Republic v National Land Commission & 6 others; Tunoi (Exparte Applicant) (Environment and Land Judicial Review Miscellaneous Application 7 of 2019) [2024] KEELC 6525 (KLR) (8 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6525 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT AND LAND JUDICIAL REVIEW MISCELLANEOUS APPLICATION 7 OF 2019

JM ONYANGO, J

OCTOBER 8, 2024

BETWEEN

REPUBLIC .... APPLICANT

AND

THE NATIONAL LAND COMMISSION .... 1ST INTERESTED PARTY

ABDI SITENEI .... 2ND INTERESTED PARTY

ELIAS BUSIENEI .... 3RD INTERESTED PARTY

KIPSANG MASAI .... 4TH INTERESTED PARTY

JOHN KISUGUT TOO .... 5TH INTERESTED PARTY

SYLVESTER ARAP CHOGE .... 6TH INTERESTED PARTY

PHILIP SAWE TUNOI .... 7TH INTERESTED PARTY

AND

HON JUSTICE (RTD) PHILIP KIPTOO TUNOI .... EXPARTE APPLICANT

RULING

1. The 1st, 3rd, 4th and 6th Interested Parties (the Applicants herein) filed a Notice of Motion Application dated 20th June, 2023 seeking the following orders:-

    a. Spent

b. That this Honourable Court be pleased to grant an interim order of stay of execution of the judgment an decree herein pending the hearing and determination of this application interpartes.

c. That this Honourable Court be pleased to interpret its judgment dated 16th April, 2020 and clarify on the question of costs.

d. That pursuant to the interpretation in 3 above, this Honourable Court be pleased to review its order on costs and apportion costs payable by the 1st Respondent, the National Land Commission and the costs payable by each of the 1st - 7th Interested Parties herein.

e. That this Honourable Court be pleased to stay execution of the decree and the certificate of costs herein as against the Interested parties pending the hearing and determination of Eldoret Environment and Land Court Case No. E039 of 2021, Kaptukuk Farm Limited v Philip Kiptoo Tunoi & Julius Tirop.

f. That costs of this Application be provided for.

2. The Application is supported by the grounds set out on the face of it. Further grounds are to be found in the Supporting Affidavit of the 1st Applicant, Kibirgen Kimaiyo sworn on 20th June, 2023 with authority of the other Applicants. He deponed that the Ex-parte Applicant (the Respondent in this Application) sought judicial review against the decision of the 1st Respondent regarding ownership of the land known as LR No. 8409/1 (the suit property). That in its judgment of 23rd April, 2020 the court quashed the 1st Respondent's decision and ordered the 1st Respondent and 1st - 7th Interested parties to pay to the Respondent the costs of the suit.

3. He deponed that on 29th June, 2022 the court delivered a ruling on the Respondent's Bill of Costs dated 9th June, 2020 taxing the said costs at Kshs 1,271,020/-. That despite the fact that the costs of the suit were to be paid by the 1st Respondent and all the Interested Parties, the Respondent extracted warrants of attachment against only the Applicants herein for recovery thereof. Mr. Kimaiyo deponed that the judgment did not specify the liability of the parties on the costs or apportion any ratio/percentages between them. Further, that liability was not found to be jointly and severally to entitle the Respondent seek costs from any of the parties, which is why the Applicants seek the Court's interpretation as to the extent of their liability on costs.

4. Mr. Kimaiyo further deponed that this court has jurisdiction under Order 22 Rule 25 of the Civil Procedure Rules to stay execution of a decree pending hearing of a suit between the same parties. That there is a pending suit being Eldoret ELC Case No. E039 of 2021, Kaptukuk Farm Limited v Philip Kiptoo Tanui, where the Respondent herein is the Defendant. He explained that the 1st to 7th Applicants are members of Kaptukuk Farm Limited, for whose benefit and favour the impugned decision by the National Land Commission (NLC), the 1st Respondent in the main suit, had been made. He deponed that on 23rd May, 2023 this court determined that the said suit proceed for hearing, which is what prompted the Respondent to seek execution, which if not stayed would occasion him great prejudice.

