



Ochola Kamili Holdings Limited v Deche & another (Suing on Behalf of the Estate of Anthony Chiro) (Environment and Land Appeal E011 of 2022) [2025] KEELC 4365 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4365 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E011 OF 2022
FM NJOROGE, J
JUNE 10, 2025**

BETWEEN

OCHOLA KAMILI HOLDINGS LIMITED APPELLANT

AND

KILLIAN KALAMA DECHE 1ST RESPONDENT

MOSE CHARO DECHE 2ND RESPONDENT

SUING ON BEHALF OF THE ESTATE OF ANTHONY CHIRO

(Being an appeal from the Judgment and order of the Honourable J.M Kituku Senior Principal Magistrate Kilifi delivered on the 8th of February 2022)

RULING

1. The Appellant, Ochola Kamili Holdings Limited being aggrieved by the ruling and order of Hon J.M Kituku delivered on the 8th February 2022 has appealed to this court on the following grounds:
 - a. That the Learned Trial Magistrate, erred and misdirected himself in law and fact by allowing the Plaintiff's application dated 8th February, 2022;
 - a. That the Learned Trial Magistrate erred and misdirected himself in law and fact by considering and admitting the disputed letter dated 26th February 2016 as an admission;
 - b. That the Learned Trial Magistrate erred in law and fact by failing to apply the correct principles applicable in admissions;
 - c. That the Learned Trial Magistrate erred in law and fact by failing to consider the submissions tendered in by counsel for appellant herein;



- d. That the Learned Trial Magistrate erred in law and fact by entering judgment on admission where the admission was not specifically pleaded by the appellant;
 - e. That the Learned Trial Magistrate erred in law and fact by taking the respondents submissions as the gospel truth;
 - f. That the Learned Trial Magistrate erred in law and fact by making a finding solely based on a document that would otherwise be protected by advocate client confidentiality;
 - g. That the Learned Trial Magistrate failed to consider the orders issued were drastic and deprived the appellant a chance to be heard and or cross examine the respondent on the alleged letter dated 26th February 2022 which purports to be an admission.
2. The appellant prays for the following reliefs against the defendants:
- a. That the appeal be allowed;
 - b. That the ruling and order of the Honourable Court dated 8th February 2022 be set aside;
 - c. That the Honourable Court be pleased to re –evaluate the evidence on record as well as the submissions filed and make orders accordingly;
 - d. Any other remedy that the Honourable Court may deem just.
3. The background to the present appeal is that the appellant was sued by the respondent in the Magistrate Court SPMCC Number E73 of 2021 vide a plaint dated 19th March 2021 in which the respondent sought the following orders:
- a. An order compelling the defendant to pay the sum of Kenya Shillings 4,433,000/- being balance of the purchase price;
 - b. Cost of the suit;
 - c. Interest on a, b and c (sic) at court rates;
4. An application dated 15th November 2021 was filed in that suit by the respondent. In that application, he sought the following orders:
- a. Summary judgment be entered for the liquidated sum of Kenya Shillings 4, 433,000/- plus interest in favor of the plaintiff's/applicants;
 - b. In the alternative judgment on admission for the sum of Kenya Shillings 4,433,000/- plus interest be entered in favour of the plaintiffs/applicants;
 - c. The defense dated 8/4/2021 be struck out for being a sham evasive comprising of near denials and an abuse of the court process;
 - d. Costs of this application and the main suit be awarded to the plaintiff's applicants.
5. In his ruling dated 8th February 2022 which the subject of the present appeal, the trial magistrate agreed with the applicant and stated as follows:

“The Artificial question is whether the letter dated 26th of February 2016 is an admission?

I find it does.



It was in response to a demand notice and it is clear the defendant at knowledge is indebted to the tune of Kenya Shillings 4,433,000/-.

He gave the tabulation.

The defendant has not annexed any document of payment made thereafter.

Consequently, I allow prayer b of the motion."

6. That is the last order made in the ruling that has generated the present appeal.
7. Now in the present appeal has been filed by the appellant an application dated 23rd January 2025 in which the following orders are being sought:
 - a.Spent;
 - b.Spent;
 - c. That pending the hearing and determination of the appeal lodged by the appellant herein there be an order of stay of execution and or enforcement of the ruling/order of the court delivered on 8th February 2022 in the original case number Kilifi Cm ELC E073 of 2022;
 - d. That the costs of this application be in the cause to await the outcome of the intended appeal.
8. The application is opposed. The second respondent, with authority of the first respondent, filed a replying affidavit dated 26th February 2025. However, having perused the court record in this matter, this court finds that the Record of Appeal has already been filed. As things stand now, the appeal is only awaiting the availing of the lower Court file record and issuance of directions as to hearing, in order to enable court, prepare a judgment which will finalize the entire dispute. Consequently, I find it unnecessary to go deep into the merits of the application dated 23rd January 2025. The sole course of action that will expedite the hearing and determination of the appeal is to have the status quo maintained by all parties in the appeal pending the delivery of judgment.
9. Consequently, I hereby order that all the parties shall maintain the status quo prevailing as at the date of this order, meaning that there shall be no execution before the judgment on the main appeal is delivered. To expedite the disposal of this appeal the Deputy Registrar Office Court shall call for the lower court file record from Kilifi Senior Principal Magistrate's court and attach it to this file within 2 weeks from the date hereof and the matter shall be listed for a mention for directions as to hearing on 25th September 2025.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 10TH DAY OF JUNE 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

