



**JKR v JCR & another (Environment and Land Appeal  
E010 of 2021) [2023] KEELC 17106 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17106 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E010 OF 2021**

**EO OBAGA, J**

**APRIL 27, 2023**

**BETWEEN**

**JKR ..... APPLICANT**

**AND**

**JCR ..... 1<sup>ST</sup> RESPONDENT**

**JULIUS CHEBUNET ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant herein filed a notice of motion dated 13/3/2023 in which he sought the following orders: -
  - a. spent
  - b. spent
  - c. Taxation of the aforesaid costs do await the determination of Eldoret HCCOMM/1/2023.
  - d. Costs be in the cause.
2. The 1<sup>st</sup> Respondent who is wife to the Applicant had filed a suit against the Applicant and the 2<sup>nd</sup> Respondent in the lower court. The Applicant and the 2<sup>nd</sup> Respondent filed a defence and raised a counter-claim against the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent's suit was dismissed by the lower court. There was no finding made in respect of the Applicant and the 2<sup>nd</sup> Respondent's counter-claim.
3. The 1<sup>st</sup> Respondent preferred an appeal to this court against the dismissal of her case against the Applicant and the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent's appeal to this court was heard and the same was allowed. Judgement was entered in her favour with costs and the counter-claim by the Applicant and the 2<sup>nd</sup> Respondent was dismissed with costs.



4. The 1<sup>st</sup> Respondent proceeded to file a bill of costs for taxation of the costs. It is the filing of the bill of costs which prompted the Applicant to file this application seeking to stay the taxation. The Applicant contends that he has filed an originating summons before the High Court in which he is seeking division of matrimonial property.
5. The Applicant further contends that if stay of taxation is not granted, the High Court may end up granting the matrimonial properties to him and that this will be prejudicial as he may have been put in civil jail for inability to meet the costs.
6. The 1<sup>st</sup> Respondent opposed the Applicant's application based on a replying affidavit sworn on 31/3/2023. The 1<sup>st</sup> Respondent contends that the Applicant's application is defective as it is based on provisions of the Civil Procedure Act and Rules which are not applicable in the circumstances of this case.
7. The 1<sup>st</sup> Respondent states that this court cannot stop taxation process over a case pending before another court whose proceedings have no bearing on the costs herein. The 1<sup>st</sup> Respondent contends that when she lost before the lower court, the Applicant and the 2<sup>nd</sup> Respondent were quick to obtain warrants of arrest against her and that she paid costs yet when it is their turn, they do not want to pay costs.
8. I have considered the Applicant's application as well as the objection thereto by the 1<sup>st</sup> Respondent. The costs therein are yet to be taxed. Order 21 Rule 12 (1) and (2) of the Civil Procedure Rules which the Applicant is relying on states as follows: -
  1. "Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.
  2. After passing of any such decree, the court may on the application of the judgmentdebtor and with the consent of the decree- holder or without the consent of the decreeholder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.
9. The Originating summons before the High Court is seeking for division of Matrimonial property. It is not clear whether the Applicant and the 1<sup>st</sup> Respondent have been granted a divorce which was before the lower court to pave way for division of matrimonial property or the application is meant for declaratory orders under section 17 of the Matrimonial Property Act.
10. However, be that as it may, the application herein is devoid of any merit. The provisions under which it is brought are not applicable as the 1<sup>st</sup> Respondent is merely seeking to have her costs which were granted in a concluded matter. The amount of costs have not been taxed and cannot be by any stretch of imagination be brought under the perview of order 21 Rule 12 (1) and (2) of the Civil Procedure Rules. I therefore proceed to dismiss the Applicant's application with costs to the 1<sup>st</sup> Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF APRIL, 2023.**

**E. O. OBAGA**



**JUDGE**

In the virtual presence of;  
Mr. Tororei for Respondent  
Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**27th APRIL, 2023**