5. Mr. Kimaiyo deponed that the Warrants of Attachment offend Order 22 Rule 18 which requires a Notice to Show Cause to be issued prior to execution, and that it is therefore premature to engage auctioneers. He added that they stand to suffer substantial loss and damage if the orders sought herein are not granted since their livestock and other properties listed in the proclamation notice will be attached. He deponed that they were willing to abide by any order as to security or otherwise given by

the court. He deponed that the application was brought promptly and in utmost good faith, adding that it is in the interest of justice that it be allowed as prayed.

6. The Application was strongly opposed by the Respondent vide his Replying Affidavit sworn on 11th July, 2023. He deponed that the application is a mere afterthought and brought too late in the day. He pointed out that the judgment was made on 16th April, 2020 so the Applicants have been aware of the costs awarded and he filed his Bill of costs in 2021. He added that the Applicants had not satisfied the conditions for grant of the orders sought, and that prayers 3 and 4 are not grounded on any law.

7. The Respondent deponed that the court made a decision awarding him costs, which decision was not conditional, and the Applicants have no option but to abide by it. That he could recover them from any of the parties who were to bear the costs, the Applicants included. That granting the orders sought would amount to the court sitting on appeal on the issue of costs, for which it has no jurisdiction. He also pointed out the delay of 3 years in bringing the application. He deponed that the Plaintiff in Eldoret ELC No. E039 of 2021 and the Applicants herein are not the same entity. Further that the said action was commenced after judgement was delivered in this suit and has no relation to this suit especially on the issue of recovery of costs.

8. The Respondent pointed out that the Applicants did not in any way challenge the ruling on the costs and thus the order for stay of execution cannot issue. He added that execution had properly been levied as per the law and there is nothing to stay. Further, that the court's discretion is not to be applied to assist parties who seek to delay or obstruct the course of justice. He deponed that he had invested a lot of time and resources in prosecuting the case and commencing execution, yet the Applicants seek to have the judgment reviewed on flimsy grounds 5 years after it was delivered. That this action ought not be condoned by the court as litigation must come to an end. He thus prayed that the application be dismissed with costs.

Ex Parte Applicant's Submissions

9. The Respondent's Submissions are dated 6th November, 2023. In those submissions, Miss Odwa Counsel for the Ex Parte submitted that the Bill of Costs dated 9th June, 2020 was taxed at Kshs1,271,000-. Despite demand for settlement of the costs, no payment was made hence the Respondent instructed the auctioneers to recover the costs. That it is the proclamation of the 1st, 3rd, 4th and 6th Applicants' properties that prompted them to file the instant application. Counsel submitted that there is no law cited empowering the court to interpret its award of costs and purporting to do so amounts to sitting on appeal on its own decision. That the court has no jurisdiction to do so having become functus officio after delivery of the judgment. She added that the Applicants delayed in making the application even though they have all along been alive to the order for costs, making the it an afterthought meant to scuttle the recovery of costs.

10. Counsel submitted that under Order 45 of the *Civil Procedure Rules*, an order for review cannot issue since the Applicants appealed to the Court of Appeal against the judgment of the court. She relied on the case of *Martha Wambui v Irene Wanjiru Mwangi & Another* (2015) eKLR as cited in *Gerald Kithu Muchanje v Catherine Muthoni Ngare & Another* (2015) eKLR. She contended that the prayer for review of the judgment to apportion costs is also not grounded on any law. Moreover, that if the Judge intended to apportion costs, he would have expressly stated so. Counsel submitted that in the absence of express terms, the Ex Parte Applicant was at liberty to recover his costs from any of the parties who had been condemned to pay costs. He referred the court to the case of *Oscar Omoke Ocholla & 4 Others v Independent Electoral & Boundaries Commission & 2 Others*; Mercy Khasiani Chiyumba & 2 Others (Objectors) Nairobi Election petition No. 20 of 2017. She reiterated that the application

was brought after a delay of over 3 years. Counsel argued that there is no basis to warrant a review and neither had the Applicant met the conditions for review under Order 45.

