



Wanyoike & another v Ikenya (Environment & Land Miscellaneous Case E002 of 2024) [2024] KEELC 4495 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELC 4495 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND MISCELLANEOUS CASE E002 OF 2024**

YM ANGIMA, J

APRIL 25, 2024

BETWEEN

ANTHONY MBURU WANYOIKE & PETER WANYOIKE

MBURU APPLICANT

AND

JOHN BROWN NDUNGU IKENYA RESPONDENT

RULING

1. By an originating summons dated 24.01.2024 the Applicants sought a prohibitory order to prevent the Respondent from dealing with Title Nos. Nyandarua/Karima/6679 and 6680 so that those properties may be sold for the purpose of satisfying the decree issued against the Respondent in Nairobi High Court Succession Cause No. 64 of 2010 (the succession cause).
2. The application was supported by a supporting affidavit sworn by Peter Wanyoike Mburu on 01.03.2024 and a further affidavit sworn by him on 14.03.2024. It was deposed that the Respondent was a judgment debtor in the succession cause whereby a decree was passed against him for the payment of a principal sum of Kshs.113,698/= together with interest thereon at 12% p.a. with effect from 11.07.2011 until payment in full. The Applicants exhibited a copy of a decree for a total sum of Kshs.276,392,703/=.
3. It was the Applicants' case that when they auctioned the Respondent's properties on a previous occasion the same fetched a sum of Kshs.21,427,500/= only thereby leaving a huge outstanding debt. They consequently prayed for the prohibitory order to be granted to preserve the suit properties in the meantime.
4. The Respondent filed a replying affidavit sworn on 12.03.2024 in opposition to the application on several grounds. First, it was contended that the Applicants had not given a breakdown of how the decretal amount was arrived at. Second, that the Applicants had not accounted for the proceeds of sale



of some properties which were sold earlier. Third, the sale proceeds from the earlier sale were sufficient to fully settle the decretal amount. Fourth, the Applicants' claim arose out of a failed investment venture hence he should not be made to bear the loss alone. He consequently prayed for dismissal of the application.

5. When the application was listed for hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Applicants filed written submissions dated 20.03.2024 whereas the Respondent filed submissions dated 02.04.2024.
6. The court has considered the pleadings, affidavits and documents on record in this matter. The court is of the view that the main issue for consideration and determination is whether or not the Applicants have demonstrated a case for the grant of the prohibitory orders sought. The ancillary issue which arises is who shall bear costs of the application.
7. There is no doubt from the material on record that the Respondent is the judgment debtor in the succession cause. There is no evidence on record to demonstrate that the decretal amount has been satisfied as claimed by the Respondent. The Respondent's challenge on the computation of the decretal amount is clearly a matter to be raised in the succession cause. The issue of a statement of account for the previous sale of the Respondent's properties is also a matter to be raised with the bailiffs in the succession cause. The Respondent's contention that the decree was not clear on what assets were to be sold to realize the decretal amount does not hold any water. If there was no qualification on the assets to be sold then it meant that all attachable assets could lawfully be sold to satisfy the decretal amount.
8. The court has also noted that the Respondent has attempted to challenge the decree in the succession cause through the backdoor. He has attempted to give a justification as to why he should not settle the entire decretal amount by claiming that in a joint investment venture the concerned investors should bear the losses together. Clearly, that is a matter which goes into the merits of the decree in the succession cause. The court is of the opinion that it has no jurisdiction to review the decision of the succession court. The Respondent should use the right channels and right forum to challenge the decision in the succession cause. As a result, the court is satisfied that the Applicants have made out a case for the grant of the prohibitory order sought with respect to the two properties since the decree of the succession court has not been satisfied and the same has not been reviewed, varied or set aside.
9. The upshot of the foregoing is that the court finds merit in the Applicants' originating summons dated 24.01.2024 and is consequently inclined to allow the same. The court is also satisfied that costs of the application should be awarded to the Applicants on the basis of the general principle that costs of an action or proceeding should follow the event. See Section 27 of the *Civil Procedure Act* (Cap.21). As a result, the court makes the following orders for disposal of the motion dated 24.01.2024:
 - a. A prohibitory order be and is hereby issued to prevent any dealings with Title Nos. Nyandarua/Kirima/6679 and 6680 pending their sale to satisfy the decree in Nairobi High Court Succession Cause No. 64 of 2010, or until further orders of the court.
 - b. The Applicants are hereby awarded costs of the originating summons.

It is so ordered.

RULING DATED AND SIGNED AT NYANDARUA THIS 25TH DAY OF APRIL, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:



N/A for the Applicants

Ms. Wanjiku Wamae for the Respondents

C/A - Carol

Y. M. ANGIMA

JUDGE

