



**Kamau v Nazamdini; Kiburi, Mwangi Ben & Company Advocates
(Interested Party) (Environmental and Land Originating Summons
E037 of 2021) [2025] KEELC 3218 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3218 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E037 OF 2021
MN GICHERU, J
APRIL 8, 2025**

BETWEEN

JOSEPH MAINA KAMAU PLAINTIFF

AND

NAZAKTALI NAZAMDINI DEFENDANT

AND

KIBURI, MWANGI BEN & COMPANY ADVOCATES INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated 29-4-2024. The motion which is by the Defendant is brought under Sections A1, 1B, and 3A of [Civil Procedure Act](#) and all enabling provisions of law. The motion seeks the following orders.
 3. Stay of execution of the warrants of arrest issued on 28-5-2024 and all consequential proceedings, pending the hearing and determination of the ELC Chambers Appeal filed in this case No. 37 of 2021(OS).
 4. That the costs be provided for.
2. The motion is based on four (4) grounds and is supported by an affidavit by the Defendant dated 29-5-2025. In summary the Defendant states as follows. Firstly, he has filed an appeal against the ruling of the Deputy Registrar. Secondly, he risks being arrested if the orders sought are not granted. Thirdly, there is an important question of law to be canvassed in this court regarding the substitution of a deceased party. Fourthly, the Plaintiff's counsel did not comply with the law regarding notice to show cause. For the above and other reasons, the Defendant prays for the orders.



3. The motion is opposed by the interested party which has filed a replying affidavit dated 27-6-2024. He states as follows. Firstly, the application as drawn is an unfortunate legal misconception, defective, frivolous and an abuse of the process of law and court. Secondly, there is no way the law firm of Kirubi, Mwangi Ben and Co. Advocates can be joined as a party in a concluded suit. Thirdly, the prayers sought are defective and untenable as this court has been rendered functus officio and may not grant unwarranted orders it cannot supervise because the matter is in the hands of the Court of Appeal. Fourthly, the Applicant should be candid enough with this court that his Application for stay was denied by the Court of Appeal. Fifthly, the disclosure that the Plaintiff died after Judgement means that no substantive orders can issue in any form and way upon the death of a party. Sixthly, there is ambiguity between the certificate of urgency and the motion and this is meant to mislead the court. Seventhly, there is no way the Applicant can mix or confuse recovery of Advocates costs with a general order of stay of execution of the judgment. Finally, there is no way that the Defendant would have known about the notice to show cause without being served and the record will show that the taxation of the bill of costs was done inter partes. For the above reasons, the interested party pray for the dismissal of the Defendant's motion.
4. In a further affidavit dated 15-7-2024, the counsel for the Defendant has annexed a copy of an order issued by the Court of Appeal at Nyeri in Civil Application No. E101 of 2023 staying the execution of the judgment and decree herein. The said order is dated 18-3-2024.
5. Counsel for the parties filed written submissions dated 19-8-2024, 1-8-2024 and 5-2-2025 where several issues have been raised. The issues include the following.
 - i. Whether the interested party can be joined in a concluded suit.
 - ii. Whether this court is functus officio.
 - iii. Whether execution in respect of the advocates costs can proceed as the execution of the decree awaits the conclusion of the appeal.
 - iv. Whether execution can proceed when a party has died and has not been substituted.
6. I have carefully considered the motion in its entirety including the grounds, affidavits and submissions by both sides and the law cited therein. I have also considered the issues identified by learned counsel for the parties. I find that it is totally superfluous to make any finding on the issues raised in the written submissions simply because, the Court of Appeal has already granted the prayers sought by the Defendant. There is the order dated 18-3-2024 which reads as follows in part.

By consent of the leaned counsel, it is hereby ordered as follows:-

- a. There shall be stay of execution of the judgment and decree of the Environment and Land Court at Murang'a dated 25th May 2023."

The stay covers all forms of execution including the advocates costs. There cannot therefore be any lawful execution after the consent order of 18-3-24. All purported execution is unlawful and an abuse of the court process.

For the avoidance of doubt, the notice of motion dated 29-4-2024 is allowed in terms of prayer 2 not because it changes anything that the court of Appeal said but as a restatement of the order of the Court of Appeal. Costs to the Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 8TH DAY OF APRIL, 2025.



M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs’ Counsel – Mr Kirubi

Defendant’s Counsel – Miss Wangui

Interested Party’s Counsel –Mr. Kirubi

