



**Nyamari & 2 others v Kisii County Government (Environment & Land Case 206 of 2016) [2023] KEELC 20235 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20235 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 206 OF 2016**

**M SILA, J  
SEPTEMBER 27, 2023**

**BETWEEN**

**ELIAS OKINDO NYAMARI ..... 1<sup>ST</sup> PLAINTIFF**

**JOVINALIS NYAMWENO ..... 2<sup>ND</sup> PLAINTIFF**

**JOYCE BIYAKI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**KISII COUNTY GOVERNMENT ..... DEFENDANT**

**RULING**

1. Before me is an application dated 26 January 2023 vide which the plaintiffs seek the following substantive orders which are prayers (b) and (c) in the application:-

(b) That the honourable court be pleased to grant leave to the applicants to commence execution proceedings against the County Secretary for the County Government of Kisii and Notice to Show Cause be issued accordingly to the said County Secretary to appear before this court and show cause why he cannot be sentenced to civil jail for a period of not more than six months for non-payment of the applicant's costs as assessed in the sum of Kshs. 373,700/=.

(c) That the Honourable Court be pleased to direct the defendant/respondent to issue a warrant of arrest against the County Secretary of the County Government of Kisii if he fails to show cause and commit the said County Secretary if he fails to honour the NTSC and non payment of the stated amount as per the decree.



2. In a nutshell, what the applicants wish for is for the court to issue a notice to the County Secretary Kisii County, to show cause why he should not be committed to jail for non-payment of the applicants' costs.
3. The motion is not opposed and counsel for the respondent did not show up during the inter partes hearing of the application.
4. I have gone through the record. Through a plaint filed on 18 July 2016, the applicants had sued the County Government of Kisii for creating a road of access through their land parcels Bassi/Boitangare/8888, 2182 and 2009. They wished to have the defendant permanently restrained from their land unless they compulsorily acquired their parcels and compensated them.
5. Judgment was entered in favour of the applicants on 26 May 2021 with the court making an order that the road ought to follow the path provided in the map and permanently restrained the defendant from making a new road through the applicants' parcels of land without due compensation. The applicants were also awarded costs of the suit which were taxed at Kshs. 373,700/= on 21 October 2021. It would appear that the costs have not been paid so far hence this application.
6. As I earlier mentioned, nothing was filed to oppose the motion. I therefore have no reason to deny the application. I allow it and order as follows :-
  - i. That the costs of Kshs. 373,700/= and any accrued interest be paid within the next thirty (30) days.
  - ii. That in default of settlement in (i) above, the County Secretary, Kisii County do appear in court, on the date that this court shall give upon delivery of this ruling, and show cause why he should not be arrested and committed to civil jail for non-payment of the said costs.
  - iii. That the costs of this application be shouldered by the defendant.
7. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 27 DAY OF SEPTEMBER 2023**

**JUSTICE MUNYAO SILA**

**JUDGE**

