



**Njeru t/a Javisapa Enterprises v Canucks Holdings Limited;
Makoffu (Intended Interested Party) (Commercial Case 524 of 2009)
[2025] KEHC 17127 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 524 OF 2009
AA VISRAM, J
NOVEMBER 20, 2025**

BETWEEN

JACQUELINE WAMBUI NJERU T/A JAVISAPA ENTERPRISES PLAINTIFF

AND

CANUCKS HOLDINGS LIMITED DEFENDANT

AND

MARY NYATHARE MAKOFFU INTENDED INTERESTED PARTY

RULING

Introduction and Background

1. Before the Court for determination is the Application by the Intended Interested Party (“Mary”) dated 9th November, 2021, seeking inter alia to join as an Interested Party in the suit; review, set aside, or vary the Consent Order of 6th December, 2017 (“the Consent Order”) as it relates to the Flat No. 3, Block C, York Apartments (“the Flat”); set aside the sale and subsequent transfer of the Flat to AWN or any other purchaser; an order to the Registrar of Titles to finally register her lease; an injunction to prevent the current purchaser from dealing with the Flat; an award special and exemplary damages for the illegal deprivation of her property and lost rental income and; in the alternative, if the Court lacks jurisdiction, transfer the issues to the ongoing ELC Case No. 231 of 2018.
2. The Application is supported by the grounds on its face and the affidavits sworn by Mary on 9th November, 2021, and 8th July, 2022. It is opposed by the Plaintiff (Jacqueline) through her replying affidavit sworn on 10th March, 2022. The parties have also supplemented their arguments by way of



written submissions which are on record and I will be making relevant references to the same in my analysis and determination later on.

The Application

3. Mary's case is that she entered into an agreement with the Defendant (Canuck) in 2007 to purchase the Flat for Kshs. 7,900,000.00/= and she paid the full purchase price in installments between the years of 2007 and 2009, and took physical possession of the Flat in April 2009, and executed a lease on 21st July, 2009. She claims that Canuck's Advocates presented the lease for registration in October, 2009, but it was rejected by the Lands Office due to a purported Prohibition Order registered against the property's title, which Mary claims was fake and not issued by the court. On 6th December, 2017, Jacqueline and Canuck entered into a Consent which Mary states was done without her knowledge and that the Consent Order included the Flat among the properties to be sold at a public auction to settle the debt owed to Jacqueline. That as a result of this order, Mary was illegally evicted from the Flat on 11th May, 2018, by auctioneers acting for Jacqueline, and the Flat was subsequently sold to a third party, AWN.
4. Mary alleges both Jacqueline and Canuck acted in bad faith as the latter knowingly agreed to sell a property it had already sold to her, while the former fraudulently registered fake court orders on the title to prevent the registration of Mary's lease and other purchasers' interests. That the parties failed to inform the court that the Flat was not available to be sold, as it had already been sold to and was occupied by Mary and that the Consent Order and subsequent eviction deprived her of her property rights, guaranteed under Article 40 of *the Constitution*, and caused her financial loss of rental income of Kshs. 80,000.00/= per month.
5. Mary explains the delay in filing this Application by stating that her previous Advocates mistakenly filed a case in the Environment and Land Court (ELC), that is, ELC Case No. 231 of 2018, which expressed it could not set aside this Court's Consent Order. That her new Advocates, upon taking over the case in October 2021, advised her to file the present Application in the correct forum, that is this Court, that issued the original order.

Jacqueline's Reply

6. Jacqueline details the history of this case, originating from a 2007 joint venture agreement with Canuck for constructing apartments. She explains that Canuck defaulted on payments, leading to multiple suits and, eventually, an arbitral award in her favour in 2016, which was adopted as a judgment of the court. Jacqueline asserts that all steps taken were legal and proper and that the caveat she registered on the mother title in June 2009 was legitimate, based on the debt owed to her and not a court order. That the prohibitory order issued in February 2010, specifically targeted Flats 1 Block D, 2 Block D, and 3 Block C for execution, which were believed to be Canuck's only remaining unsold properties, and the Consent Order was a result of a court application and which primarily concerned lifting the prohibition on Flat 1 Block D to facilitate a private settlement, and that this did not alter the status of Mary's Flat, which remained under prohibition.
7. Jacqueline depones that the subsequent auction of the Flat in April 2018 was a lawful execution process to satisfy the decree, conducted by court-appointed auctioneers. She argues that Mary has only herself to blame as she bought the Flat in August 2009, after Jacqueline's caveat was already registered on the title in June 2009, and that a simple search would have revealed this. That despite knowing about the prohibitory order as early as October 2009, Mary failed to register a caveat to protect her own interest, unlike other third-party purchasers who did so, as shown by entries 19 and 33 on the title. Jacqueline states that Mary is rushing to court in 2021 over a transaction from 2007, and a Consent Order from 2017, a delay which defeats equity, and she further asserts that she was not privy to the



sale agreement between the Jacqueline and Canuck, and was under no obligation to protect Mary's unregistered interest.

