



Kigutha Farmers (K) Limited v Mburia t/a Kabaki & Company Advocates (Commercial Case E019 of 2024) [2024] KEHC 14512 (KLR) (15 November 2024) (Directions)

Neutral citation: [2024] KEHC 14512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
COMMERCIAL CASE E019 OF 2024
DO CHEPKWONY, J
NOVEMBER 15, 2024**

BETWEEN

KIGUTHA FARMERS (K) LIMITED PLAINTIFF

AND

**NANCY KABAKI MBURIA T/A KABAKI & COMPANY
ADVOCATES DEFENDANT**

DIRECTIONS

1. On 9th October 2024, this court directed parties to canvass the Originating summons application dated 1st October 2024 by way of written submissions and the matter was set for mention on 14th November, 2024 for them to confirm compliance and take further directions on the disposal of the application.
2. When the matter came up before court on 14th November, 2024, it was noted that only the Applicant had complied by filing their submissions.
3. However, during the proceedings, Senior Counsel, Mr. Allen Gichuhi for the Plaintiff/Applicant, while confirming their compliance pointed out that they had not been served with a response but had sighted one on the CTS. He then requested that due to the urgency in the matter the Respondents be directed to deliver the original title deeds to the Plaintiff, and file a bill of costs within seven (7) days and the Plaintiff to deposit a sum of Kshs.10,000,000.00 into an escrow account in joint names of counsel for the parties as security for the legal fees currently in dispute. He argued that this proposal would safeguard both parties' interests while ensuring that the Plaintiff could secure possession of the title deeds or development of huge project has been held up, pending the resolution of the fee dispute.
4. The request by the Applicant was strongly opposed by Mr. Elijah Mwangi, Counsel for the Respondent, who confirmed they had served their response upon the Applicant's counsel and stated that the matter had been pre-discussed with Mr. Wamae in July, 2024 and they had even sent out an offer to them. He pointed out that from the Applicant's pleadings, there is no contention regarding



the Respondent's provision of legal services to them and an agreement on the fees payable so that there was no need to place Kshs.10,000,000.00 in an escrow account. Citing Sections 45 and 46 of the Advocates Remuneration Order, Mr. Njeru contended that the fee arrangement already reached should suffice and requested that the court directs the Plaintiff to remit the Kshs.10,000,000.00 directly to the Respondent to settle the matter. He further noted that the total legal fees owed by the Plaintiff exceeded Kshs.13,000,000.00, but the Respondent was willing to compromise and settle the matter at Kshs.10,000,000.00. He explained that the delay had been caused by the engagement they have had with their other parties since July, 2024 and that they are not holding the title documents as strangers but as lien for fees. He also explained that the delay was further caused by the hospitalization of his colleague, M/S Nancy Kabale, who has been ill. It is Mr. Mwangi's contention that if the Applicant's counsel are reluctant to settle the matter as per their proposal, then the court should allow them to file and serve their submissions in response to the Applicants submissions which they even confirmed receipt.

5. After carefully listening to both counsel for the parties herein it is evident that the central issue in this case is the determination of the legal fees payable to the Respondent, which remains unresolved and forms the basis of the dispute in the Originating Summons. It is clear that the parties have not yet reached an agreement on the precise amount of legal fees owed to the Respondent. As indicated, the lack of consensus on this issue forms the primary dispute in the Originating Summons, which is still pending determination by the court.
6. The court notes that the Respondent has already filed a replying affidavit in response to the Originating Summons wherein it has outlined their position on the matter. To prevent piecemeal determination of the issues before the court, it is prudent to allow the Respondent additional time to file their submissions, so as to ensure that all relevant issues between the parties can be addressed comprehensively in a single ruling.
7. In support of this approach, the court is guided by principles that discourage interlocutory decisions which are likely to fragment proceedings or cause undue delay. As established in the case of Galaxy Paints Co. Ltd. –vs- Falcon Guards Ltd. [2000] eKLR, courts are encouraged to resolve disputes with finality where feasible, preventing the risk of repetitive applications or rulings on the same issues.
8. Further, the court has observed that, had the parties reached an agreement regarding the deposit of Kshs.10,000,000.00 in a joint escrow account or the direct payment of the same to the Respondent, the matter could potentially have been settled at this stage. Unfortunately, in the absence of such consensus, the court finds it necessary to issue further directions to facilitate the resolution of the dispute between the parties. It will be appreciated that a court's mandate to ensure efficient and fair administration of justice requires that both parties' submissions be on record before a ruling can be delivered on all the issues raised.
9. In light of the above considerations, this court issues the following directions to ensure proper handling of this matter: -
 - a. The Respondent be and is hereby granted seven(7) days leave to file and serve their submissions in response.
 - b. The Applicant be at liberty to file and serve supplementary submissions within three (3) days of being served with Respondent's submissions.
 - c. Mention on 2nd December, 2024 for parties to confirm compliance and take a ruling date.

It is so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 15TH DAY OF ...
NOVEMBER ..., 2024.**

D. O. CHEPKWONY

JUDGE

