



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & TAX DIVISION**

**HCCC CASE NO.398 OF 2018**

AHMED NOORAN.....1<sup>ST</sup> PLAINTIFF/APPLICANT

SCHON AHMED NOORANI.....2<sup>ND</sup> PLAINTIFF/APPLICANT

**-VERSUS-**

RAJENDRA RATILAL SANGHANI.....DEFENDANT/JUDGEMENT-DEBTOR

**RULING**

1. This ruling is in respect to the application dated 26<sup>th</sup> November 2020 wherein the applicants seek the following orders:

1. *Spent.*

2. *Spent*

3. ***THAT*** the Honourable Court do issue an ***ORDER*** for attachment and sale of all the shares held by ***RAJENDRA RATILAL SANGHANI*** in the companies below as set out in the realization of the decretal sum of Kshs. 195,000,000 together with the accruing interest, to wit;

(a) *Real Management services 2002 Limited;*

(b) *Real Court Limited;*

(c) *Fiona Investments Limited;*

(d) *Croydon investments Limited;*

(e) *Twiga Properties Limited;*

(f) *Gut Ventures Limited;*

(g) *Shivali Holdings Limited;*

(h) *Jyotin Investments Limited;*

(i) *Granada Trading Company Limited.*

4. ***THAT*** the Honourable Court be pleased to issue an ***ORDER*** directing the directors and/or agents of Real Management Services 2002 Limited, Real Court Limited, Fiona Investments Limited, Croydon Investments Limited, Twiga Properties Limited, Gut Ventures Limited, Shivali Holdings Limited, Jyotin Investments Limited and Granada Trading Company Limited do furnish the court with financial documents and list of assets of the Companies and an account of monies and/ or dividends or any form of payments due to ***RAJENDRA RATILAL SANGHANI***.

5. ***THAT*** the costs of the application be borne by the Judgement-debtor.

2. The application is supported by the 1<sup>st</sup> applicant's affidavit and is premised on the grounds that:

**1. The Honourable court passed a decree against the Judgement Debtor on 19<sup>th</sup> November 2019 and the same remains due and collectible.**

**2. The Judgement-Debtor has adamantly neglected and/or ignored settling of the decree which has at the date hereof accumulated to Kshs. 195,000,000/=.**

**3. The Decree-holders have attempted to execute in recovery of the decretal sum but the Judgement-debtor, through use of craftiness, has thwarted all efforts.**

**4. The Applicants have credible information through the Registrar of Companies, that the Judgement-Debtor holds substantial shares in the following companies; Real Management Services 2002 Limited, Real Court Limited, Fiona Investments Limited, Croydon Investments Limited, Twiga Properties Limited, Gut Ventures Limited, Shivali Holdings Limited, Jyotin Investments Limited and Granada Trading Company Limited.**

**5. It will be in the interest of Justice that the application be allowed.**

**6. The Honourable court has the requisite Jurisdiction and powers under Order 22 Rule 40 (i)(a) of the Civil Procedure Rules and Sections 38 and 40 of the Civil Procedure Act to grant the reliefs as prayed herein.**

3. The respondent opposed the application through his Replying Affidavit sworn on 5<sup>th</sup> January 2021 wherein he avers that application is fatally defective, bad in law, an abuse of the court process, misconceived and as such ought to be struck out and/or dismissed with costs. He further avers that 2<sup>nd</sup> Applicant is a very erratic, disrespectful, abusive, vindictive, rude, archaic and condescending sore loser, who has filed numerous complaints before the Judicial Service Commission against almost every single judicial officer who has so far handled this matter before the lower court who he has accused corruption. He states that it will therefore not surprise him if the 2<sup>nd</sup> applicant files yet another complaint against this court before the Judicial Service Commission.

4. He further states that the 2<sup>nd</sup> Applicant engaged in acts of defamation, character assassination and incitement of public spite against him thus prompting him to seek legal redress before the Lower Court whereupon Hon. P. Muholi issued orders to restrain the 2<sup>nd</sup> Applicant from any further defamatory publications and that not sooner were the said orders issued that the 2<sup>nd</sup> Applicant filed yet another complaint against the said Hon. P. Muholi before the Judicial Service Commission alleging that the said orders are bogus, useless and contemptuous.

