



REPUBLIC OF KENYA



Mugacia & 4 others v Makindi Banks Limited (Environment & Land Case 183 of 2017) [2025] KEELC 3583 (KLR) (6 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3583 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 183 OF 2017**

MN GICHERU, J

MAY 6, 2025

BETWEEN

ROMAN NYOIKE MUGACIA 1ST PLAINTIFF
GATHUA MUNYU 2ND PLAINTIFF
SIMON KIINGATI 3RD PLAINTIFF
MARY NJOKI NJUGUNA 4TH PLAINTIFF
MARY MUGURE 5TH PLAINTIFF

AND

MAKINDI BANKS LIMITED DEFENDANT

RULING

1. This ruling is on the notice of motion dated 18-11-2024. The motion which is by the 1st Plaintiff is brought under Orders 40 rule 1 (a) and 51 rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A, 27 and 63(1) of the *Civil Procedure Act* and all other enabling provisions of law.
2. The motion seeks the following residual orders.
 3. Costs awarded to the Defendant to be shared by all the five(5) Plaintiffs and not the 1st Plaintiff alone.
 4. The Plaintiffs who are men and women of straw be accorded reasonable and affordable time to settle the costs awarded to the Defendant against them.
 5. Costs of this application be provided for.
3. The motion is based on eleven(11) grounds and is supported by an affidavit sworn by 1st Plaintiff which has three annexures. The gist of the entire motion is as follows. One, the Defendant was awarded costs



of Kshs. 378,790 against all the Plaintiffs. Two, the Defendant has declared openly that he wishes to recover all the costs from the 1st Plaintiff in order to teach him a lesson for having been the ring leader of the other Plaintiffs in this case. Three, true to his word, the Defendant has only been pursuing the 1st Plaintiff and excusing the other Plaintiffs. The only property that has been proclaimed belongs to the 1st Plaintiff. Four, the proclaimed property includes two cows which are the only source of income for the Plaintiff as he is at 83 year old man. Finally it is unjust to attach property belonging to one Plaintiff when the costs were awarded all the five Plaintiffs jointly and severally.

4. The motion though served upon counsel for the Defendant is not opposed. No replying affidavit or grounds of opposition were ever filed by the Defendant.
5. I have considered the motion in its entirety including the grounds, affidavit in support and annexures. I find that the motion has merit. It is not fair or just to execute against one Plaintiff when the decree is against all of them. I direct that the decretal amount be paid on a pro rata basis so that each Plaintiff pays Kshs. 75,758/= (Seventy five thousand, seven hundred and fifty eight.) Secondly, I direct that the decretal sum be paid within a period of 9 months.

The motion is therefore allowed in terms of prayers 3 and 4.

Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 6TH DAY OF MAY, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's counsel – Mr Kimani holding brief

Defendant's counsel – Absent