11. Counsel further submitted that there is nothing to warrant the grant of the prayers under Order 22 Rule 25 as it contemplates a situation where the pending case is between the judgment debtor and the decree holder. She contended that the Applicants are not parties to Eldoret ELC Case No. E039 of 2021 and cannot therefore ask to have execution in this suit stayed pending determination of the said case. That in any event, ELC Case No. E039 of 2021 was commenced after delivery of judgment herein and has no relation with this matter or the recovery of costs herein, and the prayer in that regard must thus fail. Counsel asserted that in the absence of a reference or any challenge on the ruling on costs, execution could not be stayed. She added, that execution had been properly levied as per the law and there was nothing to stay. She reiterated that the Respondent would be greatly prejudiced if the orders sought are granted and asked the court to dismiss the Application with costs.

Applicants' Submissions

12. The Applicants' filed their Submissions dated 10th July, 2024 where it was argued that the Proclamation Notices were issued one year from the date of delivery of the ruling on the Bill of Costs. That under Order 22 Rule 18 the Respondent ought to have issued a Notice to Show Cause why the decree should not be executed before warrants of attachments could be issued. Counsel for the Applicants submitted that the Respondent had not complied with this requirement thus the court ought to find that the said warrants were issued prematurely.

13. On apportionment of costs, Counsel submitted that since the court did not apportion the costs, execution cannot be levied against a select group of the Interested Parties to pay the decretal sum. Counsel urged that the costs should be apportioned in the ratio of 50:50 between the (NLC) and the Interested Parties. Further, that the 50% share of the Interested Parties then ought to be split between the 7 Interested Parties who would each pay Kshs90,894/-. Counsel relied on *African Planning & Design Consultants v Sololo Outlets Ltd (In Receivership) & Anor* (2018) eKLR, as well as *Republic v PS Charge of Internal Security ex parte Joshua mutual Paul* (2013) eKLR and *Kenya Airways Limited v Mwaniki Gachohi*.

14. Counsel also submitted that the court has power under Section 80 of the *Civil Procedure Act* as well as Order 45 Rule 1 of the Rules, to review its judgment and apportion costs. That this can be done on account of mistake or error on the face of the record or any other sufficient reason (*Paul Mwaniki v NHIF Board of Management* (2020) eKLR). Counsel submitted that Eldoret ELC Case No. E039 of 2021 concerns the same subject matter as this case, and that the Applicants are members of the Plaintiff Company in the pending suit and the Respondent herein is the Defendant. Counsel urged that execution on costs be stayed pending the outcome in the aforesaid case under its inherent powers at Sections 1A, 1B and 3A of the *Civil Procedure Act*. He prayed that the court find merit in the application and grant the orders sought.

The NLC's Submissions

15. The NLC also filed its submissions dated 1st July, 2024 opposing the instant application. Counsel therein submitted that the application was brought under Order 42 Rule 6 of the *Civil Procedure Rules* which sets out preconditions for grant of a stay pending appeal. That such an application must be brought without unreasonable delay. That it must be shown that substantial loss will occur if the order is not granted and that the Applicant must give security for the due performance of the decree. Counsel submitted that the Application was brought 4 years after delivery of the judgment without any explanation for the delay. That the Applicants are guilty of inordinate delay and therefore do not

merit grant of the orders sought, she relied on *Edith Gichugu Koine v Stephen Njagi Thoithi* (2014) eKLR and *Joseph Odide Wahome v David Mbadi Akello* (2022) eKLR.

16. Counsel argued that the Application is brought in bad faith to defeat the execution process. She submitted that an Applicant is obliged to demonstrate that they will suffer substantial loss if stay is not allowed (*James Wangalwa & Another v Agnes Naliaka Cheseto* (2012) eKLR). That the Applicants had also not offered any form of security, which is proof that the application was not made in good faith and urged the Court to dismiss the Application.

