



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.54 OF 2015

(Before D.K.N.Marete)

CONSTATINE MUUNA MWITHIMBU1ST CLAIMANT

GEOFFREY KAINGA AMBAU.....2ND CLAIMANT

JULIUS KIBUNGE JACOB.....3RD CLAIMANT

JULIAH KANARIO MWONGERA.....4TH CLAIMANT

DAVID NKONGE MBERIA.....5TH CLAIMANT

STEPHEN R.THIRIBI.....6TH CLAIMANT

LIMBERE THUURA.....7TH CLAIMANT

FRANCIS MWITIA.....8TH CLAIMANT

PURITY G.MWITL.....9TH CLAIMANT

VERSUS

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

RULING

This is an application by way of Notice of Motion dated 16th February, 2021. It seeks the following orders of court;

1. *That this Honourable Court be pleased to approve the conditions and terms of sale.*
2. *That the cost of this application be provided for.*
3. *That M/S JOCET AUCTIONEERS be authorized to conduct the sale.*

It is grounded as follows;

1. *It is vital that court do approve conditions for sale.*
2. *That conditions for sale are fair.*

Notably, the application is naked it is not supported in any way, or at all. A semblance of support in the form of a supporting affidavit comes in far much later and vide a supporting affidavit of Constantine Muuna Mwithimbu for the Claimants/Applicants sworn on 24th February, 2021

The Respondents in a Replying Affidavit sworn on 24th February, 2021 acknowledges her indebtedness to the Claimants/Applicants and states that she was always willed to pay up, but for financial handicap.

It is her further averment that she has applied and now has authority from the County Government of Meru to sub-divide the property the subject matter of this application, to wit, Kiirua/Ruiri/5455 with a view to disposing off bits of it to acquire monies to clear debts, including the claimant's.

It is her further averment that a grant of the orders sought would occasion unnecessary loss of a public asset as the actual value of the property is in excess of Kenya shillings one hundred million, (Kshs.100,000,000.00.) Again, the entire process of sub-division and sale shall be completed in three months.

The 1st Claimant in a supporting affidavit sworn on 24th February, 2021 rubbishes the reply of the Respondent and faults her for being economical with the truth. She faults the following averments of the Replying Affidavit of Henry K.Mathenge, the current chairman of the respondent, which comes out as follows;

3. *That the Respondent acknowledges owing the claimants the stated sum of Kshs.5,205,387 and has always been willing to settle the said amount.*
4. *That however the Respondent is unable to raise the said sum from its normal source of revenue i.e. processing coffee.*
5. *That for the above reason the Respondent approached the County Government of Meru for authority to sub-divide and sell part of land parcel number KIIRUA/RUIRI/5455 and utilize the proceeds to settle the outstanding liabilities which are as per the attached schedule marked "HK1".*
6. *That the process of obtaining the said authority from the County Government of Meru took a considerable period of time and it was not until 3/9/2019 when the authority was granted. Annexed and marked "HK2" is a copy of the minutes dated 3/9/2019.*

When the application came for hearing on 3rd February 2020, counsels for the parties submitted in reiteration of their respective cases.

The Claimant/Applicants submitted that theirs was a search for the courts authority for sale of the property to satiate the claim. They also faulted the truthfulness and sincerity of the averments by the Respondent in her replying affidavit sworn on 24th February, 2021.

Further, the applicants submitted that there is another cause relating to the subject matter, Meru Employment and Labour Relations Court cause No.50 of 2018 whereby other orders of attachments on the property the subject matter of this application had been made on 21st January, 2021.

Again, attachment was due all the way back in 2016 but there were prohibitions on the property and they were therefore shocked on the current developments of sub-division of the property.

They sought that their matter be awarded priority in that it was the earlier matter and also in view of the fact that the chairman of the Respondent is now bent on assisting the other party.

The Respondent particularly denied the presence of prohibitory orders against the sale of the property and therefore the allegation of contempt on their part. This is not based on any factual basis, she submitted.

In the penultimate, the respondent submits that the application before court is defective for want of a supporting affidavit on its face.

It is her further submission that the later day supporting affidavit raises new issues well after their response. Moreover, no material evidence has been presented in regard to the claimant's conduct.

I agree with the respondent, the application was defective from day one. It was incomplete for want of a supporting affidavit which affidavit was filed and served far much later on the prodding of the court. We shall, however not dwell on this in view of the provisions of Article 159 (2) (d) of the Constitution of Kenya, 2010; the place and regard of undue technicalities in litigation. Let us manage the substance and ignore form.

Having heard and walked through the respective cases of the parties, this matter tilts in favour of the respondent. A casual look and hearing of the respondent's case displays acknowledgment and admissibility of her indebtedness to the claimants in this and the other cause.

The respondent submits that she is now in the process of sub-division and sale of part of the mother property to pay off her indebtedness to the claimants. Again, a wholesale of the property in the manner proposed by the claimants/applicants would occasion loss of public property, the property in issue being of such valuable magnitude.

Looking at all this, a case in favour of the respondent ensues. This is more so bearing in mind that the submission of mischief in the part of the chair of the respondent is not supported by any evidence on the part of the claimants. It remains abstract and bare.

I am therefore inclined to disallow the application with orders that each party bears their costs of the application.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MARCH, 2021.

D. K. Njagi Marete

JUDGE

Appearances

1. Mr.Muchiri instructed by Maitai Rimita & Co.Advocates for the Claimant/Applicant
2. Ms.Nyaga instructed by Mithega & Kariuki Advocates for the Respondent.