



Republic v District Land Adj. Officer Tigania East; Karwamba & another (Exparte Applicants); Tiritimi (Interested Party) (Environment and Land Judicial Review Case E003 of 2021) [2022] KEELC 14951 (KLR) (23 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14951 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2021
CK NZILI, J
NOVEMBER 23, 2022
IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR
ORDERS OF CERTIORARI
AND
IN THE MATTER OF LAW REFORM ACT CAP 26 LAWS OF KENYA
AND
IN THE MATTER OF A/R OBJECTION NO. 995, 996, 997, 998, 999,
1000, 1001, 1002
AND
IN THE MATTER OF LAND PARCEL NO'S 6721, 4697, 1822,
4413, 6720, 4447, 1863, 1073 & 4446

BETWEEN

REPUBLIC APPLICANT

AND

DISTRICT LAND ADJ. OFFICER TIGANIA EAST RESPONDENT

AND

MILTON GITIYE KARWAMBA EXPARTE APPLICANT

AND

GRACE KATHEI TIRITIMI INTERESTED PARTY

AND

FLORAH CIACEREU EXPARTE APPLICANT



RULING

1. The court is asked by an application dated August 26, 2022 to stay the execution of the decree and allow the judgment debtor to liquidate the decretal amount in monthly instalments of Kshs 3,000/= till payment in full.
2. The reasons given are contained on the fact of the application and the supporting affidavit of Milton Gitiye Karwamba and Florah Ciacereu sworn on the even date.
3. It is averred that the first judgment debtors are poor and cannot afford to pay Kshs 107,925/= at once, is a casual laborer earning Kshs 200/= per day while the second judgment debtor is unemployed and lacks sources of livelihood.
4. In considering whether to postpone, suspend and allow a party to liquidate a decretal sum in instalments, the party must disclose his or her financial status, show bonafide and demonstrate that the application is not made to obstruct, derail, avoid and or frustrate the judgment creditor. The court must also be guided by the interests of justice, the antecedents of the applicant and the circumstances leading to the debt.
5. In this matter the applicants had come to court for leave to institute judicial review and upon leave failed to file the substantive notice of motion on time or at all until the interested parties moved the court to vacate both the leave and stay since it was negatively affecting the implementation of the decision relating to Parcel No 1822 and 6721 in the names of the interested party.
6. The interested party had also raised fears that the *exparte* applicants used the said orders to purport to forcefully evict her from the subject land.
7. The costs arose out of inaction on the part of the *exparte* applicants who despite the issuance of court orders failed to file the substantive notice of motion.
8. Further the applicants have not disclosed the source of their income other than stating that they are poor and or un-employed. A party seeking such orders must make full disclosure of what he or she owns and the liabilities if any.
9. To allow the applicants to pay Kshs 300/= per month would take over 35 months to settle the decretal sum.
10. In *Lavington Security Ltd & another vs Letkina Diaries Ltd & another* as cited in *Nicholas Gitonga Murangi vs Susan Wairimu & 4 others* (2021) eKLR the court held a party in a difficult position must show seriousness in paying the amount and on arranging fair payment proposals while in *TK Advocates vs Baringo County Government* (2018) eKLR the court held any decision on payment in installments was discretionary to be exercised judiciously.
11. Guided by the above case law, I allow the suspension of the execution. The judgment debtors shall liquidate the same in monthly instalments of Kshs 6,000/= with effect from December 5, 2022 and thereafter every 5th day of the succeeding months till payment in full. In default of any single instalment on its due date, the outstanding balance to become due and payable at once and the decree holder to be at liberty to execute.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT



THIS 23RD DAY OF NOVEMBER, 2022

In presence of:

C/A: Zamzam

No appearance

HON. C.K. NZILI

ELC JUDGE

