



**Tranzoia Securities Limited v Stuaďte & 2 others (Sued as 2nd and 3rd Defendant
in the capacity as Trustees & legal Representatives of the Estate of George Barbour
Deceased) (Civil Case E47 of 2021) [2023] KEHC 20200 (KLR) (5 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20200 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE E47 OF 2021
DKN MAGARE, J
JULY 5, 2023**

BETWEEN

TRANZOIA SECURITIES LIMITED PLAINTIFF

AND

ANN MUTHONI STUADTE 1ST DEFENDANT

ANTHONY JOHN BARBOUR 2ND DEFENDANT

HUGH BERIC BROOKSBANK 3RD DEFENDANT

**SUED AS 2ND AND 3RD DEFENDANT IN THE CAPACITY AS TRUSTEES
& LEGAL REPRESENTATIVES OF THE ESTATE OF GEORGE BARBOUR
DECEASED**

JUDGMENT

1. By a Ruling dated 28/1/2022 the Justice Njoki Mwangi made the following orders: -
 - i. That pending the hearing and determination of this suit, the 1st defendant is hereby ordered to deposit in Court the sum of Kshs. 25,500,000/= to satisfy the decree that may be passed against the defendants in this suit within 45 days from the date of this order;
 - ii. Leave is hereby given to the plaintiff to amend the plaint to include the names of Anthony John Barbour and Hugh Berric Brooksbank as the 2nd and 3rd defendants being sued in their capacity as personal representatives of the estate of George Barbour (deceased); within 21 days from the date of this ruling;
 - iii. Corresponding leave is granted to the 1st defendant to amend her statement of defence; and
 - iv. Costs in the cause.



2. The order originated from the Plaintiff's application dated 4/5/2021.
3. The initial application sought for a sum of Kshs. 25,500,000 for furnishing of security to satisfy the decree. It was said that the 1st Defendant is a dual citizen of Kenya and Germany.
4. The application said in part is that for 3 years parties have been pursuing interlocutory orders until now. The matter could have been concluded but for some reason the 1st defendant does not seem keen to conclude this matter.
5. The order for security has not been actuated. The order is lawful and in situ.
6. I do not wish to go into its merit or otherwise. There must be a way of proceeding for hearing while at the same time securing the interests of the plaintiff, should he succeed. I have seen order 22 Rule 29 which provides as doth: -
 1. Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.
 2. Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property.
 3. Where possession of any building or enclosure is to be delivered, and the person in possession being bound by the decree does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of her community to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”
7. Therefore, without destabilizing the plaintiff's order for security, there is a need to secure not only the available assets, but also moneys. I do not find it reasonable or desirable to liquidate the land before the decree of the court is issued. The most important aspect is the assets being attached. However, we do not have a valuation. There is no indication of the sufficiency or otherwise of the security and the money that is or may come into accounts disclosed or yet to be disclosed by the 1st defendant.
8. Therefore, we must be proactive in the protection of whatever that is needed to eventually secure any decree. If we continue to dance around the 1st defendant's whims, then the Plaintiff shall end up without any tangible security.
9. In the case of *Andrew Okoko v Jobnnis Waruru Ngatia & Another* (2018) eKLR, at paragraph 12 the Court stated as doth:-

“Therefore, this Court must guard against any action or inaction whose effect may remove pith of this litigation and leave only a shell as was appreciated by the court of Appeal position in *Dr. Alfred Mutua v Ethics & anti-Corruption Commission & Others* Civil Application No. Nai 31 of 2016 in which it cited the Nigerian Court of Appeal decision of *Olusi & Another v. Abannobi & Others* (Suit No. CA/B/309/2008] that:-

“It is an affront to the rule of law to Render nugatory an order of Court where real or anticipatory. Furthermore .. parties who have submitted themselves to the equitable jurisdiction of courts must act within the dictates of equity ...”
10. Cross examination yielded certain accounts but has not stated the amounts that are therein.



Plaintiff's submissions

11. The plaintiff filed lengthy submissions, 9 pages and 24 paragraphs long. He has laid the application being sought as seeking the following orders:-
 - a. That warrant of arrest do issue against the said 1st Defendant herein Ann Muthoni Staudte to commit her to prison until judgment/ decision of the suit or until orders of this court issued on 14/02/2022 requiring the said 1st Defendant to deposit in court the sum of KES 25,500,0000 to satisfy the decree that may be passed against the Defendants in this suit is satisfied. In default of any such assets revealed or discovered by examination in order 3 above.
 - b. That the OCS Ukunda police station an or any OCS to the nearest Police station where the 1st Defendant may be so located do effect the warrants of arrest so issued in Order 5 above.
 - c. That leave be and is hereby granted to serve summons and any other process in this suit upon the 3rd Defendant's Hugh Beric Brooksbanka through any internationally licensed courier service provider to the said 3rd Defendant's last known, current or registered postal address and office at Lyndale cottage Kimproton downtown Andover, Hampshire United Kingdom (U.K) SP118PQ and or his last email address at bberic@talk21.com and the said Defendants do enter appearance in this suit within a period of 15 days from the date of service of the order hereof.
12. Prayer No. 7 is not really opposable. I therefore allow it. The costs of the application is to be in the cause.
13. I have noted that from the affidavits, it is clear that land parcel No. Kwale/ Diani Beach Block 1741 is available as security to satisfy any eventual decree.
14. The said property does not need to be sold. The same remains as security until judgment is entered.
15. There is thus no need to arrest the 1st Defendant. However, the 1st defendant has been evasive and has disclosed certain accounts. These accounts were disclosed both in the affidavit and in court.
16. The matter being delayed, the eventual decree may be higher than initially envisaged in 2021. Therefore, it is necessary that all accounts known and that will be known be attached as and when the plaintiff discovers them until the 1st Defendant has been able to show that the attached funds are over and above the Claim.
17. The rider to this prayer is that the applicant must apply for extension of summons before the same is served. It is advisable in future that the application for substituted services be a standalone application so that it is dealt with exparte.
18. Combining such an application with contentious matters underlying clogs the progress in the matter. I shall therefore be issuing directions immediately after the ruling to enable the matter progress.
19. The application dated 30/3/2022 is therefore allowed partly with costs in the cause. The successful party in the suit shall have the costs at that point except the costs related to the 3rd Defendant which shall be an issue between the plaintiff and the 3rd defendant in the cause.

Determination

20. The upshot of this matter is that I find merit in the application dated 30/3/2022 and allow it to the following items: -



- a. Land Parcel No. Kwale/Diani Beach Block 1741 in the name of Ann Muthoni Studdte be attached by registration of an order attaching the same pursuant to Order 22 Rule 7G. The same shall remain as security for due performance of any decree that may be passed.
- b. The said property Kwale/Diani Beach Block 1741 shall not be sold until the court grants its leave and only after the full judgment of the court is delivered and in case it is in favour of the plaintiff.
- c. The following bank accounts be attached and the banks where the accounts are situated are directed to allow only deposits with the account but no withdrawal whatsoever, except to the extent required by law to maintain the accounts. The account number are: -
- d. The matter to proceed for hearing on a priority basis.
- e. Costs in the cause.
- f. Prayer for warrant of arrest is dismissed.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 5TH DAY OF JULY, 2023. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:

No appearance for parties

Court Assistant - Brian

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