



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC SUIT NO. 158 OF 2011**

**MERCY WAMBOI NJOROGE.....PLAINTIFF**

**=VERSUS=**

**FRANCIS BABU MWANGI.....1<sup>ST</sup> DEFENDANT**

**JAMES MURIITHI T/A EVASIJAME AUCTIONEERS.....2<sup>ND</sup> DEFENDANT**

**RULING**

On 20<sup>th</sup> March, 2013, the court made an order in the following terms: -

**“That the plaintiff be and is hereby compelled to remit rent proceeds from the suit property to a joint account operated by advocates for both parties pending the hearing and determination of this suit.”**

Pursuant to that order, an account was opened at Kenya Commercial Bank, Milimani Law Courts Branch namely, Account No. 1148791760 in the names of the firm of Kangethe Waitere & Company Advocates for the 1<sup>st</sup> defendant and Wambo & Company Advocates for the plaintiff. The suit was ultimately heard and a judgment delivered in favour of the 1<sup>st</sup> defendant against the plaintiff on 25<sup>th</sup> October, 2018. In the judgment, the court ordered among others that: -

**“The plaintiff shall pay to the 1<sup>st</sup> defendant mesne profits at the rate of Kshs.4000/= per month from 1<sup>st</sup> April, 2001 until payment in full together with interest at court rate from the date hereof. In this regard the rent that was being deposited in the joint account in the names of the advocates for the parties shall be released to the 1<sup>st</sup> defendant forthwith and shall be deducted from the amount payable by the plaintiff under this order.”**

The 1<sup>st</sup> defendant has now brought an application by way of Notice of Motion dated 19<sup>th</sup> September, 2019 seeking the following order: -

**“That the court be pleased to order Kenya Commercial Bank, Milimani Law Courts Branch to release to the 1<sup>st</sup> defendant or his advocates the funds held in Account No. 1148791760 in the names of Kangethe Waitere & Company Advocates and Wambo & Company Advocates.”**

The application has been brought on the grounds that since the court made an order on 25<sup>th</sup> October, 2018 for the release to the 1<sup>st</sup> defendant the monies held in the joint account in the names of the advocates for the plaintiff and the 1<sup>st</sup> defendant, the plaintiff's advocate who was a signatory to the joint account has failed to co-operate with the 1<sup>st</sup> defendant's advocates to facilitate the closure of the joint account and the release of the monies held therein to the 1<sup>st</sup> defendant as ordered by the court.

The application was served upon the plaintiff's advocates and an affidavit of service filed in court on 23<sup>rd</sup> October, 2019. The application was not opposed. When the application came up for hearing on 23<sup>rd</sup> October, 2019, the plaintiff's advocates did not appear and Ms. Waitere who appeared for the 1<sup>st</sup> defendant urged the court to allow the application as prayed. I have considered the application and the affidavit filed in support thereof. I am satisfied that the application has merit. As stated earlier in this ruling, the court made an order on 25<sup>th</sup> October, 2018 that the monies held in the joint account in the names of the advocates for the plaintiff and the advocates for the 1<sup>st</sup> defendant be released to the 1<sup>st</sup> defendant. Since the money is held in a joint bank account, it requires co-operation of the advocates from the two law firms who were the signatories to the said account to instruct the bank to close the account and release the monies held therein to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant has contended that the plaintiff's advocate who is a signatory to the account has refused and/or neglected to

avail himself at the bank to facilitate the closure of the account and the release of the monies held in the account to the 1<sup>st</sup> defendant.

Section 98 of the Civil Procedure Rules provides that: -

**“Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”**

During the hearing of the application, the court was told that the signatories to the joint account were, Perpetua Wangechi Waitere advocate for the 1<sup>st</sup> defendant and Muyala Tadayo Kibaba advocate for the plaintiff and that it was Muyala Tadayo Kibaba who had failed to co-operate to have the money in the joint account released to the 1<sup>st</sup> defendant.

I am satisfied that a case has been made out for the grant of the orders sought. I would however not grant the orders as prayed. I allow the application and make the following orders: -

1. The account held at the Kenya Commercial Bank, Milimani Law Court Branch being Account No. 1148791760 in the names of Kangethe Waitere & Company Advocates and Wambo & Company Advocates shall be closed forthwith.
2. The monies held in that account pursuant to the orders given by the court on 20<sup>th</sup> March, 2013 together with interest that has accrued since the account was opened less any bank charges and statutory deductions shall be released to the firm of Kangethe, Waitere & Company Advocates on behalf of the 1<sup>st</sup> defendant.
3. The Senior Deputy Registrar of the Environment and Land Court at Milimani Law Court is authorised to sign on behalf of Muyala Tadayo Kibaba Advocate any document which may be necessary for the closing of the said account and the release of the monies held therein to the said firm of Kangethe, Waitere & Company Advocates.
4. The costs of the application shall be in the cause.

**Delivered and Dated at Nairobi this 24<sup>th</sup> day of October 2019**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of:**

N/A for the Plaintiff

Mrs. Waitere for the Defendants

C. Nyokabi-Court Assistant