



Mastajabu [Suing as the Legal Administrator of the Estate of the Late Mastajabu Athumani Suleiman - Deceased] & another v Chief Land Registrar, Kwale & 3 others (Environment & Land Case 156 of 2018) [2023] KEELC 18303 (KLR) (26 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18303 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 156 OF 2018**

SM KIBUNJA, J

JUNE 26, 2023

BETWEEN

HASSANI MASTAJABU [SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE MASTAJABU ATHUMANI SULEIMAN - DECEASED) 1ST PLAINTIFF

ALI ATHUMAN MADZENGO 2ND PLAINTIFF

AND

THE CHIEF LAND REGISTRAR, KWALE 1ST DEFENDANT

THE KENYA LAND COMMISSION 2ND DEFENDANT

WILFRED JAMES KIMANI KAMAU 3RD DEFENDANT

FAITH NJERI KAMAU 4TH DEFENDANT

RULING

1. The 3rd and 4th defendants filed the notice of motion dated the 2nd November 2022 seeking for inter alia the certificate of costs dated the 12th August 2021 for Kshs.334,000 be deemed a decree of this court and that interest of 14% to accrue from the date of the certificate of costs till payment in full. The application is based on the seven (7) grounds on its face and supported by the affidavit of Simon P. M. Mutugi advocate, sworn on the 2nd November 2022. It is their case that the plaintiffs' suit was dismissed with costs on the 10th February 2021. That the 3rd and 4th defendants filed their party to party bill of costs dated the 14th April 2021 that was taxed by the Deputy Registrar on the 12th August at Kshs.334,000, and certificate of costs issued on the 23rd June 2022. That the plaintiffs have not filed any reference on the taxing order and the certificate of costs has not been altered, set aside or varied. The plaintiffs have not settled the costs despite a demand to pay dated the 6th July 2022 to their advocates.



- That the 3rd and 4th defendants are unable to execute on the costs as there is no decree and hence this application.
2. The application was served upon counsel for the plaintiffs, Ms. Marende Ncheza & Co. Advocates on the 24th February 2023 and an affidavit of service sworn by Titus Munyao Nyenge filed on the 17th March 2023, but no reply has been filed.
 3. That when the application came up for hearing on the 20th March 2023, only the counsel for the 3rd and 4th defendants attended and sought to have the application taken as unopposed and allowed. The court set it down for ruling today to give it time to peruse the record as the file was coming before the judge for the first time. The issue for determinations is whether the prayers in the application should be granted as prayed.
 4. The court has considered the grounds on the application, affidavit evidence, the record and come to the following determinations;
 - a. That the record confirms that the 3rd and 4th defendants moved the court vide their notice of preliminary objection dated the 20th July 2020 seeking to have the suit dismissed for being *res judicata*. The preliminary objection was opposed by the plaintiff and after hearing the parties, the court rendered its determination vide the ruling dated the 10th February 2021. The decision of the court is at paragraph 16 of the said ruling that “....this suit is *res judicata* and the only option that I have is to have the suit dismissed. It is hereby dismissed with costs to the defendants.”
 - b. The record further confirms that the 3rd and 4th defendants filed their party to party bill of costs dated the 14th April 2021 for taxation. The learned counsel for the parties were heard by the Deputy Registrar on the bill of costs on the 23rd July 2021 and through the ruling delivered on the 12th August 2021 the bill of costs was taxed at Kshs.334,000 in the absence of both counsel.
 - c. The record confirms that a certificate of costs was subsequently issued on the 23rd June 2022. It is noted that the orders of 10th February 2021 dismissing the suit with costs, and that of 12th August 2021 on taxation of bill of costs did not address the issue of interest or its percentage that has now been sought in the instant application. The court is of the view that amount should attract interest from the date of this ruling. There being no basis established why the interest should be at 14%, the court directs that it be at courts rate.
 - d. That the 3rd and 4th defendants having been successful in their application are hereby awarded costs of the application assessed at Kshs.10,000.[ten thousands].
 5. The 3rd and 4th defendants notice of motion dated the 2nd November 2022 is with merit and the court orders as follows;
 - a. That the certificate of costs dated the 12th August 2021 for Kshs.334,000 [three hundred thirty four thousand] be and is hereby deemed a decree of the court.
 - b. The 3rd and 4th defendants granted costs of the application assessed at Kshs.10,000. [ten thousand].
 - c. That the said amount to attract interest at the courts rate from the date of this order till payment in full.

It is so ordered.

DATED AND VIRTUALLY DELIVERED THIS 26TH DAY OF JUNE 2023.



S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of;

Plaintiffs : Absent

Defendants : Absent

Counsel : M/S Umara for the Applicant.

