



**Kenya Electricity Transmission Company Limited v Marula Estates Limited (Environment & Land Case 310 of 2018) [2025] KEELC 3113 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3113 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 310 OF 2018**

**A OMBWAYO, J**

**APRIL 4, 2025**

**BETWEEN**

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED ... APPLICANT**

**AND**

**MARULA ESTATES LIMITED ..... RESPONDENT**

**RULING**

1. Kenya Electricity Transmission Company Limited has come to this court vide application dated 3rd May 2025 seeking orders that The sum of Kenya Shillings Two Hundred and Seventy-Four Million Four Hundred and Seventy-one Five Hundred and Three (Kshs.274,471503/-) be paid to the firm of Kaplan & Stratton Advocates. The balance thereof together with interest accrued to date be released to the firm of Ochieng Opiyo & Company Advocates, Stanbic Bank Chiromo Branch Account number 010XXXXXXXXXX.
2. The application is opposed by the Marula Estates Ltd who stated that Honorable Court (Hon. Justice Mr. Antony O. Ombwayo) delivered a judgment on 13th September 2024 (the "judgment") in this matter, *inter alia* awarding the Defendant the sum of Kshs. 286,908,750 as compensation for the land known as LR No. 11367 in Nakuru County so acquired by the Plaintiff for purpose of a wayleave corridor.
3. At the institution of the suit herein and vide an order dated 22nd November 2018, the Plaintiff had deposited the offered sum of Kshs.267,781,500 into a Joint interest earning account in the names of the Advocates for the parties. The parties Advocates (Kaplan & Stratton Advocates and Ochieng Opiyo & Company Advocates) opened the Escrow account with Stanbic Bank, being account number 010000XXXXXXXX and deposited the sum of Kshs. 267,781,500 into the joint account. There was no dispute before the Court of whether or not the Defendant was entitled to the funds so deposited. What was in dispute before the Court was the Defendant's claim for enhanced compensation beyond the amount offered and admitted by the Plaintiff in the suit. The Defendant was at all material times



relevant to the suit entitled to the sum deposited in the joint interest earning account. The Defendant having been entitled to the funds deposited in the joint interest earning account at the point of deposit was thus entitled to both the principal amount as well as all interest to accrue up and until the point judgment was delivered.

4. The respondent states that despite the Defendants entitlement to the principal sum and the incessant pleas by the Defendant's advocates that the sum so deposited and which sum was due, be released during the pendency of the proceedings herein, the Plaintiff always frustrated the same. The Defendant vide its application dated 23rd October 2024 sought inter alia, for an order to Stanbic Bank to release the monies deposited into Account Number 010XXXXXXXXXXXXX in the names of Kaplan & Stratton Advocates/ Ochieng Opiyo & Company Advocates, being the sum of Kshs.267,781,500 together with interest accrued thereon to date to M/S Kaplan & Stratton Advocates. Vide the ruling delivered on 18th November 2024, this Honorable Court held that

“It is only prudent that the costs be assessed and the Plaintiff be paid unless there is an order of stay of execution”.

The Court further found that

“it is prudent that the money be released to the Defendant because the Plaintiff has already taken possession.”

5. The respondent states that this Honorable Court having already made a finding on the question of release of the funds in the joint interest earning account vide its ruling of 18th November 2024 is thus functus officio. The application before the Court is thus bad in law and defective.
6. According to the respondent, the Plaintiff proceeded to tax its Party and Party Bill of Costs and which Bill vide a ruling delivered on 20th February 2025, was taxed at Kshs.12,246,966. Contrary to the averments made by Counsel for the Plaintiff in its Supporting Affidavit that the Defendant has failed to execute bank papers mandating release of the funds held in Escrow, it is in fact the Plaintiffs claim to the accrued interest that has caused the aforementioned delay.
7. According to the respondent, the Plaintiff's sole claim if any is limited to payment of its taxed costs per the terms of the Certificate of Costs and the ruling of 18th November 2024. The Plaintiff has no legitimate claim to the interest accrued on funds held in Escrow and neither does it have a right to set off against the judgment sum the aforementioned taxed costs. Any such claim as presented would amount to unjust enrichment. The application herein is devoid of merit and should be dismissed with costs to the Defendant. In the alternative and without any prejudice to the foregoing, the Court should order that the disputed sums being the excess of the awarded sum in the judgment be retained in Escrow awaiting determination of the Defendant's intended appeal.
8. I have considered the application, replying affidavit and rival submissions. I do find that on the issue of release of funds held in the joint account in the names of the advocates for the parties, the court is functus officio having ordered release of the funds in the Escrow account to the defendant subject to payment of the costs to be taxed by the taxing master. Granting the orders sought would amount to reviewing the decision of the court. The application is disallowed.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**NAKURU ENVIRONMENT AND LAND COURT**

**DATE: 2025-04-04 13:19:00**

