



**Mwadzaya Wachanda Clan Welfare Registered Trustees & 58 others
v Petrol Oil Kenya Ltd & 6 others (Environment & Land Case
63 of 2020) [2023] KEELC 18041 (KLR) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18041 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 63 OF 2020**

EK MAKORI, J

JUNE 14, 2023

BETWEEN

**MWADZAYA WACHANDA CLAN WELFARE REGISTERD TRUSTEES & 58
OTHERS PLAINTIFF**

AND

**PETROL OIL KENYA LTD 1ST DEFENDANT
SAID ZEMBE BADI 2ND DEFENDANT
SALAT ABDULLAHI MOHAMED 3RD DEFENDANT
JAVICK & COMPANY 4TH DEFENDANT
THE LAND REGISTRAR, KILIFI 5TH DEFENDANT
THE DIRECTOR OF SURVEYS 6TH DEFENDANT
THE ATTORNEY GENERAL 7TH DEFENDANT**

RULING

1. There are two applications on record. One dated March 3, 2023 seeking among other relief(s); -
 - i. The court does review its orders and ruling dated 25th May 2022;
 - ii. Plaintiff be granted leave to respond to Party and Party Bill of Costs dated 1st September, 2021;
 - iii. Costs.



2. The second application dated March 3, 2023 also seeks; -
 - i. Stay of extension of the order issued on 14th December, 2022;
 - ii. That the court be pleased to review and/or vary its orders made on 14th December, 2022;
 - iii. Costs be provided.
3. The Court directed parties in this matter to file written submissions which they did.
4. The applicant contends that a suit filed by them was dismissed with costs. The Deputy Registrar did assess costs to a tune of Kshs 639,044/-. That while assessing the costs, the Deputy Registrar was oblivious that the Superior Court had already issued stay orders and that the applicants did not participate in the taxation before the Taxing Master. They now seek review of those orders.
5. On 14th December, 2022 the Court granted orders of inhibition against properties known as Madzimbani/Mitangani/170, known as Madzimbani/Mitangani/185 and Madzimbani/Mitangani/202.
6. The applicants submit that those properties do not belong to Mwadzaya Wachanda Welfare Registered Trustees besides service was never done by Respondents and hence the proceedings were exparte and against the rules of natural justice.
7. The Applicant admitted that they never participated in the taxation proceedings because they presumed that there being stay of execution proceedings, the taxation and any other proceedings ought to have been stayed as a matter of right. The ruling by the Superior Court dated 4th march, 2022 is significant since it provided for stay and restrained the Respondents from evicting the Applicants until the Appeal was heard and determined.
8. The Applicants averred that all they seek is setting aside not Reference because they do not agree with the taxation and were deprived the right to be heard under article 50(1) of *the Constitution*. The Applicants have quoted the case of *Pinnacle Properties Ltd v Presbyterian Church of East Africa, Ngong Parish & Another* (2019) eKLR which extolled the need to give parties a hearing despite mishaps or missteps by parties or counsel during the trial process.
9. It is for the foregoing reasons that the applicants seek for review of the orders issued and the bill of costs dated September 1, 2021 be subject to a fresh hearing.
10. In furtherance to being reheard, the Applicant seek that stay order should issue to halt and further proceedings arising from the taxation of the Taxing Master. The Applicant has quoted the decision in *Republic vs Kenya Urban Roads Authority & Others Exparte Cyton Investment Management Ltd* (2018) eKLR which signed “stray” and the case of *KPLC Ltd vs Esther Wanjiru Wokabi* (2014) eKLR in what to consider before stray is granted.
11. That the applicant submits that in the second application for execution the same was never served on the Respondents and was heard exparte and ought to be set aside. The case of *National Bank of Kenya v Peter Oloo Aringo* (2004) eKLR and *Richard Ncharnyi Leiyago vs IEBC & 2 others* (2013) eKLR is quoted on the need for proper service and the need to set aside exparte orders to avoid hardships.
12. The Respondents contended that the orders issued on 15/12/2022 arises from the suit be struck out and costs provided for.



13. The taxation which resulted was properly rendered before the Deputy Registrar of this Court. The Applicant failed to respond. The subsequent step of having inhibition on the suit properties for purposes of sale and recovery of the costs was prayer before the Deputy Registrar and did not require service.
14. The Respondent further contends that review is not fix visible in this matter. Everything rested with the Deputy Registrar. The Applicants were granted time but failed to participate in the matter. Besides we do not have a Reference yet.
15. In event vide ruling dated 24th November, 2023 reviewed itself in this matter and cannot have a second bite on it.
16. What falls for the determination of this Court is whether this court should review the orders made on 25th May 2022 (Taxation orders by the Deputy Registrar). And whether to stay or set aside execution orders made on 14th December, 2022 (by the Deputy Registrar).
17. Before I proceed further in this matter, this Court was moved by an application dated 23rd May 2022 which sought stay of proceedings and or differ and or arrest of proceedings and delivery of a ruling/ taxation in respect to 1st Defendant's Party and Party Bill of Costs dated 1st September, 2021 pending the hearing of Court of Appeal Nos. Malindi Court of Appeal Civil Appeal Nos. E014 of 2022.
18. By its ruling dated 24th November. 2022 this Court observed

“From the foregoing, there is a pending appeal before the Court of Appeal. An order to preserve the subject suit property was issued by the Court of Appeal in the manner I have stated above. Meanwhile the Deputy Registrar of this Court was moved to tax the Respondent's Bill of Costs arising from the proceedings before this Court. The Applicant in this application did not participate in the taxation before the Deputy Registrar to express reservations with the taxation. The pending application sought to inhibit that taxation from taking off. It has been overtaken by events as the Deputy Registrar has long taxed it. The stay orders sought here and the orders of stay already in place issued by the Superior Court were to be squarely placed before the Deputy Registrar to deal with and render a ruling on merit.

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Looking at the grievances raised in this application in my view the same ought to have been canvassed before the Deputy Registrar before this Court was moved. I am neither having a Reference nor an appeal arising from the orders made by the Deputy Registrar on this application for consideration. As correctly submitted by Mr. Gikandi this Court was moved prematurely and on an already spent application.”

19. Looking at the twin applications the first one for review, the application wants that I get back in time on a matter I have already directed on what to happen. The second one as stay still issued by the Deputy Registrar. What I am being asked to stay are execution steps towards sale of certain piece of land so as to meet the taxation costs.
20. The applicant in the two applications has totally failed to approach the Deputy Registrar who issued the orders sought to be reviewed or varied. The situation that obtained in the ruling issued on 24th November, 2022 still stands. There is nothing to review or stay. The orders sought to be reviewed were made by the Deputy Registrar (not this Court). We have no Reference nor Appeal to deal with.
21. I think that in this mater we are moving like a roll coaster. Moving around and round on the same issues.



22. The applications are dismissed with costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS
14TH DAY OF JUNE 2023**

EK. MAKORI

JUDGE

In the presence of:

Ms Randa holding brief for Gikandi for 1st Defendant.

Court Clerk; Happy

In the absence of:

Ms Ondabu & Company Advocates for the Respondents.