Analysis and determination

17. I have considered the application and grounds adduced in support thereof and annexures presented. I have also considered the response thereto as well as the rival submissions filed, together with the case law cited by counsel for their respective clients.

    a. Whether the Court has jurisdiction to interpret its own judgment

    b. Whether the court should review the judgement

    c. Whether the Applicants are entitled to an order of stay of execution

a. Whether the Court has jurisdiction to interpret its own judgment

18. The Supreme Court in *Cogno Ventures Limited & 4 others v Bia Tosha Distributors Limited & 15 others; Kenya Breweries Limited & 6 others; Ferran & 24 others* [Application E005, E006 & E012 of 2023 (Consolidated)] (2023) KESC 33 (KLR), had this to say on the matter of interpretation of its own judgement:-

> "It emerges that the parties either misunderstood our judgment rendered on February 17, 2023 or are outrightly mischievous. Having authoritatively made our decision on the issues before us in Petition No 15 of 2020, it was this court's expectation that all parties thereto, would act in accordance with what the court meant. It is not for this court to interpret its decisions or those of other courts to the different litigants. With the issuance of the judgment, the court became functus officio. The only narrow opportunity for the court's jurisdiction is by way of review vide an application as permitted by the Supreme Court Act and Rules."

19. However, the court invoked its inherent powers to determine whether there is any matter for clarification so as to avert protracted legal battles. In the same vein, this Court has no jurisdiction to interpret its own judgment. However, shall invoke its inherent powers to determine whether there is any issue in need of clarification in the judgement with regards to costs. It is not disputed in the present application that in the judgment delivered on 23rd April, 2023 the trial Judge awarded costs of the suit to the Respondent herein making an order that:-

> "(d) The 1st Respondent and the 1st to 7th Interested Parties to pay costs of the suit."

20. The Applicants contend that the Ex Parte Applicant/Respondent herein cannot recover from a select few of the parties that were held liable on costs because the court did not hold them to be jointly and severally liable for the costs. I however disagree with this position. In instances where a court finds several Defendants or Respondents liable for costs, unless the court expressly states otherwise, such a determination is on the basis that liability is joint and several. In the case cited by the Respondent

of *Oscar Omoke Ocholla & 4 others v Independent Electoral and Boundaries Commission & 2 others; Mercy Khasiani Chiyumba & 2 others (Objectors)* [2020] eKLR, the court held that:

> "18. The application for apportionment of the taxed costs between the five judgment debtors has not been supported by any known law. The judgments of the Election Court and the Court of Appeal are clear that costs were awarded to the respondents against the petitioners. In such a case the costs have to be met by the petitioners jointly and severally. The respondents can execute for the entire costs against any of the petitioners."

21. The concept of joint and several liability is defined in *Black's law Dictionary* 10th Edition as follows:

> "Liability that may be apportioned among two or more parties or to only one or a few select members of the group at the adversary's discretion. Thus, each liable party is individually responsible for the entire obligation, but a paying party may have a right of contribution and indemnity from non-paying parties"

22. Joint and several liability makes all parties liable to pay the costs awarded thereto up to the entire amount awarded. For this reason, responsibility for the total amount of costs awarded in a suit is then shared by all the parties held liable for their payment. The Decree holder is at liberty to elect to recover the full amount of the debt from any one of the judgment creditors or recover a share from each or any of them. The liable parties are in law in a position where they are all exposed to the full amount or any share sought by the judgment creditor. This means that the Respondent is at liberty to pursue any of the Judgment debtors to settle the full amount of costs awarded. In the event he pursues one party or any number of them for the costs, the party or parties so pursued are in turn entitled to seek reimbursement from their co-liable parties for their shares of the costs.

23. This was captured in the case of *Hellen Njenga v Wachira Murage & Another* [2015] eKLR cited the decision in Dubai Electronics v Total Kenya & 2 Others Civil Case No 870 of 1998 the court explained the concept of joint and several liability as follows:-

> "Clearly therefore where you have joint liability all the tortfeasors are and each one of them is liable to settle the full liability. However, in a purely several liability each tortfeasor is only liable to settle the sum due to the tune of his liability. Where, however, the liability is joint and/or several the plaintiff has the option either directing his claim against any one of the tortfeasors or making his claim against each one of the tortfeasors according to their individual liability. Either way he cannot recover more than the total sum decreed. However, the defendants are entitled to reimbursement from the co-defendants in the event that the plaintiff only opts to recover from one of them. That is my understanding of joint and several liability."

24. Although the above case dealt with a tort, it clearly captures the essence of joint liability as opposed to joint and several liability. As pointed out above, under joint and several liability, the Decree Holder cannot recover more than the total sum decreed. However, the Judgment debtors are entitled to reimbursement from the co-defendants in the event that the plaintiff only opts to recover from one of them.

