



REPUBLIC OF KENYA



KENYA LAW
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**Noorani v Ochieng & another (Environment & Land Case
319 of 2008) [2022] KEELC 15615 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15615 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 319 OF 2008
LN MBUGUA, J
DECEMBER 7, 2022**

BETWEEN

AHMED NOORANI PLAINTIFF

AND

JOYCE AKINYI OCHIENG 1ST DEFENDANT

ONESMUS GITHINJI T/A ONESMUS GITHINJI & CO.

ADVOCATES 2ND DEFENDANT

RULING

1. Before me is an application dated July 19, 2022 where the 2nd defendant/applicant seeks the following orders:
 - i. That this Application be certified urgent and be heard expeditiously.
 - ii. That pending interpartes hearing of this application the decree issued on July 14, 2022 be stayed.
 - iii. That this honourable court be pleased to list this matter in chambers before the judge who heard the case or any other judge for settlement of the decree.
 - iv. That this honourable court be pleased to give directions on the variance of costs of the suit and interest borne out of the fact That the suit against the 2nd Defendant commenced on May 14, 2013 while the initial suit was filed on July 21, 2008.
 - v. That the decree issued on July 14, 2022 be set aside.
 - vi. That costs be in the cause.
2. The application is premised on the grounds in support of the application and on the supporting affidavit of the 2nd defendant who contends That he was brought on board vide the re-amendment of



- the plaintiff filed on May 14, 2013 and hitherto, no claim or demands had been made by the plaintiff against him.
3. The applicant further contends That the costs and interests for the period before May 14, 2013 are colossal, hence the decree should state the proportion the costs and interest are to be paid.
 4. In response thereof, the plaintiff filed a replying affidavit dated October 6, 2022, averring That the applicant has not contested the draft decree which was forwarded to them. Nevertheless, the same was approved and signed by the Deputy Registrar as it was a true reflection of the judgment.
 5. I have only seen submissions of the applicant where he has reiterated the averments set out in the application, adding That the in duplum rule applies herein. The applicant has relied on various case law including *Kenya Hotels Limited v. Oriental Commercial Bank Ltd (Formerly known as Dephis Bank Limited)* [2019] eKLR.
 6. I have considered all the arguments raised herein. As pointed out by the Applicant, any party is at liberty to prepare a draft decree. This is what the plaintiff did and forwarded the same to the applicant, vide a letter dated June 28, 2022 which was duly received by the applicant on June 29, 2022 (see stamp of Onesmus Githinji). The letter was to respond within 7 days. He apparently did so as per the letter dated July 4, 2022 where he contested the draft decree. However That letter of July 4, 2022 bears no stamp to indicate That it was received. I am also not able to discern when it was uploaded in the courts CTS as the document availed is blurred.
 7. Nevertheless, the court will not belabour the above point since the gist of the matter is whether the 2nd defendant should pay costs and interest as indicated in the judgment. The applicant contends That a simple calculation of the amount demanded would put the figure at Sh. 13,456,043.
 8. I have not seen the actual calculations made to give the above mentioned figure. I do however discern That the calculations of costs and interests from year 2008 may be rather high. This however does not mean That the in duplum rule is applicable herein since the said rule applies to bank loans and interests thereof governed under section 44 of the *Banking Act*. (See the rational of the said rule in the Court of Appeal case of *Mwambeya Ranching Company Limited and another v. Kenya National Capital Corporation* [2019] eKLR).
 9. This court takes cognizance That the plaintiff paid the deposit of sh.4 000 000 way back in year 2007. What happened to the sums, whether 2nd defendant retained the money or not is immaterial as the court has pronounced a judgment on the dispute. The fact remains That the deposit was never refunded back, despite the orders from superior courts including the ruling from the court of Appeal in Civil Appeal No. 55 of 2013 delivered on March 31, 2017.
 10. Despite the foregoing, the court takes into consideration That the 2nd defendant was brought on board in year 2013 and That the calculation of interest and costs may give astronomical figures if calculated from year 2008. In the circumstances, the court proceeds to allow the application in the following terms;
 - I. Order no. (3) in the judgment of 12/5/2022 is hereby varied to read “ In terms of section 26 (1) of the *Civil Procedure Act*, The defendants are jointly and severally condemned to pay interests on order (1) above at the rate of 14%, plus costs to be calculated from May 14, 2013.
 - II. The decree issued herein is to be amended accordingly.
 - III. Costs in the cause.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF DECEMBER, 2022
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Opundo holding brief for Michuki for Plaintiff/Respondent

Kabugu holding brief for C. Kabugu for 2nd Defendant

Court Assistant: Eddel/Vanilla

