



**Kagwimi Kang'ethe & Company Advocates v Wachira (Miscellaneous Application 121 of 2017) [2024] KEHC 14020 (KLR) (Commercial and Tax) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14020 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION 121 OF 2017**

**FG MUGAMBI, J**

**NOVEMBER 8, 2024**

**BETWEEN**

**KAGWIMI KANG'ETHE & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**MARGARET WANGECI WACHIRA ..... RESPONDENT**

**RULING**

**Background and Introduction**

1. This ruling determines the application dated 17<sup>th</sup> May 2022. The application seeks orders directing that the property known as Land Reference Number Nairobi/Block 104/4113 situated in Nairobi (the subject property) be sold by public auction and the proceeds be utilized to settle outstanding taxed costs amounting to Kshs. 538,165.30/= together with accrued interest in terms of the Decree issued on 8<sup>th</sup> May 2019.
2. The dispute arises from an advocate client relationship between the parties. Pending the taxation proceedings, this Court, (Tuiyott J) granted prohibitory orders against the disposal of the subject property, which is registered in the respondent's name. The application is therefore premised on the fact that the taxation proceedings are now completed and that the respondent is yet to pay the decretal amount. The applicant contends that they are not aware of any other property that would satisfy the decree and as such pray that the application be allowed.
3. The application is opposed by the respondent through a replying affidavit sworn on 13<sup>th</sup> December 2023. The respondent avers that the taxation proceedings proceeded undefended without her knowledge, despite the fact that she had instructed counsel to appear for her. She further avers that the amount of Kshs. 538,165.30/= that is claimed has been settled in full and that in any case, the amounts paid to the applicant to date are over and above the amount claimed.



## Analysis and Determination

4. I have carefully considered the pleadings, submissions, evidence and authorities cited by the parties in support of their respective positions. The power to grant the orders sought by the applicant are provided for under Sections 38(b) and 44(1) of the *Civil Procedure Act*. The applicant further relies on the provisions of Order 22 Rules 48(1) and 57(1) as well as Section 52 of the *Advocates Act*.
5. From the evidence placed before me, it is clear that there is a Decree issued on 9<sup>th</sup> May 2019, in favor of the applicant herein. The same is to be found at page 25 of the annexures in the supporting affidavit of George Kangethe, sworn on 18<sup>th</sup> July 2022. The Decree arises from the Certificate of Taxation dated 15<sup>th</sup> November 2018, for Kshs. 538,165.30, which is found at page 24 of the same bundle. The respondent has not provided this Court with any evidence to prove that the decree has been set aside, reviewed or appealed against.
6. The applicant has also placed before the Court, a certificate of lease appearing at page 7 of the bundle of annexures, which confirms the ownership of the suit property by the respondent. The orders issued on 22<sup>nd</sup> September 2017 by this Court are equally annexed at page 22 of the said documents.
7. I have equally perused the evidence presented by the respondent claiming that she had already paid the outstanding amounts in full. The bundle of documents was filed on 14/12/2023. I note that the said bundle of documents contains receipts and other documents dated as far back as 2007 as well as 2012 and running through to August 2017. These were certainly issued before the taxation proceedings and before the Certificate of Taxation was even issued. I have looked at the said evidence also against the demands for payment annexed to the application, which were made much later.
8. The evidence on record leads me to one conclusion; that the evidence presented by the respondent is evidence of payments made before the taxation proceedings and before the Certificate of Taxation, as submitted by the applicant. I concur with the applicant that this being execution proceedings, the evidence presented before the Court at this time is irrelevant and ought to have been presented at the taxation proceedings for consideration.
9. In the circumstances, I am convinced that the applicant has made a case for granting of the orders as prayed. I am equally convinced that no reason stands in the way of denying the applicant the right to execute the Decree issued by Court. The issue raised by the respondent regarding the value of the property is one that can be resolved prior to the auction.

## Disposition

10. Accordingly, the application dated 17<sup>th</sup> May 2022 is allowed and the following orders do hereby issue:
  - i. That the subject property, that is Land Reference Number Nairobi/Block 104/4113 situated in Nairobi registered in the name of Margaret Wangeci Wachira shall be sold by public auction, at the current market value, to satisfy the decree and cater for any expenses and costs arising from the auction;
  - ii. The sale shall be conducted in compliance with the provisions of Order 22 Rule 57 of the *Civil Procedure Rules*, 2010 and any other relevant law;
  - iii. That in order to allow for this process, the respondent shall provide access to the property and vacate the same within 45 days of this Ruling;
  - iv. Parties shall attend before the Hon. Deputy Registrar for further settlement of terms if need be; and



v. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 8<sup>TH</sup> DAY OF NOVEMBER 2024.**

**F. MUGAMBI**

**JUDGE**

