



**Arula v Gachanja t/a Showcase Properties Ltd (Cause 498 of 2013)
[2024] KEELRC 233 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 233 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 498 OF 2013
MA ONYANGO, J
FEBRUARY 14, 2024**

BETWEEN

TIMOTHY MUSINZI ARULA CLAIMANT

AND

FRANCIS GACHANJA T/A SHOWCASE PROPERTIES LTD RESPONDENT

RULING

1. Vide an application dated 14th October 2022, the Applicant/Decree Holder seeks the following orders:
 - i. That this application be heard on priority of the application dated 11th October 2021 and or before further court orders and directions.
 - ii. That the Respondent be ordered to pay into court or in a joint interest earning account of the parties advocates a sum of Kshs 643,629.52 before further audience, orders or directions by this Honourable Court.
 - iii. That costs of the application be provided for.
2. The Applicant states that judgment in this cause was delivered on 18th August 2017 and that to date, the said judgment has never been appealed against.
3. The Applicant avers that since judgment was delivered the Respondent has filed numerous proceedings and applications to evade execution of the decree and certificate of costs.
4. According to the Applicant, as at the date of filing this application the amount outstanding including costs and interest was Kshs 643,627 and prospects of payment were nil as the Respondent delayed the execution by sustaining frivolous Applications..
5. The Applicant contends that the inherent jurisdiction of the court enables the court to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling



the observance of the process as was held in the case of *Rev. Madara Evans Okanga Dondo v Housing Finance Company of Kenya*, Nakuru HCCC No. 262 of 2005.

6. It is therefore the Applicant's position that the Respondent is contemptuous of the court and its process and it is in interest of justice that the orders are given to curtail further abuse.
7. The application is opposed. The Respondent filed a Replying Affidavit sworn on 22nd November 2022 where he deposes that the judgment dated 18th August 2017 has never been appealed because the Respondent was the wrong party before the court, a fact that was brought to the attention of the Respondent's former advocates and was also put in writing for the record on two emails dated 19th June 2019.
8. The Respondent avers that in his individual capacity he has no assets capable of satisfying the decree but the company that employed the Claimant has assets that can immediately satisfy the decree.
9. The Respondent further avers that the blunder of suing the wrong party would have been corrected had the Claimant's advocate truthfully served the Respondent and not relied on prosecuting the suit in the absence of the Respondent to easily obtain a default judgment after allegedly serving summons to the Respondent through the mistaken impression that there was a proper decree against the Respondent.
10. It is the Respondent's case that there has been common mistakes by the parties in this suit where the Claimant in suing the wrong party who does not have the financial capacity to service the decree. That the Respondent out of fright mistakenly partially serviced a decree it ought not to have.
11. Mr. Gachanja contends that he is a victim of being taken down the wrong legal path as initially, the lawyer who appeared in court on his behalf did not file a memorandum of appearance, then the second lawyer could not comprehend the difference between one director out of seven and the company.
12. It is the Respondent case that he should not be made to suffer from the legal competences or otherwise of both the Claimant's advocate and that of its prior advocates.
13. The application was disposed of by way of written submissions.

The Applicants' Submissions

14. In his submissions, the Applicant submitted that at no time has the other directors of the company complained about this suit and that, it is Mr. Gachanja who is the face of the company as evidenced not only in all applications filed in this court but also other cases found at the Kenya Law Report portal.
15. According to the Applicant, Mr. Gachanja has tried to hide under the old age principle in *Salomon v Salomon* to evade satisfying the decree.
16. The Applicant urged the court to dismiss such claims as Mr. Gachanja is hell-bent on a deliberate evasion of, or obstruction, or delay of justice.
17. The Applicant submits that litigation must come to an end and there is no justification for this matter to still be in court for years until now. To buttress this point, the Applicant cited the case in *William Koross (Legal Personal Representative of Elijah C.A. Koross) v Hezekiah Kitoo Komen & 4 others* (2015) eKLR.
18. The court was urged to allow the application with costs.



The Respondent's Submissions

19. In his submissions dated 7th December 2022, the Respondent reiterates the contents of his affidavit and relies on the case of *Kolaba Enterprises Ltd v Shamsudin Hussein Varvani & Another* (2014) eKLR which cited with approval the case of *Salomon & Co. Ltd v Salomon* (1897)A.C. 22 H.L.
20. It is the Respondent's submission that the Application has no foundation and is bad in law as the same is not premised on the relevant provisions of the law.
21. The Respondent further submits that there is no justification by the Applicant as to why the current proceedings were taken out against one director, who does not even have the financial capacity to service the decree out of seven directors of the company.
22. The Respondent prayed that for the application to be dismissed with costs to the Respondent.

Determination

23. I have considered the application, the rival affidavits and the submissions filed by the parties.
24. The court has noted with concern the number of applications that have been filed by the Respondent in this matter since judgment was delivered. It is indicative that apart from the application dated 11th October, 2022, all the applications sought stay of execution among other prayers and all the applications were dismissed.
25. Indeed, while this application was pending ruling the Respondent filed yet another application dated 30th January 2023 which was on 27th June 2023 dismissed by my Brother B. Ongaya PJ.
26. The court further notes that the decree herein is partly settled by the Respondent as was pointed out in the Replying affidavit of Jason Okemwa, advocate for the Claimant in his affidavit sworn on 27th December, 2019 and captured in this court's ruling No. 2 delivered on 21st January 2022.
27. The Respondent has not tendered any convincing or valid reason why the court should not grant the orders sought in the application herein.
28. It is therefore my considered view that to prevent the Respondent from delaying the enjoyment of the decree herein by the Applicant through the filing of multiple applications for stay of execution, it is in the interest of justice to grant the orders sought in the instant application.
29. Consequently, the application dated 14th October 2022 is allowed in the following terms:
30. The Respondent/Judgment debtor is directed to deposit the decretal sum of Kshs 643,627 together with interest accrued to date in a joint interest earning account in the joint names of the advocates for Claimant and Respondent within 30 days.
31. Respondent restrained from filing any application in this court until the deposit is made.
32. In default Claimant/Decree holder at liberty to execute.
33. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 14TH DAY OF FEBRUARY 2024

MAUREEN ONYANGO

JUDGE

