



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & TAX DIVISION
MISC. APPLICATION NO. E 453 OF 2019
IN THE MATTER OF THE ARBITRATION ACT 1995 & THE ARBITRATION RULES 1997

AND

IN THE MATTER OF ENFORCEMENT OF AN ARBITRATION AWARD

BETWEEN

CM CONSTRUCTION (EA)

LIMITED.....APPLICANT/DECREE HOLDER

Versus

NINE SISTERS LIMITED.....RESPONDENT/JUDGMENT DEBTOR

RULING

1. Before me is a Motion on Notice dated 24/11/2020 brought under *sections 1A, 1B, 3 and 3A of Civil Procedure Act, Order 22 Rule 48 and Order 51 Rule of the Civil Procedure Rules*.

2. The applicant seeks a Warrant of Attachment by way of a Prohibitory Order prohibiting the respondent/judgment debtor from transferring or interfering in any manner with the following properties (hereinafter referred to as 'the suit properties'), *to wit, Title Number Miti Mingi/Mbaruk Block 8/1424, 1496-1499, 1500-1507, 1523, 1525, 1546, 1557-1561, 1565, 1575, 1579, 1583, 1584, 1589-1592, 1600-1602 and 1614 (Kianjoya 'D')*.

3. The application was predicated upon the averments contained in the supporting affidavit of **Manji Ravji** sworn on even date. It was contended that by a consent dated 21/10/2020, the decretal sum of Ksh.130,000,000/- together with the auctioneer's fees was to be recovered by way of attachment and sale of the suit properties. That the applicant had since instructed the auctioneers to attach and sell by public auction or private treaty the said 35 properties. That it was necessary for the orders sought to be granted to effect the consent order aforesaid.

4. The respondent opposed the application vide a Notice of Grounds of Opposition dated 15/12/2020. It was contended that the procedure applicable in attaching immoveable properties is provided for under *Order 22 Rule 6 of the Civil Procedure Rules* and not by way of the present application.

5. The parties have filed their respective submissions which the Court has considered.

6. *Order 22 of the Civil Procedure Rules* provides for execution of decrees and orders. *Rule 6* thereof provides: -

“Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A”

7. *Rules 7, 9 and 10 of Order 22* provide how the application for execution is to be made and the particulars to be included as well as the mode of execution required.

8. *Order 22, Rule 48* states:-

“Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property”.

9. The above provisions set out the procedure and format to be followed by a decree holder in execution of a decree. The present application is not in accordance thereof. Indeed, the application is supposed to be dealt with by the Deputy Registrar in his/her administrative quasi-judicial function.

10. The import of **Order 22, rule 48 and 68** is that the court may make an order of attachment and sale of immovable assets in execution of a decree and such attachment will be complete and effective upon the registration of a prohibitory order halting any dealing with the judgment debtor’s property. All that is required is the filling of **Form 14 in Appendix A of the Civil Procedure Rules** and lodging the same in the registry. The Deputy Registrar grants the orders if satisfied that the same is in order.

11. Be that as it may, this Court finds that it has jurisdiction to entertain the application. That failure to apply as provided for under **Form 14 in Appendix A of the Civil Procedure Rules** is not fatal.

12. The Court finds that no prejudice has been occasioned by the failure to adhere to the procedure set out in **Order 22 Rule 6**. Only that the application has wasted this Court’s precious time. All that is sought is the attachment of the suit properties and thereafter the process of sale can commence before the Deputy Registrar where Settlement of Terms of sale in the normal manner will be undertaken. If the order is not granted, the suit properties may be sold or encumbered thereby prejudicing the applicant irreparably.

13. In ***ECO Bank Kenya Limited V Harvey Engineering Limited & 2 Others (2018) Eklr***, the court attached the property owned by the judgment debtor in order to have it sold in a public auction in satisfaction of a decree.

14. In view of the foregoing, I allow the application as prayed. The applicant will take steps in accordance with the law on the Settlement of Terms of sale before the Deputy Registrar accordingly.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MAY, 2021.

A. MABEYA, FCI Arb

JUDGE