



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 78 OF 2017

KIHARA WAWERU CONSTRUCTION CO. LTD.....PLAINTIFF

VERSUS

BENJAMIN LEMASEI TUMPES.....DEFENDANT

RULING

What is before me for determination is the Plaintiff's Notice of Motion Application dated the 2nd May, 2019 brought pursuant to sections 1A, 1B and 3A of the Civil Procedure Act as well as Order 22 Rule 48 & Order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks for the following Orders:

1. Spent.
2. That the Respondent/ judgement debtor be prohibited from transferring or charging the property Land Reference Number Kekonyokie/ Il kisumet/ 535 (belonging to the judgement debtor) in any way, and all persons be prohibited from taking any benefit from such purported transfer or charge.
3. That the costs of this Application be in the cause.

The application is premised on the summarized grounds that a Decree was issued against the Defendant on 11th June, 2012 for a refund of Kshs. 2, 250, 000 together with costs of the suit. The Defendant has failed and/ or neglected to pay the decretal sum with the total amount outstanding being Kshs. 2, 717, 260.

The Application is supported by the affidavit of KIHARA WAWERU a Director to the Plaintiff where he deposes that it filed a suit on 28th October, 2011 against the Defendant and obtained judgment. Further, that a Decree was issued on 11th June, 2012 for Kshs. 2, 550,000 to be refunded to the Plaintiff by the Defendant. He explains that he has engaged the Defendant through its' advocates on record to settle the decretal amount but he has declined to do so. He claims on 9th September, 2013, the Defendant signed an agreement with the Plaintiff's Advocates on records on the mode of settling the decretal sum but he failed to honour the same. He contends that the delay in settling the decretal amount is occasioning the Plaintiff great prejudice. He confirms that they undertook a search and established that the Judgment debtor is the owner of land reference number Kekonyokie/ Ilkisumet/ 535 and seeks an order of prohibition against the Respondent against transferring or selling the said land before they can proceed with attachment.

The Defendant never filed any response to oppose the application.

The Plaintiff filed written submissions to canvass the instant application.

Analysis and Determination

Upon consideration of the Notice of Motion application dated the 2nd May, 2019 including the supporting affidavit and submissions, the only issue for determination is whether a prohibition order should issue barring the Respondent from transferring or selling Land Reference Number Kekonyokie/ Il kisumet/ 535 pending the attachment by the Plaintiff to realize the decretal sum herein.

The Plaintiff in its submissions reiterated its claim above and relied on the case of **ECO Bank Kenya Limited V Harvey Engineering Limited & 2 Others (2018) eKLR** to support its argument.

Order 22 rule 48 of the Civil Procedure Rules provides that:

'(1) 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.

(2) A copy of the order shall be affixed on a conspicuous part of the property.'

Further, Order 22 Rule 68 of the Civil Procedure Rules stipulates that: '*Sale of immovable property in execution of decrees may be ordered by any court.*'

In the current scenario, the Plaintiff had filed a suit against the Defendant on 28th October, 2011 and obtained judgment in default of appearance. Further, a Decree was issued on 11th June, 2012 for Kshs. 2, 550,000 in favour of the Plaintiff as against the Defendant. Despite engaging the Defendant through its lawyers, he failed to settle the Decretal amount. Further, on 9th September, 2013, the Defendant even signed an agreement with the Plaintiff's Advocates on record proposing a mode of settling the decretal sum but he still failed to honour his promise.

In relying on the legal provisions cited above and associating myself with the case of **ECO Bank Kenya Limited V Harvey Engineering Limited & 2 Others (2018) eKLR** where the Court issued an order prohibiting the 3rd Judgement Debtor including his servants or agents from transferring property that belonged to the said judgment debtor in pursuit of the decretal sum; I will proceed to direct that a prohibition order be registered against land reference Number Kekonyokie/ Il kisumet/ 535 belonging to the Defendant pending attachment to settle the decretal amount.

It is against the foregoing that I find the application dated the 2nd May, 2019 merited and will allow it. I will proceed to make the following final orders:

- a. A prohibition order be and is hereby issued in respect to land reference number Kekonyokie/ Il kisumet/ 535.
- b. The Defendant/ judgement debtor be and is hereby prohibited from transferring or charging Land Reference Number Kekonyokie/ Il kisumet/ 535 in any way, and all persons are prohibited from taking any benefit from such purported transfer or charge pending the attachment of the said parcel of land to settle the decretal amount herein.
- c. Costs will be in the cause.

Dated signed and delivered via email this 14th day of May 2020

CHRISTINE OCHIENG

JUDGE