

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 48 OF 2004

JAMES MUOKI MUSYIMI.....PLAINTIFF/APPLICANT

VERSUS

JULIUS WAMBUA MALAI....DEFENDANT/RESPONDENT

RULING

1. In the Notice of Motion dated 3rd November, 2020, the Plaintiff has sought for the following orders:

a. The Applicant/Plaintiff be allowed to deposit the sum of Kenya shillings ten thousand (Kshs. 10,000) per month and the rest of the monthly payments until payment in full into the court's account.

b. The costs of execution be borne by the Defendant/Respondent.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that this suit was heard and determined; that the Defendant's Bill of Costs was assessed and taxed and that he is willing to pay the sum of Kshs. 67,318 in monthly installments of Kshs. 67,318 from his small savings until payment in full.

3. The Plaintiff finally deponed that he is apprehensive that should the Defendant apply for execution of the taxed costs, he will be prejudiced because he is unable to pay the sum in full at once.

4. In reply, the Defendant's advocate deponed that the Plaintiff's suit was dismissed for want of prosecution on 22nd October, 2009; that the Bill of Costs was taxed on 21st October, 2020 and that the Plaintiff is abusing the process of the court because he has filed a fresh suit based on the same facts at Kithimani Law Court.

5. The Defendant's advocate deponed that there are no cogent and credible grounds advanced by the Plaintiff to warrant the payment of the taxed costs in installments and that the conduct of the Applicant as far as this matter is concerned is that of not only a vexatious litigant but also a person who is avidly bent on abusing the process of the court. Neither the Plaintiff nor the Defendant filed written submissions.

6. This suit was dismissed by this court on 22nd October, 2009 with costs. The Defendant taxed his costs and a Certificate of Taxation was issued by the court on 23rd October, 2020. The Defendant is seeking for an order allowing him to pay the taxed costs of Kshs. 67,318 per month.

7. The Defendant has opposed the Application for the proposed payment of the taxed costs on the ground that no good reason has been given by the Plaintiff. The Defendant's advocate has further stated that the Plaintiff is a vexatious litigant having filed a fresh suit in Kithimani PMCC No. 15 of 2020.

8. This Application was filed on 4th November, 2020, which is four months ago. The Certificate of Taxation was issued in October, 2020, while the Bill of Costs was taxed on 21st October, 2020. If the Plaintiff was paying the proposed Kshs. 10,000 from the time the Bill of Costs was taxed, he would have paid almost 50,000 by now.

9. Considering that this matter was dismissed in the year 2009, any delay by the Plaintiff in paying the taxed costs will be prejudicial. This, coupled with the fact that the Plaintiff filed a fresh suit raising similar facts militates against the grant of the orders being sought. Indeed, it was only prudent that the Plaintiff settles the costs of this suit before filing a fresh suit.

10. For those reasons, I dismiss the Application dated 13th November, 2020 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19TH DAY OF MARCH, 2021.

O.A. ANGOTE

JUDGE