



REPUBLIC OF KENYA



**Registered Trustees of the Catholic Archdioces of Mombasa v Wakio (Environment & Land Case 500 of 2011) [2025] KEELC 1251 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1251 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 500 OF 2011**

**YM ANGIMA, J  
MARCH 13, 2025**

**BETWEEN**

**REGISTERED TRUSTEES OF THE CATHOLIC ARCHDIOCES OF  
MOMBASA ..... PLAINTIFF**

**AND**

**PRUDENCE WAKIO & 101 OTHERS ..... DEFENDANT**

**RULING**

**A. Plaintiff's Application**

1. By a notice of motion dated 30.10.2023 brought under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules* and other enabling provisions of the law, the plaintiff sought eviction orders in terms of the judgement delivered on 15.3.2021. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Augustus Wafula on 30.10.2023 and the annexures thereto. The plaintiff averred that there is no stay of execution orders in place and as such they sought to evict the defendants who had refused to vacate the suit property in spite of the existence of the decree.

**B. Defendants' Response**

2. The defendants filed a replying affidavit sworn on 20.11.2023 by Prudence Wakio. The gist of the response was that the intended execution process was irregular and unlawful because costs had not been ascertained as required under Section 94 of the *Civil Procedure Act* (Cap 21). As a result, they urged the court to disallow the plaintiff's application.

**C. Intended interested parties' application**

3. By notice of motion dated 18.6.2024 brought under Section 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*, Section 9 of the Office of the County Attorney Act, Article



159 (2)(c) of the Constitution of Kenya and other enabling provisions of the law, the County Attorney of Taita Taveta and the County Government of Taita sought to be joined as interested parties in the suit. The application was based upon the grounds set on the face of the motion and the contents of the supporting affidavit sworn by Mwang'ombe J. Mwakio and the annexures thereto.

4. The proposed interested parties contended that the matter was of public interest to the county since it involved the eviction of a large number of its residents. The interested parties claimed to be engaging the plaintiffs in negotiations and had even offered an alternative parcel of land to avert the eviction. The court was urged to allow the involvement of the interested parties to ensure a win-win situation as envisioned in Article 159 (2)(c) of the Constitution.

#### **D. Plaintiff's Response**

5. The plaintiff filed a replying affidavit sworn by Augustus Wafula on 27.09.2024 in opposition to the application. The deponent stated that the suit was heard and determined vide a judgement delivered on 15.03.2021 whereby the defendants were ordered to vacate the suit property. The defendants' appeal in Mombasa Civil Appeal No E061 of 2021 against the judgement was dismissed with costs on 22.3.2024. The court was urged to find that the defendants had exhausted all avenues available for appeal and that the court was functus officio and could only enforce its judgment by evicting the defendants.

#### **E. Directions on Submissions**

6. When the applications were listed for inter parties hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The plaintiff filed submissions in respect to their application dated 30.10.2023 on 27.06.2024 and in respect to the intended interested parties' application dated 18.6.2024 on 27.9.2024. The defendants filed submissions to the application dated 30.10.2023 on 8.1.2025. However, the interested parties did not file any submissions to their application dated 18.6.2024.

#### **F. Issues for Determination**

7. The court has perused the two applications dated 30.10.2023 and 18.06.2024, the responses thereto as well as the material on record. The court is of the view that the following key issues arise for determination herein:
  - a. Whether the plaintiff's application is irregular and in violation of Section 94 of the Civil Procedure Act.
  - b. Whether the plaintiff is entitled to the eviction order sought against the defendants.
  - c. Whether the applicants have made out a case for their joinder as interested parties.
  - d. Who shall bear the costs of the applications.

#### **G. Analysis and Determination**

##### **a. Whether the plaintiff's application is irregular and in violation of Section 94 of the Civil Procedure Act**

8. The court has considered the material on record on the alleged non-compliance with Section 94 of the Civil Procedure Act. The court is not persuaded that there is merit in the defendants' objection. A perusal of the record shows that the plaintiff filed a bill of costs dated 30.8.2022 which was taxed and



allowed in the sum of Kshs 226,800.00. A certificate of taxation to that effect was issued on 6.12.2022. As such, the court finds the defendants' objection to the execution to be misconceived.

#### **b. Whether the plaintiff is entitled to the eviction order sought**

9. The plaintiff filed this suit on 12.09.2011 and obtained judgment against the defendants jointly and severally on 15.3.2021. The court, inter alia, ordered the defendants to vacate the suit property failure to which they shall be forcibly evicted. The defendants were aggrieved by the decision and appealed against it to the Court of Appeal of Mombasa. On 22.3.2024 the appellate court found the appeal unmerited and dismissed it with costs to the plaintiffs. The Court of Appeal confirmed the plaintiff's ownership of the suit property and affirmed the decision of this court. As such the plaintiff is entitled to the fruits of its judgment.
10. The court is of the view that as long as the decree that was issued by the court on 15.09.2023 remains in force, there is no good reason why execution should not proceed. The defendants have clearly come to the end of the road and must abide by the terms of the decree.

#### **c. the applicants have made out a case for their joinder as interested parties**

11. It is evident from the material on record that this suit was finalized by the judgement delivered on 15.03.2021 which was subsequently affirmed by the Court of Appeal. The applicants have made an application to be joined as interested parties four years after the suit was concluded. The court is of the view that it has become functus officio and cannot allow the intended interested parties to reopen the suit which has been litigated to its finality. The Court of Appeal in *Telkom Kenya Limited v John Ochanda (Suing On His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited)* [2014] eKLR held that;

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon. It is a doctrine that has been recognized in the common law tradition from as long ago as the latter part of the 19th Century.”

12. The court is of the view the applicants herein are only seeking to delay the eviction of the defendants since they have exhausted all avenues for judicial intervention. The court finds that there is no pending suit to which the intended interested parties can be joined and as such the prayer for their joinder is disallowed.

#### **d. Who shall bear the costs of the application**

13. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA. 287 The court finds no good reason to depart from the general rule. As a result, the plaintiff shall be awarded the costs of the application.

#### **H. Conclusion and Disposal Order**

14. At the time of filing the suit, there was no court sitting in Taita Taveta County where the suit property is situated. Since there is now an operational ELC Court at Voi the file shall be transferred to Voi Law Courts for execution of the decree. As a consequence, the court makes the following orders for disposal of the two applications:



- a. The plaintiff's notice of motion dated 30.10.2023 be and is hereby allowed as prayed with costs to be borne by the defendants.
- b. The proposed interested parties' notice of motion dated 18.06.2024 be and is hereby dismissed with costs to the plaintiff.
- c. The file is hereby transferred to the ELC at Voi for execution of the decree since the suit property is located within its jurisdiction.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

In the presence of:

Ms. F. Osewe for the plaintiffs

Mr. Nyange for the defendants

Mr. Wangombe for intended interested party

Court assistant Gillian

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**Y. M. ANGIMA**

**JUDGE**

