



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

CIVIL CASE NUMBER 756 OF 1995

KENYA KARIBA FARMES CO. LTD
----- **PLAINTIFF**

VERSUS

KWIYUNIRA FARMERS CO. LTD -----
DEFENDANT

AND

ISAYA CHEGE GACHANJA
CHEGE KINYUA
ZABLON NYANGWESO
NANCY WANJIRU NGENYE
JAMES KUHORA -----
APPLICANTS
JOSEPH KURU
SALIM THAIRU JUMA
MARY NJOKI MACHARIA
SIMON MUTAHI
MARY WACHEKE KAMAU

RULING

1. The Applicants bring a Notice of Motion dated 11/11/2024 seeking the following reliefs:-

1. Spent.

2. Spent.

3. THAT upon the inter partes hearing, this court issues an order that the execution process by way of a notice to show cause against the applicants is illegal and unconstitutional.

4. THAT the court issues an order that the execution process by way of notice to show cause against the applicants herein is unprocedural and it exceeds the scope of the provisions of Order 22 rule 18 of the Civil Procedure Rules.

5. THAT the court issues orders that the execution process by way of a notice to show cause, being an action founded on a judgment is barred by the Limitation of Action Act.(sic)

6. THAT consequent to the foregoing, the notice to show cause and the entire execution process be struck out.

2. One of the Applicants (Geoffrey Njoroge Mwangi) swore an affidavit in support of the motion purportedly with a written authority of his Co-Applicants. He avers that they are challenging an application the Plaintiff herein filed for an order directing the Applicants to show cause why they should not be evicted from a parcel of land known as

L.R. 16366. According to the Applicants, execution of a decree can only be levied against parties to a suit, based on advice given by their advocates. The court is told that the judgement and/or decree sought to be enforced by eviction of the Applicants was entered against the Defendant, which is a limited liability company. The execution process by eviction of the Applicants is therefore termed as illegal for infringing their right to property and fair hearing.

3. The Applicant further aver on advice by their lawyers that pursuant to **Order 22 Rule 18 of the Civil Procedure Rules 2010** execution of a decree by way of a Notice to Show Cause does not include eviction. Besides, it is contended that the execution process is time barred by dint of the provisions of **Section 4(4) of the Limitation of Actions Act**, as per legal counsel given to the Applicants.
4. The Applicants further contend that the court's decree was to be executed against the Defendant and its members. They assert that they are members and/or

shareholders of the Plaintiff who are the Judgement Creditors and so execution against them could not issue.

5. The Plaintiff opposes the Application by means of an affidavit in reply sworn by its Chairman and Director (Kefa Kuria Mutua Ngure). He states that the Applicants are children of the shareholders of the Defendant and not shareholders or members of the Plaintiff. If the Applicants were indeed shareholders or members of the Plaintiff they would not oppose the execution process against the Defendant, according to the Plaintiff.
6. Moreover, the Plaintiff's Chairman avers that the Applicants could not be holding any titles to land they claim since there has been no sub-division of the land in dispute and the mother title remains intact. Any title documents in possession of the Applicants are therefore dismissed as forgeries.
7. Learned Counsel for the parties filed Written Submissions. Before determining the Application a brief background thereto is necessary. The Plaintiff sued the Defendant herein for various reliefs including a declaration that the former is

the lawful owner of a disputed parcel of land known as I.R. 16366/LR 9874 and a permanent injunction restraining the Defendant from interfering therewith. The Defendant was served with the suit documents but neither entered appearance nor filed defence.

8. By an *ex parte* judgement delivered on 1/10/1996, the court found in favour of the Plaintiff. *Inter alia*, the Defendant and/or its servants and/or agents were restrained from occupying the suit property, and if they were in occupation thereof, they were ordered to move out or risk eviction therefrom. The long outstanding decree remained unexecuted because of many applications that followed including the current one before the court. A notice requiring the Applicants to show cause why they should not be evicted from the contested property was pending before the Deputy Registrar of this court when this application was brought.

9. Having perused the parties' submissions, rival affidavit evidence and the record, the issue in controversy is whether execution of this court's decree can lawfully be levied against the Applicants. The parties to this suit are limited liability

companies. Whereas the Applicants contend that they are members and/or shareholders of the Plaintiff/Judgement Creditor who cannot be executed against, the Plaintiff Company retorts that the Applicants are in fact children of the shareholders of the Defendant Company against whom execution may lawfully issue.

10. There is a judgement of this court entered on 1st October 1996 and a decree flowing therefrom. The decree indicates those against whom it is to be executed. A Notice to Show Cause why the decree should not be executed against those the Plaintiff perceives to be the judgement debtors is pending before the Deputy Registrar of this court. If they have been served with the Notice to Show Cause, the Applicants ought to appear before the Deputy Registrar to respond to the Notice. It is irregular to conduct parallel judicial processes over the same dispute.
11. Consequently, the court declines to determine the application on merits. The Notice of Motion dated 11th November 2024 is accordingly struck out with no orders as to costs.

J. M. NANG'EA, JUDGE.

Ruling delivered virtually at Nakuru this 3rd day October, 2025.

In the presence of:-

Plaintiff's Advocate, Mr. Mwangi

Applicants' & Defendant's Advocate, Ms Alwala

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.