



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rutere & 11 others v Reynolds Construction Company (NIG) Ltd (Environment & Land Case 28 of 2013) [2024] KEELC 6770 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6770 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 28 OF 2013**

**CK NZILI, J**

**OCTOBER 9, 2024**

**BETWEEN**

**JAPHETH MBAE RUTERE & 11 OTHERS & 11 OTHERS ..... PLAINTIFF**

**AND**

**REYNOLDS CONSTRUCTION COMPANY (NIG) LTD ..... DEFENDANT**

**RULING**

1. What the court is asked by an application dated 29.8.2024 is to stay, suspend and or set aside, quash, or annul the warrants of attachment and sale dated 22.8.2024 for being premature, irregular and unlawful for non-compliance with Section 94 of the *Civil Procedure Act*.
2. The grounds are set out on the face of the application and in the supporting affidavit of Seline Opiyo, sworn on 29.8.2024. The main reason is that a decree and a certificate of costs have not been issued following the taxation of costs. From the court record, it appears there is a decree of the court dated 13.8.2024.
3. The warrants of attachment and sale are dated 22.8.2024. Section 94 of the *Civil Procedure Act* provides that the court must grant leave to a decree-holder to execute a decree before costs are taxed. In *Bamburi Portland Cement Co. Ltd vs Hussein (1995) LLR 1870 CAK*, the court observed that leave is mandatory and can be sought informally at the time of judgment delivery, and if not so, it must be done through a notice of motion served upon the opposite party and hbe eard inter-partes.
4. In *Lakeland Motors Ltd vs Harbhajan Singh Sembi (1998) eKLR*, the court said that all parties to a decree should be availed an opportunity to be heard before such an order is made. The rationale behind the section, as observed in *Mercedes Sanches Rau Tussel vs Samken Ltd & others (2002) eKLR*, is that costs may take time to be taxed or agreed upon by the parties and that where there is a known sum in the decree, it may not be prudent to await to execute the decree until costs are taxed.



5. In this application, it is not disputed that the decree holders had not sought leave to execute before costs were taxed.
6. The decree holders have not given any justification why they did not seek leave or why they should be allowed to do so at this stage. The rationale of the leave is also to save the judgment debtor from facing execution twice. There is already a decree which, in my view has not given the total amount to be paid by the judgment debtor in terms of figures. The respondent's counsel conceded this fact.
7. I agree with the applicant that it was premature to purport to execute without leave. The warrants of attachment and sale dated 22.8.2024 are, as a result of this, set aside and or quashed. There will be no order as to costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 9<sup>TH</sup> DAY OF OCTOBER, 2024**

In presence of

C.A Kananu

Miss Maina for the plaintiffs

Ochieng for Mr. Agwara for the defendants

Applicant

**HON. C K NZILI**

**JUDGE**