25. In any event, I have taken time to peruse the Proclamation Notices annexed to the Application herein. They indicate that the amount required to be paid in execution of the decree is the Kshs1,271,020/- being the taxed costs together with the Auctioneers charges of Kshs340,663/- making a total of Kshs1,611,683/-. The amounts listed therein as being the value of goods attached does not in any way

exceed the share that each of the parties are expected to pay. And even if the amounts therein did exceed the share to be paid by any one party, being joint and several liability, the Respondent is within his right to seek the entire settlement from the Applicants herein, who then have a right to seek reimbursement from the other Interested parties as well as the NLC once they have settled the entire decretal sum.

26. The Respondent applied for execution and obtained the warrants of attachment as a mode of execution and enforcement of the payment of the taxed costs, which remains a legally recognized form of execution under Section 38(b) of the *Civil Procedure Act*.

b. Whether the court should review the judgment

27. The Applicants sought review of the judgment delivered by this court on 16th April, 2020. The Law on review is set at Section 80 of the *Civil Procedure Act*, which provides:-

80. Review

Any person who considers himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

28. Under this provision, the court has unfettered discretion to make such order as it thinks fit once it is satisfied that sufficient reasons have been given for review of its decision. The procedure and prerequisites for grant of an order for review are set out at Order 45 of the Rules, which at Rule 1 provides that:-

1. Application for review of decree or order [Order 45, rule 1]

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

29. From the above cited law, where a party opts to pursue an appeal on the judgment or order of a court, they lose the right to apply for review of the said decision. If the party however opts for review, the only grounds upon which a court would allow itself to review its own decision are:

i. The discovery of new and important matter or evidence

ii. A mistake or error apparent on the face of the record

iii. Any other sufficient reason

30. There has been no allegation of the discovery of any new and important matter or evidence. The second ground is an error or mistake apparent on the face of the record. The Applicants correctly submitted that such an error is one that is seen by merely looking at the record, and which does not require a long drawn process of reasoning. The Court of Appeal in *National Bank of Kenya Limited v Ndungu Njau* (1997) eKLR held that:-

> "A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."

31. Aside from submitting on the same, the Applicants did not indicate what this error was exactly, only praying that the court apportions the costs. The Applicants' claim seems to be that the failure to apportion costs is in itself a mistake or error on the face of the record. As indicated earlier however, the NLC and the 1st to 7th Interested Parties are jointly and severally responsible for the costs of the suit. The consequences thereof have already been explained under the previous head. Each one of them was held to liable to pay the costs of the suit to the Respondent who had emerged victorious in the suit. The fact that the court did not apportion the percentage of costs for each individual party does not mean that it made an error in its judgment.

32. It follows then that the Applicants have failed to establish any error or mistake on the record as to warrant review of the judgement of the court. Additionally, no sufficient reason has been provided to invoke this court's power to review the judgment as prayed. Consequently, the Applicants have not met the conditions for review of the judgment delivered by this court, the prayer for review thus fails.

(c)Whether the Applicants are entitled to order of stay of execution

33. The Applicants also sought a stay execution of the decree and the certificate of costs herein as against them pending the hearing and determination of Eldoret Environment and Land Court Case No. E039 of 2021. The prayer for stay of execution in the Application is brought under Order 22 Rule 25 which provides that:-

> "
>
> "25. Stay of execution pending suit between decree-holder and judgment-debtor [Order 22, rule 25]
>
> Where a suit is pending in any court against the holder of a decree of such court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided."

34. The Plaint in ELC Case No. E039 of 2021 has been exhibited herein and the Plaintiff there in is Kaptutuk Farm Limited which has been defined therein as a limited liability company, incorporated under the *Companies Act* Cap 486, laws of Kenya. The Defendants are Philip Kiptoo Tonui and Julius Tirop Too. Rule 25 is clear that the pending suit must be between the judgment debtor and the decree holder. While the Respondent who is the decree holder herein, is one of the Defendants in in ELC Case No. E039 of 2021, none of the Applicants are named as parties therein. The Applicants claim that they are members of the Plaintiff therein cannot entitle them to the orders under Rule 25 above.

