



Nchebere & another v Bundi & another (Environment and Land Appeal 111 of 2019) [2023] KEELC 20421 (KLR) (27 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20421 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 111 OF 2019
CK NZILI, J
SEPTEMBER 27, 2023**

BETWEEN

TIMOTHY MARETE NCHEBERE 1ST APPELLANT

MERU WOOD INDUSTRIES 2ND APPELLANT

AND

JANET BUNDI 1ST RESPONDENT

BEALINE KENYA AUCTIONEERS 2ND RESPONDENT

RULING

1. Through an application dated June 27, 2023, the court is asked to stay the execution of a decree dated October 24, 2022 and grant leave to the firm of MD Maranya and Co Advocates to come on record for the applicant. The second prayer is for an order of injunction barring and restraining the decree-holder, his agents or servants, and in particular the 2nd respondent from attaching, selling by public auction or private treaty or in any way disposing of, transferring or dealing with the 2nd appellant's movable property as per the proclamation made on June 21, 2023, pending hearing and determination of this application.
2. The application is premised on the grounds, and a supporting affidavit of Charles Kimathi sworn on June 27, 2023. The applicant avers that Ms. Bealine Kenya Auctioneers proclaimed its properties as per the notice marked as annexure MW '1' which covers its lifetime investments. The applicant averred that the attachment was irregular; it was not given a chance to contest the execution proceedings, no proper notice to tax the bill was served as per the law, and a level playing field should be accorded to it to contest or argue the bill of costs before taxation. Lastly, the applicant averred that it was in the interest of justice that the applicants be allowed.
3. The application was opposed through a replying affidavit of Japhet Bundi sworn on July 17, 2023 for being baseless; a delaying tactic to frustrate the execution process, and lacking merits. The respondent



- averred that by a judgment dated March 2, 2022, the applicant's appeal was dismissed with costs; hence, there was nothing to stay since a negative order was issued. Secondly, the applicant averred that a bill of cost was filed, and the taxing master ruled on September 30, 2022, where all items were considered and taxed as per the scale, following which a certificate of costs was issued on October 24, 2022.
4. It is averred that after the certificate was not honored or appealed against, the respondent moved to execute the same and that in the absence of subsequent proceedings, this application was unmerited and more so when no security has been provided. Therefore, the respondent urged the court to find the application unknown in law.
 5. It is not in dispute that this court dismissed the appeal brought by the applicant on March 2, 2022, with costs to the respondents, after which a bill of costs was taxed through a ruling dated September 30, 2022. Once a bill is taxed, any party aggrieved by such a ruling is required under Rule 11 of the Advocate's Remuneration Order within 14 days from the date of the ruling to indicate in writing the items of taxation he is objecting to. After such a notice, the taxing master is required to record and forward to the objector the reason for his decision, after which the objector applies before a judge by chamber summons setting out the grounds of his objection.
 6. In First American Bank of Kenya Ltd vs Shab and others (2002) 1 EA 64, the court said that it could not interfere with a taxing master's ruling unless it was shown that either the decision was based on an error of principle or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.
 7. Order 21 Rule 9 (A) of the Civil Procedure Rules requires a bill of costs to be filed and served upon the other party.
 8. The court record shows that a bill of costs was filed on May 25, 2022, and a notice of taxation was issued to Otieno C and Co Advocates on May 27, 2022. The said firm appeared for the taxation on July 21, 2022 and was allowed to object to the bill before a ruling date of September 30, 2022. No indication is on record that compliance or objection was made against the bill. On that score alone, the applicant was allowed to contest the bill.
 9. Secondly, what is before the court is neither a reference nor an objection to the bill was made against the certificate of costs or its ruling as required by the law. In the absence of compliance with the law, I find the application bad in law.
 10. Thirdly, no leave has been sought and obtained for the firm of MD Maranya Advocates to appear for the applicant in line with Order 9 Rule 9 of the Civil Procedure Rules. There is no indication if the previous law firm appearing for the applicant was served with this application, and or consent to appear was sought and obtained. I also find the application filed by an incompetent law firm on that account.
 11. The upshot is that I find the application incompetent and lacking merits. The same is dismissed with costs to the respondent.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

ON THIS 27TH DAY OF SEPTEMBER 2023

In presence of

C.A Kananu

Kimotho for respondent

Kaba for applicant



HON. CK NZILI
ELC JUDGE

