



REPUBLIC OF KENYA



**Ingoi v Macharia & another (Environment & Land Case
648 of 2015) [2025] KEELC 110 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 110 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 648 OF 2015**

**AA OMOLLO, J
JANUARY 23, 2025**

BETWEEN

MAURICE INGOI PLAINTIFF

AND

JOSIAH MACHARIA 1ST DEFENDANT

LANDAN MBOTE HUTHU 2ND DEFENDANT

RULING

1. For determination is the application dated 22nd August 2023 brought under the provisions of Section 1A, 1B and 3A of *Civil Procedure Act*. It seeks orders that:
 1. Spent
 2. That the Order made by this Court on 25th July, 2024 with regard to the deposit of the sum of Kshs 690,000/= in a joint interest earning account in the names of the Advocates for the parties in a bank of their choice be varied and that instead of the said sum be deposited into Court.
 3. Cost of the application be provided.
2. The application is based on the following grounds;
 - a. The Advocates are unable to agree on the opening of the Account
 - b. Contrary to the said order, the Defendant's Advocates wish that the said amount be paid over to the Defendants instead of being deposited in a joint account of the Advocates.
 - c. The plaintiff has the funds in his hands which he would like to be deposited in obedience to the Court order made on 25th July, 2024.



3. The plaintiff/Applicant deposes that his application before court of appeal was dismissed on 17th May, 2024 and that he has requested the matter to be placed before a three – judge bench of the Court of Appeal for review. He added that since obtaining the decree on 9th June, 2023, the Defendant has never applied to court for execution.
4. I have not seen any response filed by the Defendant/Respondent other than the submission. The Plaintiff/Applicant in his submissions urged the court to allow the application.
5. The Applicant annexed emails exchanged between his Counsel and the Defendant’s counsel. For instance, in the email dated 6th August 2024, Mr. Oduor learned counsel for the Defendant wrote thus;

“However in light of the fact that the judgment of the ELC court still stands and is favour of the Defendants, we urge you to for once properly advise your client to wit to vacate the suit property and pay the sum of Kshs 690,170 as ordered in the judgment to avoid embarrassment that is very imminent. He has hit the wall this time and it is high time that he accepts that. That you.”
6. He states that he had requested for the matter to be reviewed by a 3-judge bench hence he still has hopes of getting a favourable order. As at now, there is no application pending before the court of appeal. The Applicant in his motion dated 18th March 2024 had sought for stay of execution before this court pending hearing and determination of his application dated E079 of 2024 before the Court of Appeal for extension of time to lodge an appeal. The application before the Court of Appeal having been heard and determined in the negative, it reverted the parties to their previous position before the order of 25th July, 2024 was granted.
7. Since the sum of Kshs 690,170 was not deposited in the joint interest account within the timeframe provided in the ruling, there is no basis to review the order for making the deposit in court as the stay automatically lapsed with the determination of the Court of Appeal Civil application No. E079 of 2024.
8. Hence, there is nothing to lift as already the stay order has already lapsed as stated hereinabove. At this stage, the Defendant is at liberty to execute the decree of this court as per the rules of procedure. Consequently, the motion dated 9th August, 2024 is allowed as a matter of formality. The application dated 22nd August, 2024 by the plaintiff is dismissed. Each party to meet their respective costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY, 2025.

A. OMOLLO

JUDGE

