



**Ireri v New Kenya Cooperative Creameries Ltd (Cause  
113 of 2017) [2024] KEELRC 1111 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1111 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 113 OF 2017  
MA ONYANGO, J  
MAY 8, 2024**

**BETWEEN**

**JOSEPHINE GICUKU IRERI ..... CLAIMANT**

**AND**

**NEW KENYA COOPERATIVE CREAMERIES LTD ..... RESPONDENT**

**RULING**

1. The Respondent in this suit filed the instant application dated 24<sup>th</sup> August 2023 seeking for orders that:
  - i. The Honorable court be pleased to issue an order attaching the decree herein in satisfaction of the judgment/decree made on 2 /2/ 2021 in favour of the Respondent in Eldoret CMCC No. 767 of 2013, Josephine Gicuki Ireri v A.G and New Kenya Cooperative Creameries to the tune /extent of Kshs 203, 847.
  - ii. That the costs of this application be borne by the Claimant.
2. The application was made under section 38 of the *Civil Procedure Act*, Order 22 rule 14, order 22 rule 47(1), Order 49 rule 7(b) of the *Civil Procedure Rules* and all other enabling provisions in law. It is supported by the affidavit of Denis Onyimbo Onyinkwa, counsel on record for the Respondent.
3. In that affidavit, it is deposed that the Claimant herein had filed a Civil suit in the subordinate court, Eldoret CMCC No. 767 of 2016 Josephine Gicuku Ireri v The AG and the Respondent herein claiming for damages for malicious prosecution and unlawful confinement among other reliefs; that the said suit was heard and determined and the subordinate court in its judgment delivered on 2<sup>nd</sup> February 2021 dismissed the Claimant's suit with costs; that no appeal was preferred against the said judgment and consequently, costs were assessed against the claimant in the sum of Kshs 203,847 in favour of the Respondent herein; that the Claimant has refused, failed and ignored to settle the said costs; that the Respondent has made several attempts to execute to recover the costs awarded in vain



as the Claimant's whereabouts are unknown and that in fact, there is a warrant of arrest against the Claimant which has become impossible to execute.

4. It is deposed by the Respondent, that there is a decree in favour of the Claimant and against it for a sum of Kshs 522,457 plus costs in this suit while the Respondent has a decree in its favour (in Eldoret CMCC No. 767 of 2016) against the Claimant which remains unsettled to date.
5. The Respondent has therefore sought to have the decree herein attached in settlement of the decree/ amount owing to the Claimant to the Respondent to a tune of Kshs 203, 847.
6. In opposition to the application, the Claimant filed grounds of opposition dated 10<sup>th</sup> November 2023 stating that the application is defective, devoid of merit and an abuse of the court process as the prayers sought aren't available. She further contended that the application is misconceived as the prayers sought by the Respondent are not tenable. It is the Claimant's contention that under order 22 rule 14(1) (a) and (b), such an order can either be made where the decrees are of equal sum or if unequal, the execution may be taken out by the decree holder of the larger sum. Lastly, the Claimant avers that the Respondent has not met the threshold contemplated under order 22 rule 14(1) and thus sought for the application to be dismissed with costs.
7. The application was canvassed by way of written submissions as directed by the court on 15<sup>th</sup> November 2023. The Respondent's submissions were filed on 18<sup>th</sup> December 2023. I have perused the court file and did not find submissions for the Claimant.

### **Determination**

8. I have carefully considered the application, the response thereto as well as the written submissions on record. The only issue that falls for the court's determination is whether the decree in the suit herein can be attached in settlement of the decree owed by the Claimant to the Respondent in Eldoret CMCC No. 767 of 2016.
9. It is not disputed that the Claimant owes the Respondent Kshs 208,847 being costs assessed in Eldoret CMCC no. 767 of 2016 in favour of the Respondent.
10. The [Civil Procedure Rules](#) provides for execution in case of cross-decrees under Order 22, rule 14 as follows:
  1. Where applications are made to a court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then—
    - (a) if the two sums are equal, satisfaction shall be entered upon both decrees; and
    - (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.
  - (2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.
  - (3) This rule shall not be deemed to apply, unless—
    - (a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and



- (b) the sums under the decree are definite.
- (4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.
11. In the instant case, the Claimant does not dispute owing the Respondent Kshs 203, 847 being costs as assessed in Eldoret CMCC case no.767 of 2016. From a perusal of the record, there is a certificate of assessed costs filed on 16<sup>th</sup> November 2023 with respect to the decree in the suit herein which costs are in the sum of Kshs 251,700 against the Respondent.
12. The Respondent has explained that it has not been able to execute the costs of Kshs 203,847 granted by the subordinate court in its favour as the Claimant's whereabouts are unknown. It is the Respondent's position which is not disputed by the Claimant, that a warrant of arrest was also annexed to the affidavit in support of the instant application, proof that the Claimant is in default and there are warrants of arrest in force pursuant to a notice to show cause.
13. there is no allegation that the Claimant disputes the assessment of costs by the subordinate court in favour of the Respondent.
14. It is my finding that the Applicant meets all the conditions set out in Order 22, rule 14 for attachment of decrees.
15. Consequently, I find and hold that the application dated 24<sup>th</sup> August 2023 has merit and make orders as follows:
- a. An order be and is hereby issued attaching the decree herein in satisfaction of the judgment/decree made on 2<sup>nd</sup> February, 2021 in favour of the Respondent in Eldoret CMCC No. 767 of 2013, Josephine Gicuki Ileri v A.G and New Kenya Cooperative Creameries to the tune/extent of Kshs 203, 847.
- b. Each party shall bear its costs of this application.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 8<sup>TH</sup> DAY OF MAY, 2024**

**MAUREEN ONYANGO**

**JUDGE**

