



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

CAUSE NO.50 OF 2018

(Before D.K.N.Marete)

ANTHONY MBAABU MUGWIKA & 7 OTHERS.....CLAIMANTS

VERSUS

RUIRI FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT

CONSTATINE MUUNA MWITHIMBU & OTHERS.....1ST INTERESRED PARTIES

DAVID KIMATHI & 30 OTHERS.....2ND INTERESTED PARTIES

R U L I N G

This is an application by way of Notice of Motion dated 18th May, 2021 and comes out as follows;

1. *That this application be certified urgent and be heard in the first instance and on a priority basis.*
2. *That this Honourable court be pleased to stay its judgment and decree dated 6/2/2019 and 29/5/2020 respectively and all other consequential orders pending the hearing and determination of this application.*
3. *That this Honourable court be pleased to grant leave to the applicants herein to be enjoined as interested parties herein.*
4. *That this Honourable court be pleased to order that the valuation of Land parcel No.KIIRUA/RUIRI/5455 be valued by the Government surveyor Meru.*
5. *That upon compliance with order 4 above the Respondent be allowed to subdivide its land parcel No.KIIRUA/RUIRI/5455 and sell portions to satisfy the decree of this Honourable court.*
6. *That costs of this application be provided for.*

It is based on the following grounds;

- a) *That the Applicants are members of the Respondent*
- b) *That the Claimants/Respondents are employees of the Respondent.*
- c) *That by being members of the Respondent, the Applicants are actual owners of the Respondent and have delegated their power to conduct the daily running of the Respondent to the management committee.*
- d) *That the management committee has failed to defend the current suit and they have not informed the members of its existence, therefore failing in their duty delegated to them by the members.*
- e) *That the 1st Claimant is the secretary to the board and an employee of the Respondent.*
- f) *The Applicants are surprised that this suit was filed and determined without their knowledge.*

- g) That the Claimants/Respondents obtained an order allowing them to sell the property of the Respondent to recover the debt owed to them.*
- h) That the Applicants suspect that there is collusion between the committee and the Claimants to have the Respondent's property auctioned and have the interest of the society defeated.*
- i) That the auctioneers valued the land at around Kshs.34,000,000.00 which is way below the approximated value of Kshs.100,000,000.00.*
- j) That the orders of stay will held the Applicants sort out the issues of the Respondent and pay the Claimants.*
- k) That the Applicants are afraid if the decision of the court is executed as it is them who will be prejudiced being the owners of the property.*
- l) That it is only fair, apt and in the interest of justice that this application be allowed.*

The Claimants in a Replying Affidavit dated 5th July, 2021 oppose the application. It is their case that they are not opposed to the application in terms of prayer 4 for a subdivision of the parcel known as Kiirua/Ruiri/5455 and sell a portion thereof to satisfy the decree and allow the society to keep the balance of the land.

The Claimants further urge the court to grant facilitating orders for formal subdivision and sell the parcel with the police providing security during such subdivision. Their further case is as follows;

- 10. That however, we vehemently oppose the plea by the Respondent Society to have its aforesaid members resolution made on 8/8/2019 to sell the aforesaid alleged portions of various parcels of land to be adopted as an order of the court.*
- 11. That we verily believe that the sale of the other aforesaid alleged portions of various parcels of land which are 3 in number by the Respondent society should be divorced from the sale of parcel of land No.KIIRU/RUIRI/5455.*
- 13. That secondly, the aforesaid 3 parcels of land are either not registered in the names of the Respondent Society and/or are encumbered. Thus, it will be futile for the court to order the same to be sold in these proceedings.*

The Claimants submit thus;

- a) L.R No.KIIRUA/RUIRI/65 is not registered in the name of the Respondent Society. The same is registered in the name of Meru County Council and is indicated as 'Reserved for factory area' which factory is unnamed.*
- b) L.R No.KIANJAI/MITUNTU/325 is registered in the name of the but its encumbered over a loan of Kshs.1,500,000/-.*
- c) L.R No.RUIRI/RWARERA/1728 is not registered in the name of the Respondent Society. The name is registered in the name of Njotene Coffee factory which is not a party to these proceedings.*

This is on grounds that the members' resolution dated 8th August, 2019 does not add up as these are not the subject matter of this decree. This resolution should therefore be vacated as an order of this court.

The Claimant's in their written submissions dated 5th July, 2021 reiterates their case as pleaded.

This is simple and viable application. This is because the subject matter in this cause has been riddled with confusion and darkness. What with the back and forth of employees and the employer who are not able to move towards a resolution of execution in favour of a decree of this court.

It is opportune that this matter be resolved once and for all. If a joinder of the Applicant brings out this, the better for us all. This is the thinking of this court.

I am therefore inclined to allow this application and order relief as follows;

- i) The Judgment dated 6th February, 2019 and 15th May, 2020 and all orders thereto be and are hereby stayed to the extent that the 3 parcels of land namely, LR Nos.Kiirua/Ruiri/65l, Kianjai/Mituntu/325l, Ruiri/Rwarera/1728 be removed from the subject of the judgment of court and not be availed for sale in execution of decree.*
- ii) That relief be and is hereby awarded to the Applicants herein to be joined as interested parties to this suit.*
- iii) That an evaluation of parcels known as Kiirua/Ruiri/5455 be heard by the Government Valuer in liaison with the Government Surveyor, Meru County.*
- iv) The Respondent be and is hereby allowed and authorised to subdivide parcel known as Kiirua/Ruiri/5455 to satisfy the decree of this Court.*

v) That the three (3) material parcels of land be and are hereby removed from the purview of the judgment of court.

Dated and delivered at Nyeri this 23rd day of March, 2022.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr.J.Muthomi instructed by John Muthomi & Company Advocates for the Claimant
2. Miss Mutegi instructed by Mutegi Mugambi & Company Advocates for the Applicants.
3. Mr.Mwenda instructed by Mwenda Mwarania, Akwalu & Company Advocates for the Respondents.