



**Shariff & 2 others v Kenya Railways Corporation (Environment & Land Case E002 of 2021) [2024] KEELC 5117 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5117 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE E002 OF 2021**

**EC CHERONO, J**

**JULY 4, 2024**

**BETWEEN**

**NAZMUDIN ABDULALI SHARIFF ..... 1<sup>ST</sup> APPLICANT**

**ALTAF ABDULALI SHARIFF ..... 2<sup>ND</sup> APPLICANT**

**FIROZ ABDULALI SHARIFF ..... 3<sup>RD</sup> APPLICANT**

**AND**

**KENYA RAILWAYS CORPORATION ..... RESPONDENT**

**RULING**

1. The Applicants have moved this Court vide the Notice of Motion under certificate of urgency dated 11<sup>th</sup> March, 2024 seeking the following reliefs;
  - i. (spent)
  - ii. The Honourable Court be pleased to stay the execution of the Ruling by Hon. Getenga issued on the 7<sup>th</sup> February 2024 and all consequential orders and/or processes arising therefrom pending the hearing and determination of this application.
  - iii. The Honourable Court be pleased to stay the execution of the Ruling by Hon. Getenga issued on the 7<sup>th</sup> February 2024 and all consequential orders and/or processes arising therefrom pending the hearing and determination of COACA NO. E214 OF 2023 *Nazmudin Abdulali Shariff & 2 Others V Kenya Railways Corporation*.
  - iv. Costs of the application be awarded to the Applicant.
2. The application is supported by the affidavit of Nazmudin Abdulali Shariff and grounds apparent on the face of the said application.



3. In a brief summary, the applicants/Plaintiffs contend that on 7<sup>th</sup> March 2024, the defendant acquired warrants of attachment for moveable property and proclamation notices against the plaintiffs' assets in clear defiance of the court of Appeal's status quo order in Kisumu. They further contend that on the same day and armed with the said warrants, Remma Auctioneers irregularly and unlawfully proclaimed the plaintiffs' various moveable properties and intend to seize them after the expiry of the 7 days proclamation notice, unless the Court intervenes. He annexed a copy of the said warrants and marked NA-1. The applicants further stated that the defendant irregularly and clandestinely obtained the warrants of attachment after deliberately withholding information about the existence of status quo order issued on 8<sup>th</sup> August 2023 by the Court of Appeal in Kisumu in Civil Application NO. E087 of 2023 pending the hearing and determination of COACA NO. E214 of 2023 between *Nazmudin Abduali Shariff & 2 Others v Kenya Railways Corporation*. He annexed a copy of the said order and Notice of appeal marked NA-2
4. The Applicants stated that on 14<sup>th</sup> March 2024, the Respondents' agents intent to proceed with the attachment of the moveable properties irregularly and unlawfully, thereby severely disrupting the plaintiffs' operations and causing substantial and irreparable losses unless this Honourable Court intervenes and grants the orders sought.
5. The Applicants stated that being aggrieved by the Ruling delivered on 7<sup>th</sup> February 2024 by the Taxing Officer Honourable Getenga on party & party Costs timeously lodged a Reference on the 21<sup>st</sup> February 2024 challenging the said Ruling and the Reference and has very High chances of success.
6. The respondent filed a replying affidavit sworn on 18/3/2024 opposing the said application. The Respondent stated that they recorded a consent order before the Kisumu Court of Appeal in Civil Application No. E087 of 2023 whereby they agreed to maintain the status quo. According to the Respondent, the status quo as agreed was to the extent that the applicants shall not be evicted from the suit property nor shall their structures be demolished pending hearing and determination of the Appeal. She stated that the consent order for status quo did not restrict them from taxing and or executing for costs awarded to them. She further stated that the said bill of costs was taxed with full participation of the applicant's advocate who not only filed submissions opposing the bill but was also present during the entire proceedings and when the Ruling was being delivered before the Deputy Registrar Hon. Getenga. She annexed a copy of the said Ruling. The Respondent further contends that upon delivery of the impugned Ruling, the applicant's advocate was invited to settle the taxed costs within 14 days and after they failed to settle the taxed costs, her Advocated instructed Remma Auctioneers to commence execution process in accordance with the law.

### **Analysis And Decision**

7. I have considered the application, the supporting affidavit, the replying affidavit, written submissions and the relevant law. It is imperative to note that the applicant has only invoked General provisions of Sections 1A, 1B and 3A as read with Order 51 rule 1 [CPR](#), 2010 and all enabling provisions of the law for the orders sought in the present application. It is not in contestation that this Honourable court heard the parties in this case and rendered its final Judgment/decree by dismissing the suit with costs to the defendant/respondent. It is not also in dispute that from the court record, the defendant/respondent filed a bill of costs where the Applicants through their hitherto Firm of advocates duly participated in all proceedings and the Ruling delivered by the Deputy Registrar on 7<sup>th</sup> February, 2024. It is also not in dispute that the Applicants have filed a reference under order 11 of the [Advocates Remuneration Order](#) against the said taxation by the taxing officer.



8. I note that the applicants have raised numerous grounds in support of this application seeking stay of execution of the taxed costs. First the, the applicants contend that defendant/respondent acquired warrants of attachment for moveable property which she obtained irregularly and clandestinely after deliberately withholding information about the existence of status quo orders issued by the Court of Appeal at Kisumu in Civil Application NO. EO87 of 2023 pending hearing and determination of COACA NO. E214 of 2023. I have looked at the Ruling by the Court of Appeal in Civil Application NO. E087 of 2023 delivered on 8<sup>th</sup> August, 2024. At paragraph 2 thereof, the Superior Court observed as follows;

“In the circumstances, we order that the status quo currently obtaining be maintained, and that therefore the applicants shall not be evicted nor shall their structures be demolished pending hearing and determination of the intended appeal...”

9. I agree with counsel for the Respondent that the order by the superior court did not stay execution of the judgment/decree of this court entirely including costs and further proceedings. That would explain why the applicant/appellant did not raise any objection to the bill of costs filed by the Respondent and fully participated during the hearing and even filed submissions and attended court during the delivery of the Ruling.

10. From the materials placed before me particularly the Ruling by the Taxing Master delivered on 7<sup>th</sup> February, 2024, I agree with that the advocate for the Respondent that present application is an afterthought. Be that as it may and since the Applicant has filed a Reference against the taxed bill under Order 11 of the Advocates Remuneration Order seeking to challenge the same, I hereby issue the following consequential orders;

1. The Notice of Motion application dated 11<sup>th</sup> March 2024 is an afterthought and devoid of merit and the same is hereby dismissed.
2. In view of the fact that the applicant has filed a Reference under order 11 of the Advocates Remuneration Order challenging the Respondent’s taxed costs, a stay of execution is hereby issued subject to the Applicant depositing in court the taxed costs in the sum of Kshs. 2,456,578.70 within 14 days from the date of this Ruling.
3. The Applicant shall also bear the costs of this application

11. Orders accordingly.

**READ, DATED, DELIVERED AND SIGNED AT BUNGOMA THIS 04<sup>TH</sup> DAY OF JULY, 2024.**

.....

**HON. E.C.CHERONO**

**ELC JUDGE**

In the presence of;

1. M/S Moraa for the Respondent/Defendant.
2. Mr. Ochieng for the Applicant/Plaintiff.
3. Bett C/A.

