



REPUBLIC OF KENYA



**Wambutu v Githae & another (Environment & Land Case
198 of 2015) [2024] KEELC 4084 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4084 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 198 OF 2015**

JO OLOLA, J

MAY 9, 2024

BETWEEN

JOSEPH MAINA WAMBUTU PLAINTIFF

AND

PHILIP MURIITHI GITHAE 1ST DEFENDANT

ANNAH MUMBI MURIITHI 2ND DEFENDANT

RULING

1. By the Notice of Motion Application dated 16th May 2023, Philip Muriithi Githae and Annah Mumbi Muriithi (the Defendants) pray for orders as follows:
 1. That the Honourable court be pleased to order (the) Judgment debtors to deposit the decretal sum in an interest earning account in the joint names of the Advocates for the Plaintiff and the Applicants; and
 2. That there should be no order as to costs.
2. The Application is supported by an Affidavit sworn by the 1st Defendant and is premised on the grounds that:
 - (i) On 20th February 2023, Party and party costs were taxed and a Certificate of Costs was issued;
 - (ii) The 1st and 2nd Defendants are husband and wife and they are willing to pay the amount taxed;
 - (iii) The Defendants are aggrieved by the Judgment of the Honourable Court and are intending to appeal; and
 - (iv) That to make the amount available to the party who wins in the Appeal, the Court should allow the said amount to be deposited in an interest earning account to be opened in the joint names of the Advocates for the Plaintiff and the 1st Defendant.



3. Joseph Maina Wambutu (the Plaintiff/Judgment creditor) is however opposed to the Application. In his Replying Affidavit sworn on 6th June, 2023 as filed herein on 8th June, 2023, the Plaintiff avers that although the Defendants lodged a Notice of Appeal on 22nd December 2021, they have not taken any other steps towards the filing of the Record of Appeal even after their Application for stay of execution was dismissed on 28th September, 2022.
4. The Plaintiff further avers that there is nothing pending in Court that would warrant the depositing of the Party and Party costs into an interest earning joint account as sought by the Judgment debtors. The Plaintiff further avers that he is entitled to the taxed costs and that it has not been suggested that he is incapable of refunding the sum of Kshs.149,440/- in the unlikely event of a successful appeal by the Defendants.
5. I have carefully perused and considered the Application as well as the response thereto. I have similarly perused and considered the submissions placed before the Court by the Learned Advocate for the Defendants. The Plaintiff did not file any submissions.
6. By their Application before Court, the Defendants/Judgment debtors pray for an order that they be allowed to deposit the taxed costs in an interest earning account in the joint names of the Advocates representing the Parties herein.
7. It is the Defendants case that they are aggrieved by the Judgment delivered by this Court on 2nd December, 2021 and that they intend to appeal to the Court of Appeal. It is further their case that they are willing to pay the Party and Party Costs as taxed on 20th February, 2023 but they would rather have the same deposited in a joint interest earning account to make the amount available for the Party that shall be successful at the Court of Appeal.
8. By their Application before the Court, it would appear that the Defendants are apprehensive that they may not recover the costs should their appeal succeed in the Court of Appeal. Accordingly they urge that the Costs that they have been ordered to pay to be secured in an account from which it could easily be retrieved at the close of their intended Appeal.
9. In my considered view, the factors that the Court is required to consider in such circumstances are the same requirements that the Court considers when dealing with a request for security for costs. As it were, the purpose of security for costs order was to alleviate the concerns of potential difficulties in seeking to recover costs.
10. In such a scenario, an Applicant for such an order was required to establish that the respondent, if unsuccessful in the proceedings would be unable to pay costs. The objective was to protect a party from circumstances where one was dragged to Court and made to incur costs due to litigation. It was meant to prevent frivolous and vexatious litigation. The costs protected the Defendant or a Respondent against the risk that a costs order made in its favour may be rendered ineffective by the plaintiff's impecuniosity.
11. I have applied my mind to those requirements and the circumstances of this case. In the matter before me, it is not the Plaintiff but the Defendants who intend to Appeal the decision of this Court. The Plaintiff has successfully litigated his claim before this Court and his claim cannot therefore fall in the category of those that are termed as frivolous. If anything, it was perhaps the Plaintiff who should insist on the Defendants depositing security for costs for their intended Appeal.
12. At any rate, the Defendants have not suggested even remotely that the Plaintiff/Decree-holder is impecunious and that he will therefore be incapable of refunding the sum of Kshs.149,440/- that was taxed as costs herein.



13. In the circumstances herein, I did not find any basis for the Motion dated 16th May, 2023. The same is dismissed with costs to the Plaintiff.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 9TH DAY OF MAY, 2024.**

In the presence of:

Mr. Wachira holding brief for Ms Mwai for the Plaintiff/Respondent

Mrs. Maina holding brief for K. Wachira for the 1st Defendant/Applicant

Court assistant - Kendi

.....

J. O. OLOLA

JUDGE

