



REPUBLIC OF KENYA



**Ojwang v Ageri (Environment & Land Case 8 of 2017)
[2022] KEELC 4801 (KLR) (21 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4801 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 8 OF 2017
AA OMOLLO, J
SEPTEMBER 21, 2022**

BETWEEN

KENNETH MULONGO OJWANG APPLICANT

AND

ROBERT OSIKE AGERI RESPONDENT

RULING

1. The defendant/applicant brought the notice of motion application dated September 7, 2021 under the overriding objectives of the [Civil Procedure Act](#). The following orders were sought:-
 - a. ...
 - b. ...
 - c. ...
 - d. There be a stay of execution of the Notice To Show Cause pending hearing and determination of this application.
 - e. That the sum of Kshs 50,000 that was admitted and acknowledged as owing from the plaintiff to the defendant in the pleadings and proceedings herein be deducted from the unsettled taxed costs sum of Kshs 117,510/= and the defendant be allowed to settle such reduced amount in costs by paying monthly instalments of Kshs 15,000/=.
 - f. That costs of this application be provided for.
2. The application is supported by the grounds listed on its face and on his affidavit sworn on September 7, 2021. The applicant deposed that the respondent prayed for the transfer of this sold land to be effected before paying the balance of Kshs 50,000. He deposed further that he has been suffering from high blood pressure since 2019 so he will not withstand civil jail due to his health status. The applicant



urged the court to deduct the Kshs 50,000 from the plaintiff's taxed costs and he be allowed to defray the balance in equal monthly instalments of Kshs 15,000/=.

3. The plaintiff/respondent opposed the application by filing a replying affidavit dated February 3, 2022. He deposed that the judgment rendered captured each and every aspect of the case and even the application for review was dismissed. He accused the applicant of mischief for instead of showing cause why he cannot settle the taxed costs of Kshs 117,510, he brought the current application. The respondent stated further that the applicant had not paid even the sum of Kshs 15,000 he had proposed. He urged the court to dismiss the application with costs.
4. The applicant is seeking two orders; that he gets a credit of Kshs 50,000 from the respondent on account of the money owed to him and that he be allowed to liquidate the balance of costs on monthly instalments of Kshs 15,000/=. The issue of whether Kshs 50,000 being balance of the purchase price should be paid was raised in the application dated September 25, 2020. The said application was heard on merits and determined on June 17, 2021. The applicant is thus raising a matter that is now *res judicata*. I will not consider whether the amount of Kshs 50,000 should be treated as part of the costs.
5. On the matter of settling the costs by instalments, the applicant did not state that he has financial constraints. He only deposed to being unwell and also that he has suffered a lot. This application was filed a year ago meaning the respondent has also been denied the fruits of his judgment. Therefore taking into consideration that the applicant has had ample time to settle the impugned costs from the time the application was filed, I allow the request of payment by instalments but revise that the payment shall be in three equal instalments. The 1st instalment be paid on or before October 15, 2022 and the second instalment on or before November 15, 2022 and the last instalment on or before December 15, 2022. In default of any instalment execution to issue.
6. Each party to meet their respective costs of the current application.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 21ST DAY OF SEPTEMBER 2022.

A OMOLLO

JUDGE

