



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rajani v Rajani & 2 others (Environment & Land Case  
232 of 2019) [2022] KEELC 12715 (KLR) (29 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 12715 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 232 OF 2019**

**NA MATHEKA, J**

**JUNE 29, 2022**

**BETWEEN**

**NITIN JAYANTILAL RAJANI ..... PLAINTIFF**

**AND**

**SHAILESH JAYANTILAL RAJANI ..... 1<sup>ST</sup> DEFENDANT**

**SIMOUN TRAVEL LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JEREMY NJENGA, VICTORIA WAMBUA, VIVIANNE W. WACHANGA  
& PHYLLIS KIRAGU T/A J.M. NJENGA & COMPANY**

**ADVOCATES ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application is dated March 7, 2022 and is brought pursuant to article 159 of the [Constitution](#) of Kenya, sections 3A, 20, 63(e), 80 & 100 of the [Civil Procedure Act](#) cap 21 Laws of Kenya, order 5 (3), 45&51 of the [Civil Procedure Rules, 2010](#) seeking the following orders;
  1. That this application be certified as urgent and further in view of the urgency of the matter, this honourable court do in the first instance, dispense with the service of this application on the respondents and does make interim orders in terms of the prayers below.
  2. That pending the inter parties hearing and determination of this application the court be pleased to reinstate the orders issued by this court dated the February 23, 2021 and the suit.
  3. That the honourable court be pleased to review, to discharge and/or vary and/or correct and/or amend and/or set aside its order issued on October 25, 2021 by the Honourable Justice N A Matheka striking out this suit and reinstatement of the suit.
  4. That the costs of this application be provided for.



2. It is grounded on *inter alia*, the following grounds that the court's orders dated February 23, 2021, requiring the plaintiff to deposit of a security of a sum of Kenya shillings 3,000,000.00 was duly and timeously complied with and full and final payment was made of the said amount of Kshs 3 million and there is a receipt confirming payment of Kenya shillings 3,000,000.00 on record issued by the judiciary on the March 24, 2021, contrary to what the court has been misled into believing. That there exists some mistake and or error apparent on the record and or there is sufficient reason for this honourable court to review and or set aside its orders, as the plaintiff complied with this court's order dated the February 23, 2021. That this honourable court on the February 23, 2021 ordered that the plaintiff to deposit such security in form of cash deposit in court and or alternatively into a joint account in the name of the respective advocates or in the form of a bank guarantee from a reputable bank and in default of the above and or non-compliance with the provisions of such security, the plaintiffs claim would be struck out with costs to the defendants. That on the April 23, 2021, the plaintiff deposited with the judiciary and a receipt placed in on the court file a total sum of Kenya shillings 3,000,000.00 in full and final compliance with the orders of the court. That consequently, the plaintiff was issued with both a receipt and a computer generated payment order summary. That when this matter came up on the September 27, 2021, Mr Odipo holding brief for Mr Taib informed the court of the above facts as had Mr Taib prior to that. That on the October 25, 2021, in the absence of counsel for the plaintiff, when the matter came up for a mention the honourable court erroneously dismissed this suit on grounds that the plaintiff had failed to comply with its order dated the February 23, 2021, despite the plaintiff having complied with the said order and a payment receipt placed in the court file. That the record of the court will confirm the correctness of all the averments and will confirm that the payment was made in time and in its entirety. That in the circumstances, there exist sufficient reasons in addition to the new and important matters/developments which are valid enough to warrant a grant of the orders sought hereinabove. That the review of the order as sought will cause no prejudice whatsoever to the defendants as it will enable the substantive and inter-parties hearing of the suit as against the defendants and further the plaintiff has complied with the court orders as is required.
3. The 1<sup>st</sup> defendant stated that the matter arises from the sale of the suit property in the year 2007 but it inexplicably took the plaintiffs until December 25, 2019, over 12 years, to file this suit. That upon filing an injunction application on December 19, 2019, at the time of filing suit, the plaintiffs did not fix it for hearing until October 14, 2020 when the defendants applications for security for costs came up for hearing. That in a ruling of February 23, 2021 (exhibit SR 1 is the relevant part of the ruling) the court allowed the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants' applications for security for costs dated April 21, 2020, September 29, 2020 and April 30, 2020 respectively and ordered the plaintiffs to *inter alia* to provide security for costs of Kshs 1,000,000/- to each defendant within a period of 60 days from February 23, 2021. The security to be in form of cash deposit in court or a joint account in the names of respective parties advocates or in the form of a bank guarantee from a reputable bank. In default of compliance with the provision of the said security, the plaintiff claim stood struck out with costs to the defendants. That it took until April 13, 2021 for the plaintiffs advocates to forward one set of joint account opening forms to my advocates, M/s Mituga & Co Advocates, through a letter of the same date (exhibit SR 2). That, Jared Omari Mituga advocate duly filled the account opening forms and forwarded them to M/s Taib A Taib Advocates through a letter April 19, 2021 (exhibit SR 3) received by Mr Anthony Opondo on behalf of the plaintiffs' advocates on the same day. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants adopted the submissions of the 1<sup>st</sup> defendant.
4. That inexplicably, the plaintiffs' advocates forwarded a fresh set of joint account opening forms by way of a letter dated April 20, 2021 which were nonetheless duly filled again by my advocates and received by M/s Taib A Taib Advocates representative on April 20, 2021. Exhibit SR 4 are a copies of the letters. That they requested the plaintiff's advocates for particulars of the account opened and proof of deposit



of the security but did not receive any response. That the plaintiffs' advocate served him a copy of the plaintiffs' application dated April 19, 2021 via an email of that date seeking, *inter alia*, extension of time within which to comply with the court order of February 23, 2021. That when this matter came up for mention on September 27, 2021, the court confirmed that there was no proof in the court file that the plaintiff's had deposited a sum of Kshs 3,000,000/= as security for costs ordered on February 23, 2021. The matter was postponed to October 27, 2021 for the plaintiffs advocate to provide proof of such deposit.

5. This court has considered the application and the submissions therein. The application is based on the grounds that the court's orders dated February 23, 2021, requiring the plaintiff to deposit of a security of a sum of Kenya shillings 3,000,000.00 was duly and timeously complied with and full and final payment was made of the said amount of Kshs 3 million and there is a receipt confirming payment of Kenya shillings 3,000,000.00 on record issued by the judiciary on the March 24, 2021, contrary to what the court has been misled into believing. I have perused the court record and indeed find that there is a receipt confirming payment of Kenya shillings 3,000,000.00 on record issued by the judiciary on the March 24, 2021. It is unfortunate that when this matter came up for mention on September 27, 2021, the advocate holding brief for the plaintiffs could not confirm the that the plaintiff's had deposited a sum of Kshs 3,000,000/= as security for costs ordered on February 23, 2021. The matter was postponed to October 27, 2021 for the plaintiffs advocate to provide proof of such deposit but they failed to attend court. Be that as it may, I find that on the June 9, 2021 Yano J has ruled that his orders of 23<sup>rd</sup> February had been complied with in the presence of the advocates for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' and the plaintiff advocate. I find that this application is merited and I grant the following orders;

1. That the order issued on October 27, 2021 striking out this suit is set aside and the suit is reinstated as well as the court orders dated February 23, 2021.
2. That the costs of this application be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 29TH DAY OF JUNE 2022.**

**N.A. MATHEKA**

**JUDGE**

