



**Timamy & 3 others v Rashid & 17 others (Environment & Land Case  
238 of 2014) [2025] KEELC 4056 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4056 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 238 OF 2014**

**YM ANGIMA, J  
MAY 22, 2025**

**BETWEEN**

**RASHID MOHAMED TIMAMY & 3 OTHERS & 3 OTHERS & 3  
OTHERS ..... PLAINTIFF**

**AND**

**RASHID ALI RASHID & 17 OTHERS & 17 OTHERS & 17  
OTHERS ..... DEFENDANT**

**RULING**

**A. Introduction**

1. The material on record shows that vide a plaint dated 17.07.2014 the plaintiffs sued 18 defendants in relation to a house without land on plot 860 Section 1/MN which was said to belong to the estate of the late Issa Suleiman and the late Rashid Mohamed.
2. It would appear that in the course of the proceedings the plaintiffs withdrew their claim against the 9<sup>th</sup>, 10<sup>th</sup> and 13 the defendants (the defendants) as a consequence whereof the latter were awarded costs. The record further shows that those defendants filed a bill of costs dated 12.07.2023 against the plaintiffs which was taxed and allowed in the sum of Kshs.681,983.83 on 06.12.2023.
3. It would further appear that when the plaintiffs failed to pay the taxed costs and the defendants sought to sell the house without land by public auction to satisfy the decree on costs. The plaintiffs and the objector were aggrieved by the intended auction hence they filed objection proceedings.

**B. Objectors' application**

4. The record shows that Zubeda Issa Suleiman (Zubeda) was the 4<sup>th</sup> plaintiff's sibling. They all filed a notice of motion dated 04.12.2024 expressed to be grounded upon Order 22 Rules 6, 7, 8, 9, 13, 18, 19, 22, 51, 52 and 53 of the Civil Procedure Rules, Sections 44 and 63 (c) of the [Civil Procedure Act](#)



(Cap 21), Article 50 of *the Constitution* of Kenya, and all other enabling provisions of the law. The substantive prayer sought was the setting aside of the execution process and in particular the intended sale of the house without land.

5. The application was based upon the grounds set out on the face of the motion and the contents of the 2 supporting affidavits sworn by Asia Assa Suleiman and Zubeda Issa Suleiman. The objectors contended that they were not aware of the order or decree on costs and that a certified copy thereof was never served upon them. They further stated that the house without land did not belong to them but to the estate of the late Issa Suleiman Chuba and that the decree was not one for delivery of immovable property but a money decree. It was also the objectors' case that the said house was the subject of High Court Family Appeal No. 19 of 2018.

### **C. Defendants' response**

6. The defendants filed a replying affidavit sworn by James Mugambi Ituruciu on 13.01.2025 in opposition to the objection proceedings. They stated that all material times the plaintiffs were represented by a firm of advocates and that they were duly served with relevant notices including notice of taxation. They denied that the costs were awarded in ex- parte proceedings and pleaded that they were awarded costs on 10.03.2022 in the presence of the plaintiffs' advocates.
7. In further response, the defendants stated that they house without land the subject of the proceedings was, in fact, vested upon the plaintiffs by the Kadhi's Court in Succession Cause No. 97 of 2014 - In the matter of the estate of Issa Suleiman Chuba. It was also their case that even though there was a pending appeal over the decision such appeal does not operate as a stay. It was pointed out that the plaintiffs were the judgment debtors in this suit and that Zubeda had not demonstrated her claim over the house without land.

### **D. Directions on submissions**

8. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the defendants filed written submissions dated 26.02.2025 whereas the objectors' submissions were not on record by the time of preparation of the ruling.

### **E. Issues for determination**

9. The court has perused the objectors' notice of motion dated 06.12.2024, the replying affidavit in response thereto as well as the material on record. The court is of the view that the main issues for determination herein are the following:
  - a. Whether the objectors are entitled to the reliefs sought in the application.
  - b. Who shall bear the costs of the application.

### **F. Analysis and determination**

#### **Whether the objectors are entitled to the reliefs sought in the application**

10. The court has considered the material and submissions on record. Although the objectors filed what they considered to be objection proceedings they raised rather unusual grounds in support of the application. The plaintiffs' allegations that the proceedings before Hon. Justice Matheka proceeded ex parte does not belong to objection proceedings. The claim that the taxation of costs proceeded ex



parte before the taxing officer does not belong to objection proceedings too. Moreover, the court is satisfied on the basis of the material on record that the plaintiffs were at all material times represented by a firm of advocates before this court and that they were notified of the taxation proceedings before the taxing officer.

11. The court shall first consider the objection by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs before considering the objection by Zubeda. The material on record shows that the 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs were children of the late Issa Suleiman who had constructed the house without land the subject of the proceedings. The defendants claimed that the said house was vested upon the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs in the success proceedings before the Kadhi's court. The plaintiffs did not controvert that claim but contended that the decision was subject to a pending appeal before the High Court at Mombasa.
12. The court is of the view that if the house without land belongs to the estate of the late Issa Suleiman and the same was vested upon his representatives in the succession cause then the same can properly be the subject of attachment because it would appear that the 2<sup>nd</sup> to 4<sup>th</sup> plaintiffs had filed suit for vindicate their rights over the house among other reliefs sought.
13. The plaintiffs have not challenged the order for costs against them nor the taxation by the taxing officer. The order for costs against them is still in force and payment of the same can lawfully be enforced by sale of property over which they have beneficial interest. The plaintiffs cannot simply run away from their liability to pay taxed costs through objection proceedings. A judgment debtor cannot seek to evade his just obligations by seeking to show that the property sought to be sold probably belongs to someone else. They should let the true owner to come forward and prove his ownership.
14. The court has considered the objection by Zubeda who claimed that the 4<sup>th</sup> plaintiff was her sister. The court has noted that in her supporting affidavit she simply adopted the contents of the 4<sup>th</sup> plaintiff's affidavit. She did not exhibit any documents or other evidence to demonstrate what legal or equitable interest, if any, she was over the house without land. It is not enough simply to point out the objector is a relative of the 4<sup>th</sup> plaintiff. It was the duty of Zubeda to adduce credible evidence to demonstrate her claim over the house without land. It was the duty of the objector to demonstrate that the judgment debtors had no legal or equitable interest in the house and that she was the rightful owner or beneficiary of it. The court finds and holds that the objector has failed to discharge her burdened of proof.

#### **Who shall bear costs of the application**

15. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the 9<sup>th</sup>, 10<sup>th</sup> and 13<sup>th</sup> defendants shall be awarded costs of the application.

#### **G. Conclusion and disposal order**

16. The upshot of the foregoing is that the court finds no merit in the objectors' application. As a consequence, the notice of motion dated December 4, 2024 is hereby dismissed with costs. The objectors shall pay costs of the application to the 9<sup>th</sup>, 10<sup>th</sup> and 13<sup>th</sup> defendants.

Orders accordingly

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 22<sup>ND</sup> DAY OF MAY, 2025.**



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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

No appearance for the plaintiff/judgment debtor

No appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants

Mr. Mutugi for the 9<sup>th</sup>, 10<sup>th</sup>, and 13<sup>th</sup> defendants/decreed holder

No appearance for the rest of the defendants

