



REPUBLIC OF KENYA



Family Bank of Kenya Limited v Nzioka & 10 others; Africa Merchant Assurance Company Limited (Interested Party) (Commercial Case 291 of 2022) [2023] KEHC 21403 (KLR) (Commercial and Tax) (24 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 291 OF 2022
JWW MONG'ARE, J
JULY 24, 2023**

BETWEEN

FAMILY BANK OF KENYA LIMITED APPLICANT

AND

CAROLYNE ANYANGO OMENDA 1ST RESPONDENT
SIMON MUIINDE NZIOKA 2ND RESPONDENT
JACOB OBIERO MUMBO 3RD RESPONDENT
RISPER WANJA 4TH RESPONDENT
GRACE NDUITA NG'ANG'A 5TH RESPONDENT
CICILIA KANIIRU 6TH RESPONDENT
HELLEN WANJIKU MUNENE 7TH RESPONDENT
ABEL MWANIKI 8TH RESPONDENT
GIDEON OCHIENG' SULE 9TH RESPONDENT
LILIAN NJERI KARONGA 10TH RESPONDENT
PETER OKEMWA MAKORI 11TH RESPONDENT

AND

AFRICA MERCHANT ASSURANCE COMPANY LIMITED INTERESTED PARTY



RULING

1. The applicant instituted this suit through an originating summons (OS) dated July 27, 2022 seeking a myriad of orders amongst them an order to have the court declare the rightful beneficiaries of Kshs 2,123,004.04/- held by the applicant in the name of the interested party and an order for directions in respect to the garnishee applications pending before different trial courts.
2. The 8th and 10th respondents herein filed a preliminary objection (PO) dated September 30, 2022 seeking to have this suit dismissed with costs due to the OS being in contravention with the provisions of order 34 rule 1 of the *Civil Procedure Rules* and section 58 of the *Civil Procedure Act*.
3. Section 58 of the *Civil Procedure Act* provides for instances when an interpleader suit may be instituted, it states thus:

“Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants, or where a suit dealing with the same subject-matter is pending may intervene by motion on notice in such suit, for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself: Provided that where any suit is pending in which the rights of all parties can be properly decided no such suit of interpleader shall be instituted.”

4. Further, order 34 rule 1 of the *Civil Procedure Rules*, states:

“An application for relief under this order shall be made by originating summons unless made in a pending suit in which case it shall be made by summons in the suit.”

5. The 8th and 10th respondents submitted that there were other suits filed by various respondents in this suit whereby the applicant duly participated and that the court made a determination based on evidence which was availed by the applicant herein. That therefore under section 58 of the *Civil Procedure Act* an interpleader suit cannot be instituted where any suit is pending and where all rights of the parties can be adjudicated.
6. On the other hand, the applicant submitted that it would not be practical for it to file interpleader proceedings in the various garnishee proceedings filed by the respondents as this would lead to different outcomes.
7. It is not in dispute that there are various garnishee proceedings pending before different courts between different parties. This has led the applicant to approach this court through its OS to obtain directions on settlement of the different garnishee applications before different courts.
8. Under section 58 of the *Civil Procedure Act*, the applicant ought to file interpleader proceedings in those matters to obtain direction from the courts as to the person to whom payment ought to be made. However, in this case there are multiple suits and I agree with the applicant that it would be counter-productive for the applicant to file interpleader proceedings before the different trial courts as that would lead to different decisions in respect of who would be allocated the amounts in the account. This would consequently lead to contempt proceedings being issued against the applicant’s officials.



9. The *Civil Procedure Rules* and Act recommend the filing of interpleader proceedings within a suit in which the subject matter is in issue. However, that would not be feasible in the circumstances of this matter in fact it would only derail the expeditious and fair disposal of the dispute between the parties. It is in the interest of justice to have this interpleader suit heard in this court with all the respondents claiming against the applicant present.
10. All in all, I find that the OS was rightfully filed before this court and that the PO holds no water.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2023

J. W. W. MONG'ARE

JUDGE

In the Presence of:-

Mr. Orende for the Applicant.

Mr. Nelson Kaburu for the 9th & 11th Respondents.

Mr. Njagi for 8th & 10th Respondents.

