



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC NO. 206 of 2013**

1. **PAOLA TARLAZZI** (*suing through his attorney and or agent*)

2. **CARLA TARLAZZI**.....**PLAINTIFF**

**=VERSUS=**

**ROBERTO CIAVOLELLA**.....**DEFENDANT**

**R U L I N G**

1. In the Application dated 4<sup>th</sup> March, 2016, the Defendant/Judgment Debtor is seeking for the following reliefs:-

(a) That this Honourable Court be further pleased to issue an order directing that a joint valuation be conducted to ascertain the current market value of the two (2) villas namely Villa No. 7 and Villa No. 8 erected on Land Portion Number 1371 Marine Park Road, Malindi.

(b) That upon the conclusion of the valuation and filing of the valuation report in court, this Honourable Court do order the sale of the said Villa NO. 7 and Villa No. 8 and the proceed thereof be utilised to settle or satisfy the Decretal sum owing from the Defendant/Judgment Debtor to the Plaintiff/Judgment Creditor and the balance thereof be paid to the Defendant/Judgment Debtor.

(c) That this Honourable Court be further pleased to make an order for preservation of the Villa No. 7 and 8 erected on Land Portion No. 1371 Marine Park Road Malindi pending the hearing and determination of the application herein.

2. The Application is premised on the ground that the Plaintiff has commenced the process of execution of the decree that was issued against the Defendant; that a prohibitory order has been issued restraining the Defendant from transferring or changing his shares with various companies and that it was decreed that the Defendant do pay Euros 130,000 and in the alternative transfer Villas no. 7 and 8 erected on portion number 1371 Malindi.
3. According to the Defendant, he is willing to consent to the sale of the said villas and the proceeds thereof be utilised to defray the decretal sum.
4. The Plaintiff's advocate filed grounds of opposition in which it was averred that the Defendant has avoided satisfying the decree of this court; that the Defendant has continued to file numerous

- applications to delay the execution process and that this application is an afterthought and another dishonest tactic by the Judgment Debtor to buy time and frustrate the Decree Holder.
5. The Plaintiff has further averred that the Applicant has no title or capacity to carry out the proposals that have been made in the Applications as he is not the registered proprietor of the said villas.
  6. The advocates appeared before me on 20<sup>th</sup> April, 2016 and made oral submissions. I have considered the submissions by counsels.
  7. According to the Affidavit of the Defendant, the Plaintiff has commenced execution proceedings by attaching his twelve (12) shares in LILAC LIMITED, 375 shares in VOAXHALL LIMITED and 350 shares in MELVILLE LIMITED with the intention of selling them by way of public auction.
  8. In the same Affidavit, the Defendant has deponed that MELVILLE LIMITED owns villas Nos 7 and 8 erected on the land portion number 1371 and that he is willing to transfer the said villas to the Plaintiff.
  9. The Defendant has not told this court what is unlawful or unprocedural about the attachment of his shares by the Plaintiff. Indeed, the Defendant has not denied that the shares that the Plaintiff has attached pursuant to the warrants of attachment are his.
  10. The Defendant is offering an alternative mode of “execution” to the sale of his shares.
  11. In my view, it is for the Plaintiff to either agree or accept the alternative mode of execution that the Defendant is offering.
  12. It is not for this court to direct the Plaintiff on which movable or immovable properties of the Defendant he should attach for the purposes of satisfying the decree of this court.
  13. If the Defendant is willing to sell villa numbers 7 and 8, which are not even registered in his name, he is free to sell the said villas and pay the Plaintiff the decretal amount. The Court need not sanction such a sale.
  14. At the same time, the court cannot stop the Plaintiff to proceed with the process of attaching and selling the Defendant's shares if, in the Plaintiff's view, that is the most efficacious mode of execution.
  15. For those reasons, I dismiss the Defendant's Application dated 4<sup>th</sup> March, 2016 with costs.

Dated, signed and delivered in Malindi this 20<sup>th</sup> day of **May**, 2016.

**O. A. Angote**

**Judge**