



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**

**MOMBASA ELC NO. 180 OF 2019**

**JAGJIT SINGH PANDHAAL ..... PLAINTIFF**

**VERSUS**

**HUSSEIN MOHAMED GULAMHUSSEIN VERJEE..... DEFENDANT**

**RULING**

*(Application by plaintiff seeking orders for attachment before judgment of the defendant's properties and judgment on admission; counter application by the defendant seeking security for costs; plaintiff claiming that the defendant is disposing of his properties; that alone not enough to order an attachment before judgment; no admission in the pleadings for judgment on admission to be entered; defendant basing his application on the fact that the plaintiff lives in Spain; the mere fact that a person lives in a foreign country by itself does not invite an order for security for costs; applications dismissed)*

1. There are two applications for determination. That dated 30 September 2019 filed by the plaintiff, and that dated 31 October 2019 filed by the defendant. This is a consolidated ruling in respect of both applications.
2. By way of background, the plaintiff filed this suit on 11 October 2019. In his plead, he pleaded that he is the owner of the land parcels Subdivision No. 13569 Section 1 Mainland North, Mombasa (Original No. 9621/6) CR No. 40686 and Subdivision No. 13570 Section 1 Mainland North, Mombasa (Original No. 9621/7) CR No. 40687 (the suit properties). He pleaded that through a special power of attorney registered on 15 January 2013, he appointed the defendant to be his attorney and agent, to inter alia sell and execute agreement and transfer on his behalf, in respect of his share in the suit properties. It is pleaded that the defendant executed two sale agreements, dated 29 January 2014 and 19 December 2014, and sold the Plot No. 13569 to one Daniel Kamau Wanyoike for KShs. 10 million, and Plot No. 13570 to John Maingi Wambugu at KShs. 9.5 million and he received the purchase price. It is pleaded that despite receiving the purchase price the defendant has failed to remit the same to the plaintiff. In the suit, the plaintiff has sought orders for judgment in the sum of KShs. 19,500,000/= and interest.
3. Together with the plead, the plaintiff filed the application dated 30 September 2019. In that application, he seeks orders for the attachment of some identified properties which he claims to belong to the defendant, being 5 specified motor-vehicles, or in the alternative, deposit of security of KShs. 10 million. He also wants judgment on admission to be entered against the defendant. In the supporting affidavit to the application, the plaintiff has deposed that he resides in Malaga, Spain. He has reiterated that he donated a power of attorney to the defendant, who sold the suit properties and received the purchase price. He has annexed records in an attempt to show that the defendant is owner of the 5 specified motor-vehicles. He has also deposed that the defendant has admitted the claim.
4. The defendant has filed a defence denying the claims of the plaintiff. In his reply to the application by the plaintiff, the defendant has deposed that it is correct that a power of attorney was donated to him. He has deposed that the plaintiff admitted receiving KShs. 32 million through a Whatsapp message which he annexed a print of. He also remitted other monies being 6,450 Sterling Pounds and 1170 Euros. He claims to have later advanced KShs. 14,943,792.90/= to the plaintiff in Spain. He believes that he has settled his indebtedness to the plaintiff in full. He has deposed that the plaintiff filed a criminal complaint which was later withdrawn by the prosecution for lack of evidence. In his application dated 31 October 2019, the defendant seeks that the plaintiff do furnish security for costs in the sum of KShs. 20 million. In his supporting affidavit, he has deposed that the plaintiff is a British citizen and resides in Spain. To oppose this motion, the plaintiff filed Grounds of Opposition. It basically states that the application is untenable and an abuse of the process of court.
5. Counsel agreed to argue both applications together and filed written submissions. I have considered the submissions filed.
6. I must at the outset state that I am unable to allow both applications. On the plaintiff's application, which is basically for attachment before judgment, I can see that the five motor-vehicles listed, claimed to belong to the defendant, actually do not belong to the defendant but to other persons. I cannot order attachment of properties not belonging to the defendant. That aside, I would still not have allowed any attachment of any property of the defendant. First, the suit herein is yet to be determined. We cannot at this stage say whether the plaintiff will succeed or fail. Secondly, it has not been demonstrated to me that the whereabouts of the defendant are unknown. The defendant resides in Kenya. If the plaintiff will be successful in obtaining judgment, he will find ways of executing the same.
7. On the application by the defendant, that for security of costs in the sum of KShs. 20 million, first, if it is security for costs that the defendant wants, costs for a claim of KShs. 19,500,000/= cannot be KShs. 20 million. Further, merely because the plaintiff is a British citizen and resident in Spain, cannot by itself be reason enough to demand security for costs. I can see from the documents on record that the plaintiff and defendant appear to have had some business dealings which appear to have gone sour. They know each other very well. Each party knows the whereabouts and abode of the other. If any of them obtains judgment he can execute against the other, and that includes costs.
8. To me, the two applications have no merit whatsoever. Let the parties prepare their case for trial and have the matter heard. The two

applications are hereby dismissed. Each party will bear his own costs.

9. Orders accordingly.

**DATED AND DELIVERED THIS 22 DAY OF JULY 2020**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**