs of the application shall be borne by the Applicant, and payable to the 1st Respondent only.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 11TH DAY OF MAY, 2023

JANET MULWA

JUDGE