5. It is the respondent's case that the 2<sup>nd</sup> Applicant has been intimidating the judicial officers in order to obtain favourable order through the filing of frivolous and scandalous complaints before the Judicial Service Commission, and withdrawing some of the complaints if the said judicial officers rule in his favour.

6. The respondent contends that the present application is an abuse of the court process as the Applicants are engaged in different execution processes (modes) at the same time and are seeking orders against parties (private companies) that are not parties to these proceedings.

7. The respondent also filed a notice of Preliminary Objection to the application in which he listed the following grounds: -

**i) THAT the application is incompetent for seeking orders against parties (private companies) that are not part of these proceedings,**

**ii) THAT the application is an abuse of the court process since the Decree Holders are contemporaneously engaged in multiple execution processes at the same time,**

**iii) THAT the application is defective for seeking orders against private companies that are not part of these proceedings, which if allowed would violate their fundamental constitutional rights against self-incrimination without even being heard.**

**iv) THAT the share capital of the defendant within the listed subject private companies is known, therefore the application is unnecessarily scandalous and vexatious,**

**v) THAT attachment and sale of shares in a private company offends section 9(l)(a) (iv) of the Companies Act, 2015**

8. When the application came up for directions on 26<sup>th</sup> November 2020, applicant was directed to serve it on the respondent and all the interested parties. It is however not clear if the affected parties, namely; the companies, against whom the orders sought in the application are directed, were served with the application.

9. Parties canvassed the application by way of written submissions which I have considered. The main issues for determination are; whether the preliminary objection is merited and, if not, whether the applicants have made out a case for the granting of the orders sought in the application.

**Preliminary Objection.**

10. What constitutes a Preliminary Objection was discussed in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*, where it was held that: -

*“a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”*

11. In the present case, the respondent faults the applicants for filing an application that affects companies that are not parties to the case and for engaging in multiple/parallel execution proceedings. On their part, the applicants argued that the grounds listed in the preliminary objection do not meet the threshold of the ingredients of Preliminary Objection as were set out in *Mukisa Biscuits* case (supra).

12. My finding, as regards the alleged existence of parallel execution proceedings is that the same is a factual matter and not a pure point of law as it will require that this court be furnished with evidence to establish the existence of such proceedings. As regards the issue of the companies who may be affected by the orders not being made parties to the application, I note that this court had from the very outset directed the applicants to serve the application on all the affected parties and I therefore find that issue of the said companies being excluded from the proceedings does not arise.

13. As I have already noted in this ruling, it is not clear if the applicants served the mentioned companies with the application even though they submitted that the said companies were duly served. A perusal of the court file shows that through the application dated 4<sup>th</sup> December 2020, the applicants sought the leave of this court to serve the said companies by way of substituted service. The application said was however dismissed by the Deputy Registrar in a ruling delivered on 3<sup>rd</sup> March 2021. It therefore behooved the applicants to tender proof of service of the application on the said companies before listing the matter for hearing and ruling. I have perused the court file and I did not come across any such proof of service on the cited companies.

14. It is a cardinal legal principle that no person should be condemned unheard. This principle is captured under Article 50 of the Constitution on the right to fair hearing. In the instant case, I have already found that the applicants did not demonstrate that they effected service of the application on the affected companies. I note that the orders sought are substantive in nature and as they require the Directors of the companies to furnish the court with financial documents and list of assets of the Companies and an account of monies and/ or dividends or any form of payments due to **Rajendra Ratilal Sanghani**.

15. Consequently, I find that the preliminary objection is merited on the issue of seeking orders against companies who are not parties to the case. I therefore strike out the application with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF JULY 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17TH APRIL 2020.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

**Mr. Maingi for Khaminwa Senior Counsel for the Applicant.**

**Mr. Makokha for Respondent.**

Court Assistant: Sylvia