8. Jacqueline clarifies that the Consent Order was not fraudulent as it was a limited order concerning a different flat, Flat 1 Block D and was reached to facilitate a settlement that partially satisfied the decree. She points out that the Flat was lawfully sold at auction to a third party, AWN, who paid the purchase price, and had the property transferred to her. That this purchaser is not a party to the case, and cannot be condemned unheard. Jacqueline argues that Mary's remedy, if any, is to sue Canuck for a refund, not to challenge the execution process, and asserts that blaming previous lawyers is not a valid excuse, and that she should sue the Advocates for professional negligence if she feels misadvised. She further adds, that the alternative prayer to transfer the issues to the ELC is misconceived, baseless and bad in law, as the ELC itself has already ruled that the proper forum to set aside the Consent Order is in this court.
9. For the above reasons, Jacqueline urges the court to dismiss the application in its entirety, arguing that Mary has not established a sustainable case for reviewing the Consent Order, setting aside the auction, or granting any of the injunctive orders or damages sought.

Analysis and determination

10. I have considered the Application together with the affidavit filed in support, the reply, and the submissions on record. Mary lists the following issues for the court's determination : -
 - a. Whether Mary has satisfied the conditions required to be enjoined as an interested party to enable her seek to set aside the Consent Order.
 - b. Whether the Consent Order was entered into fraudulently, through collusion of the parties and marred with illegalities and material concealment of crucial facts by the parties to warrant setting aside of the Order.
 - c. If the Consent Order is set aside, what would be the just and equitable remedy for Mary.
 - d. Whether this court after setting aside the Consent Order can transfer the issues raised in the application in case it finds that some of the issues are not within its jurisdiction to the ELC.

Joinder as an Interested Party

11. Mary submitted that she was not a party to the suit when the Consent Order was entered. She invoked Section 80 of the *Civil Procedure Act* and Order 45, rule 1 and 2 of the Civil Procedure Rules, which refer to "Any person" aggrieved by a decree or order, arguing that its application is wide enough to accommodate her application for review. She relied on the case of Presbyterian Foundation v Charles Ndungu & 3 others [2016] KEELC 315 (KLR) where the ELC held that a party not privy to a consent can still apply to have it set aside under Section 80.
12. In response, Jacqueline submitted that Mary has not demonstrated a recognizable stake in the matter. Her presence is unnecessary because the main suit is already concluded, and the property in issue was sold to third and fourth parties. The Respondent submitted that the Applicant was indolent in moving the court after a long delay because she knew of the case, and a prohibition order in the year 2009, but did nothing to protect her alleged rights.
13. The Respondent submitted that that Mary has produced an offer letter for a different flat from the subject suit, and while she claims the numbers changed, no evidence has been provided to prove this. Furthermore, that the agreements for sale and lease produced by the Applicant were made after the dispute arose and was already in court, caveats and injunctions had already been registered. She



submitted that this means that Canuck had no authority to sell the Flat to the Applicant. In short, the Applicant failed to exercise her due diligence and bought property from someone who did not have a good title.

14. Looking at both versions of events, while it is arguable that the Applicant is affected by the terms of the Consent Order because it allowed the public auction of the Flat to proceed, I do not think the Applicant has provided a sufficient reason for the delay in making the present Application. Moreover, while I empathize with her position, I am not persuaded that she exercised sufficient diligence in respect of the subject transaction.
15. Based on the record, the Applicant's evidence is that she knew, as early as the year 2009, that a prohibition order existed and was preventing her from registration of the subject property. That was the first red flag. She ought to have moved the court for joinder at that time, or at the very least, ought to have demonstrated to the Court that she took some active steps at that time to protect her interest. The delay from 2009 until 2021, twelve (12) entire years later, to file the correct application, or even the delay at 2017 when the Consent Order was issued, is in my view, inordinate and insufficiently explained. I say so bearing in mind that this Court, in *Kisorio v Land Registrar, Uasin Gishu County & another; Lagat & 4 others (Proposed Interested Parties)* [2022] KEHC 3124 (KLR) found that an application for review that has been brought two years after the court rendered its decision was unreasonably late. In the present matter, the Applicant concedes in her own supporting affidavit, at Paragraph 8, that she was aware of the existence of a prohibition order affecting her property as early as 2009. The Consent Order was recorded on 6th December, 2017, and the Flat was sold at a public auction on 16th April, 2018. The present application was filed on 9th November 2021. This means that the Applicant filed the Application approximately four (4) years after the Consent Order she seeks to challenge, approximately three and a half (3 1/2) years after the auction and her subsequent eviction; and over twelve (12) years after she first became aware of a legal impediment to her registration in 2009.
16. I find the delay as described above, inordinate and inexcusable. Moreover, over the period of time, it is evident that the various properties have since been sold and the rights of innocent purchasers for value without notice are likely to have been affected. The equitable maxim, that equity aids the vigilant, not the indolent, applies with full force in the present circumstances. The Court may not awaken with the Applicant at this late stage, to the detriment of other parties who have relied on the finality of the Court's process.
17. In conclusion, while I acknowledge that the Applicant does indeed have an identifiable stake in the subject matter, I find that the same is overwhelmingly eclipsed by the inordinate and unexplained delay in seeking redress. The law requires finality, and the equitable doctrines of laches and vigilance compel this Court to decline the orders sought.
18. Having found the above, the remaining prayers are moot and it would not be appropriate to comment on the same.

Conclusion and Disposition

19. The upshot is that the Intended Interested Party's Application dated 9th November, 2021, is dismissed with costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 20TH DAY OF NOVEMBER, 2025

ALEEM VISRAM, FCI Arb

JUDGE



In the presence of;

Court Assistant: Lispa

..... for Plaintiff

..... for Defendant

..... for Intended Interested Party

