



REPUBLIC OF KENYA



**Oluoch & another v Oduori (Civil Case E030 of 2022)  
[2023] KEHC 20113 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20113 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E030 OF 2022  
HK CHEMITEI, J  
JULY 13, 2023**

**BETWEEN**

**JACOB ONYANGO OLUOCH ..... 1<sup>ST</sup> PLAINTIFF**

**AGNES ADHIAMBO OLUOCH ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ELLY GODFREY AP ODUORI ..... DEFENDANT**

**RULING**

1. In their application dated October 21, 2022 the applicants pray for the following orders against the respondent;
  - (a) Pending the hearing and determination of this suit an order of temporary injunction do issue restraining the respondent either by himself or his agents and or servants from further wasting, disposing of, misappropriating, spending, transferring and or withdrawing money from Equity Bank Account No 0600180xxxxx Machakos branch or dealing with the money therein in any way.
  - (b) The respondent be compelled to render proper accounts of all the funds received from the applicants for the period between November 18, 2021 and October 19, 2022 with all evidence of all the expenses incurred.
  - (c) That the respondent grants access to the applicants authorised valuer for purposes of conducting a valuation of the houses constructed on the parcel of land namely Nakuru Municipality Block 29/907 and or subdivision therefrom in order to ascertain the current market value of the buildings and or houses therein.
  - (d) The OCS Ronda police station to avail police officers to ensure that there is no breach of peace while the said valuation is being undertaken.



2. The application is supported by the affidavit of Jacob Onyango Oluoch sworn on the same date as well as the grounds on the face of the application.
3. The application has been opposed by respondent vide his replying affidavit dated November 23, 2022.
4. The issues between the siblings herein are long and winding as they seemed to have litigated in the Succession Cause no 1716 of 2001 which was in respect to the estate of their father.
5. After the grant was confirmed they agreed to develop jointly land parcel number Nakuru municipality Block 29/907. They sold land parcels number namely Central Kitutu /Daraja Mbili /7540 and 7541 for a sum of Kshs 40,000,000 which was part of the needed capital.
6. The evidence on record clearly demonstrate a mutual oral agreement between them including the developments of the Nakuru property. The applicants have attached copies of photos showing the extent of the developments.
7. At the same time the applicants have attached the bank statements showing how they managed to transfer the amount each to the respondent's bank accounts. It was the applicant's case that the respondent was to supervise the said development and that was the reason why they transferred that funds to his account.
8. The applicants depose that the respondent later became uncooperative after transferring the last batch of the amount to him rendering them to file this suit and this application for injunction.
9. The respondent on his part does not deny that the money was transferred to his account. He nevertheless blames the applicants for not finalising the part of the mutual oral agreement. He stated that the first respondent was part of the agreement as he received some of the money towards the development of the properties.
10. This court has read the submissions and the entire pleadings on board. I think all that took place between the brothers herein is pure mistrust carried forward from the succession cause involving their father's estate. I state so for the simple reason that in their oral agreements they clearly agreed to dispose the two Kisii properties so that they could develop the Nakuru property.
11. They went ahead and Tosha Petroleum (Kenya) Limited purchased the same for Kshs 40,000,000 which part of it were transferred by the applicants to the respondent's account. The respondent does not deny that the amount was wired to his Equity Bank account.
12. I find the only issue here is whether the amount transferred to the respondents account was indeed utilised for the purpose intended. The pictures of the houses annexed to the applicant's affidavit are not contested. However, what was the costs of their construction and other incidentals. If indeed the 1<sup>st</sup> applicant participated in the construction will be for the parties to admit or deny but the work done can always be valued.
13. In the premises, I think this is clearly a situation where the services of a valuer will be necessary. Whatever the outcome the parties will be able to reach an amicable solution and in the event of any disagreement this court shall be available to arbitrate.
14. In any case none of the parties including the respondent stands to lose anything should the valuation be undertaken.
15. The money in the respondents account if any as at November 1, 2022 ought to be preserved pending the outcome of the suit. This is necessary considering the fact that the paper trail from the applicants indicate that they each transferred money to the respondent's Equity bank account.



16. In the premises the application is allowed as hereunder.

- (a) The parties within 30 days from the date herein to agree on a joint valuer so as to value the work and construction undertaken on Land Parcel Number Nakuru Municipality Block 29/907 and file a report to this court within 45 days thereafter.
- (b) In the event that the applicants and the respondents are unable to agree on a joint registered valuer then each of the parties shall be at liberty to engage a separate valuer under the same terms as in (a) above.
- (c) Both the applicants and the respondent shall meet the costs of the valuation equally.
- (d) The OCS Ronda police station shall provide security when the above valuation exercise shall be undertaken.
- (e) The temporary orders of injunction issued on 1<sup>st</sup> November 2022 are hereby confirmed pending the hearing and determination of the suit.
- (f) Costs of this application to the applicants.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 13<sup>TH</sup> DAY OF JULY 2023.**

**H K CHEMITEI**

**JUDGE**

