



REPUBLIC OF KENYA



KENYA LAW
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**Ddaiddo v Bank of India (Cause 616 of 2015)
[2025] KEELRC 332 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 332 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 616 OF 2015
M MBARŪ, J
FEBRUARY 6, 2025**

BETWEEN

FRANCOIS MAKORANI DDAIDDO APPLICANT

AND

BANK OF INDIA RESPONDENT

RULING

1. The applicant, Francois Makorani Ddaiddo filed an application dated 27 August 2024 seeking orders;
 1. Spent.
 2. Spent.
 3. This court be pleased to restrain the respondent, whether by themselves, employees, servants, or agents of M/s Fairlane Valuers Ltd, from evaluating, attaching, removing, selling, and/or interfering with the peaceful and quiet enjoyment by the applicant on the property known as Plot No.1921/Section II/MN pending the hearing and determination of the suit herein.
 4. The costs of this application be provided for.
2. The applicant supports the application because he received a letter dated 12 August 2024 issued by the respondent instructing M/s Fairlane Valuers Ltd to evaluate the applicant's matrimonial home for auction purposes. These instructions are in executing the Court of Appeal judgment that held this court lacks jurisdiction to entertain the dispute between the applicant and the respondent. The judgment has led to a stalemate without resolving the dispute. In the interests of justice, the respondent's actions should be stopped, and the matter should be transferred back to the Mombasa High Court for hearing and determination.
3. In his Affidavit, the applicant avers that the matter was originally filed as a civil suit HC No.164 of 2005 at the High Court and was transferred to this court in 2015. This court rendered itself on 16



July 2021, and later, the Court of Appeal delivered judgment on 21 June 2024 and held that this court lacked jurisdiction to hear the matter. The actions by the respondent, unless stopped, shall prejudice the applicant. Unless the matter is transferred back to the High Court, injustice will be committed against the applicant.

4. The applicant also filed an application dated 5 August 2024 seeking to transfer the file to the Mombasa High Court for hearing and determination.
5. In reply, the respondent filed the Replying Affidavit of Aseem Ahamadil Kebir, the senior manager, who avers that the applicant is aware of the loan advanced to him by the respondent and has failed to reply despite the judgment herein and that of the Court of Appeal. This court dismissed the applicant's case for being time-barred. Hence, the court lacked jurisdiction to hear the matter. He appealed to the Court of Appeal, which also dismissed the appeal.
6. Aseem avers that the applications filed by the applicant are before a court without jurisdiction and should be dismissed with costs.
7. In reply, the respondent filed a Notice of Preliminary Objections dated 30 October 2024 on the following grounds;
8. That Notice of Motion dated 5 August 2024 be struck out with costs because;
 1. The Court lacks the Jurisdiction to hear and determine the Notice of Motion dated 5.08.24.
 2. The application is an abuse of the Court process.
 3. The Application is frivolous and vexatious.
9. Parties attended and agreed to address the objections and applications through written submissions.
10. The respondent submitted that the instant applications by the applicant are an abuse of the court process since this court has rendered judgment and established that the claim is time-barred and hence lacks jurisdiction. The Court of Appeal has rendered judgment and held that this court lacks jurisdiction, and hence, both applications should be dismissed with costs and the objections allowed.
11. The applicant submitted that he filed his case before the High Court, which suo motto transferred to this court. Judgment herein held that the claim was time-barred, and upon appeal, the Court of Appeal confirmed the judgment herein. This has created a stalemate since the respondent moved to auction his matrimonial home. The matter should be transferred back to the High Court for hearing and determination.

Determination

12. The applicant filed his case in Mombasa High Court Civil Case No.164 of 2005.
13. The matter was transferred to this court and registered as ELRC No.616 of 2015. The respondent had a counterclaim against the applicant.
14. The court delivered judgment on 16 July 2021 and dismissed the claim and counterclaim.
15. The applicant filed Mombasa Civil Appeal No.E082 of 2021, and the judgment was delivered on 21 June 2024. The Court of Appeal held that;
 - (i) A declaration that the appellant's suit in ELRC Cause No.616 of 2015 was time-barred.



- (ii) The ELRC had no jurisdiction to entertain the respondent's counterclaim or make any finding thereon.
 - (iii) ...
16. The main suit leading to the appeal before the Court of Appeal is ELRC Cause No.616 of 2015. It was initially Mombasa High Court Civil Case No.164 of 2005. As reiterated by the Court of Appeal, this court cannot move a step further and issue any directions without jurisdiction.
 17. However, cognizant of the Court of Appeal judgment and the fact that there is no jurisdiction to hear the counterclaim, in the interests of justice, the file shall revert to the High Court for directions.
 18. Without jurisdiction, interim orders issued on 29 August 2024 lapse with this ruling.
 19. The ELRC Deputy Registrar shall move the file to the Mombasa High Court Registry. For this Court, ELRC Cause No.616 of 2015 is hereby closed.

Orders accordingly.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6 DAY OF FEBRUARY 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

