



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 691 OF 2012**

**KIPLAGAT KOTUT.....PLAINTIFF/DECREE HOLDER**

**VERSUS**

**ROSE JEBOR KIPNGOK.....DEFENDANT/JUDGMENT DEBTOR**

**STANDARD CHARTERED BANK LTD.....GANISHEE**

**RULING**

**[NOTICES OF MOTION DATED 26<sup>TH</sup> SEPTEMBER, 2019 AND 22<sup>ND</sup> SEPTEMBER, 2020]**

1. The Plaintiff in the Motion dated the 26<sup>th</sup> September, 2019 seeks for the following orders:

1. *Change of mode of execution from arrest and detention to prison to execution by attachment of debts and salary.*
2. *Attachment of Shs.695,883 and or any credit balances in the Garnishees Standard Chartered Bank Account No. 0100342888900 to be remitted to the Plaintiff's Advocates.*
3. *Attachment of  $\frac{1}{3}$  of the Defendant's monthly salary from her employer, The Central Bank of Kenya, to be remitted to the Plaintiff's Advocate till the decretal sum of Kshs.695,883 is fully satisfied and or settled.*
4. *Costs.*

The application is supported by the affidavit sworn by **Jonah K. Korir** Advocate for the Plaintiff on the 26<sup>th</sup> September, 2019.

2. The application is opposed by the Defendant through the replying affidavit sworn on 4<sup>th</sup> October, 2019.

3. The Plaintiff further filed the Notice of Motion dated the 22<sup>nd</sup> September, 2020 and amended on 6<sup>th</sup> October, 2020 seeking for an order to sell the Defendant's property, that is ***Eldoret Municipality Block 9/281*** by way of public auction or private treaty in execution of Kshs.520,000 being the costs awarded on 13<sup>th</sup> June, 2019 and further costs and accrued interests. The application is supported by the two affidavits sworn by **Jonah Kimutai Korir** on 5<sup>th</sup> October, 2020.

4. The application is opposed by the Defendant through the Replying affidavit sworn on 2<sup>nd</sup> October, 2020.

5. The learned Counsel for the Plaintiff filed submissions dated 6<sup>th</sup> October, 2020 in respect to the Motion dated the 26<sup>th</sup> September, 2019.

6. The following are the issues for the Court's determinations:

- (a) *Whether the Plaintiff has laid out a reasonable case for change of the mode of execution.*
- (b) *What mode of execution to grant.*
- (c) *Who pays the costs?*

7. The Court has carefully considered the prayers sought in the two notices of motion, the affidavit evidence, the written submissions, the record and come to the following findings;

(a) That indeed, the suit between the Plaintiff and Defendant commenced as **Eldoret High Court No. 35 of 2011** and later registered as **ELC No. 691 of 2012** was finally decided in **Eldoret Court of Appeal, Civil Appeal No. 31 of 2015** through the judgment delivered on the 7<sup>th</sup> March, 2019 in favour of the Plaintiff herein, who was the appellant therein. The Court of Appeal at paragraph 33 of the judgment summarized its orders as follows;

**“33. The final orders of this court is that the appeal has merit and is hereby allowed. The prayers sought in the Plaint dated 4<sup>th</sup> March, 2011 be and are hereby granted. For avoidance of doubt, we hereby issue an order for specific performance compelling the respondent to execute the instrument of transfer and transfer the suit property L. R. No. Plateau/Plateau Block 2 (Uasin Gishu) 63 to the appellant. In default, we hereby direct and order the Deputy Registrar to execute the instrument of transfer whereof the same shall be deemed sufficient to effect transfer of L. R. Plateau/Plateau Block 2 (Uasin Gishu) 63 in favour of the appellant. The respondent shall bear costs of this appeal and costs before Environment and Land Court. It is so ordered.”**

That the record confirms that the Deputy Registrar of the court of Appeal, Eldoret subsequently issued a Certificate of Costs as taxed at Kshs.390,425. That further the Deputy Registrar, High Court Eldoret issued a Certificate of Costs for taxed costs dated the 13<sup>th</sup> June, 2019 for Kshs.241,843.

(b) That the totals from the two Certificates of Costs being added together, that is Kshs.390,425 + Kshs.241,843 comes to Kshs.632,268. That though the Plaintiff is seeking to execute for different amounts in the two applications, the amount due will definitely be ascertained by the Deputy Registrar and the registry at the stage of preparing and issuing the appropriate documents after the ruling on the two applications is delivered.

(c) That in the notice of motion dated the 26<sup>th</sup> September 2019, the Plaintiff sought for two ways of attachment. The first was by attaching the amount of Kshs.695,883 which is reportedly the credit balances in the Defendant’s account No. 0100342888900 with Standard Chartered Bank, the Garnishee. The second is by attaching  $\frac{1}{3}$  of the Defendant’s monthly salary with her employer, the Central Bank of Kenya. That the two prayers are not phrased as an alternative of the other, and the Court take it that the Plaintiff desires to have the two orders issued at the same time if the application is found to be meritorious. That in the Motion dated the 22<sup>nd</sup> September, 2020 and amended on the 6<sup>th</sup> October 2020, the Plaintiff seeks for an order to attach and sell by public auction the Defendant’s property described as Eldoret Municipality/Block 9/281. That this is the latter of the two applications by the Plaintiff on the same subject matter of executing for the costs awarded by the Court of Appeal, and considering that it is not fair and just to allow all the three options of execution sought at the same time, the Court takes it to be the option preferred by the Plaintiff.

(d) That the Defendant has not presented any proposal to liquidate the costs to the Court for consideration. That having considered the history in this matter, and the many applications that have been filed and decided since the Court of Appeal’s decision, the Court is of the view that attaching and auctioning the listed property would raise sufficient funds to meet the costs awarded to the Plaintiff, and thereby settle this matter. That as the Plaintiff’s application has merit, he is entitled to costs.

8. That in view of the foregoing, the Court finds merit in the notice of motion dated 22<sup>nd</sup> September, 2020 and is allowed in the following terms;

*(a) That the Defendants granted thirty (30) days to deposit all the taxed costs and any other costs that may be certified by the Deputy Registrar to have accrued, with the Plaintiff’s Counsel on record and in default, execution in terms of prayer 3 of the Motion dated 22<sup>nd</sup> September, 2020 as amended on 6<sup>th</sup> October, 2020 to proceed and the sale be through public auction.*

*(b) The Notice of Motion dated 26<sup>th</sup> September, 2019 is dismissed with no order as to costs.*

*(c) The Defendant to pay the Plaintiff costs of the application dated 22<sup>nd</sup> September, 2020.*

It is so ordered.

**Delivered virtually and dated at Eldoret this 16<sup>th</sup> day of December, 2020.**

**S. M. KIBUNJA**

**JUDGE**

**In the presence of:**

Plaintiff/Decree Holder: Absent.

Defendant/Judgment Debtor: Absent.

Garnishee: Absent.

Counsel: Mr. Keter for Dr. Chebii for Defendant.

M/s Karuga for Garnishee.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.