



**Wanyoike & another v Ikenye (Environment & Land Miscellaneous
Case E007 of 2024) [2024] KEELC 3919 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3919 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND MISCELLANEOUS CASE E007 OF 2024**

A OMBWAYO, J

MAY 15, 2024

BETWEEN

ANTHONY MBURU WANYOIKE 1ST APPLICANT

PETER WANYOIKE MBURU 2ND APPLICANT

AND

JOHN BROWN NDUNGU IKENYE RESPONDENT

RULING

1. The applicant Anthony Mburu Wanyoike and Peter Wanyoike Mburu has sued John Brown Ndungu Ikenye seeking orders of inhibition inhibiting any dealings with properties No. Nakuru/Langalanga/Block 1/209, Kabatini/Block1/1140, Nakuru Municipality/Block 17/23. The application is based on grounds that the applicant being execution of the estate of the late Josphat Mburu Wanyoike obtained decree to sell inter alia the above real properties belonging to the respondent. The decree was issued by the family Division of the High Court in Nairobi in HCSC 64 of 2010. They wish to preserve the property pending the advertisement and sale. They claim to have obtained judgment against the respondent in the tune of kshs276,392,703 which is accruing interest.
2. The respondent opposes the application on the basis that the applicant has not laid down to basis for arriving at Ksh276, 392,703 as the claimed amount. The application have not rendered account on how the proceeds in the sale of the properties was spent. According to the respondent the decree was settled with the proceeds obtained from selling the properties that the court had ordered to be sold under the said decree.
3. I have considered the application and replying affidavit and do find that the application lacks merit as it is brought under Order 37 (1) of the Civil Procedure Rules but chose not fall within the ambit of order 37 (1) a-g which provides: -
4. Who may take out originating summons and in respect of what matters [Order 37, rule 1]



5. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions—
- (a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;
 - (b) the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
 - (c) the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
 - (d) the payment into court of any money in the hands of the executors, administrators or trustees;
 - (e) directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
 - (f) the approval of a sale, purchase, compromise or other transaction;
 - (g) the determination of any question arising directly out of the administration of the estate or trust.
6. The application does not raise any question of law for the determination by this court under order 37 rule 1 of the *Civil Procedure Rules* 2010 and therefore the application is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 15TH DAY OF MAY 2024.

A O OMBWAYO

JUDGE