35. The said entity being a limited liability company, it goes without saying that it is a separate legal entity, distinct from its members, whether they be the Applicants herein or other individuals. The principle flowing from legal/corporate personality was established in the well-known case of *Salomon v Salomon* (1897) AC 78 where the House of Lords held that a company is in law a separate person from its members. The Court of Appeal in the case of *Victor Mabachi & Anor v Nurturn Bates Ltd* (2013) eKLR held that:-

> " (23) In our view, moreover, the corporate status of Mediacom was not in question in the pleadings in the suit. This much is confirmed by the plaint, drawn and filed on behalf of the respondent, and supported by an affidavit sworn by the respondent's representative. This being the case, Mediacom, as a body corporate, is a persona jurisdica, with a separate independent identity in law, distinct from its shareholders, director sand agents unless there are factors warranting a lifting of the veil."

36. There was no prayer for lifting of the veil of incorporation nor were reasons advanced for it. That being the case, the Plaintiff in Eldoret ELC Case No. E039 of 2021 stands as a separate entity from the Applicants in this Application, and they cannot by virtue of any alleged membership therein claim to be parties to that suit. For the avoidance of doubt, the sum being recovered is not a decretal sum in the strict sense of the word as submitted by the Applicants, but costs of the suit awarded in the judgment to the Respondent herein. The taxation process is an implementation of the decision of the trial Court. None of the prayers sought in the pending suit have any bearing or effect on the issue of costs in this suit. Execution is on recovery of costs of the suit, it cannot thus be said to be tied with the outcome of any other suit as, with or without the said outcome, the costs of this suit must be paid.

37. The allegation that the genesis of the execution herein is a ruling delivered in Eldoret ELC Case No. E039 of 2021 which ordered that the matter proceed for hearing on merits is unfounded. The said case may indeed concern the same subject matter as the suit herein, however, the two are very distinct matters. In any event, this case was already concluded and the court rendered its decision on the same, hence the move by the Respondent to recover costs awarded to him by the trial court. If the Applicants were aggrieved by the order of costs, they ought to have challenged the same through the proper channels, either through appeal or filing a reference against the ruling on the Bill of Costs. Since there is no challenge to the same, the order stands and the Respondent is well within his rights to recover them. I see no connection whatsoever between the recovery of costs this suit and ELC Case No. E039 of 2021 to warrant the stay of execution order sought herein. Moreover, the Applicants have also not shown how the said suit will be affected by the recovery of costs in this suit.

38. The Applicants have also claimed that the Respondent failed to comply with the provisions of Order 22 Rule 18 which provides that:-

> " 18. Notice to show cause against execution in certain cases [Order 22, rule 18]

(1) Where an application for execution is made:-

(a) more than one year after the date of the decree;

(b) ...

(c) ...

the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him…”

39. It is under this provision that the Applicants have questioned the validity of the warrants of attachment. Order 22 Rule 18 above relates to instances where execution is made one year after the decree. The Warrants of Attachment are dated 19th May, 2023. The Proclamation Notices are dated 14th June, 2023. This means that execution was levied less than a year from the delivery of the ruling on the Bill of Costs which was made on 29th June, 2022. Accordingly, the requirement for issuance of a Notice to Show Cause does not apply in this case.

40. It is trite that the execution process is meant to aid a successful party to finally access the fruits of his judgment. It is apparent that the Applicants are unwilling to settle the costs and have instead resorted to employing technicalities to obscure or delay the execution and deny the Respondent the fruits of his Judgement. This court will not be used to impede justice in any way. Consequently, upon consideration of the matters raised in the Application dated 20th June, 2023 it is found to have no merit and the same is dismissed with costs to the Ex-parte Applicant/Respondent.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 8TH DAY OF OCTOBER 2024.

....

J.M ONYANGO

JUDGE.

In the presence of;

1. Miss Kemboi for Miss Odwa for the Ex Parte Applicant/Respondent

2. Miss Kayeli for Mr. Sambu for the 1st, 3rd and 6th Interested Parties/Applicants

3. Miss Obino for the 1st Respondent

4. Miss Cheruiyot for Mr. Mutai for the 2nd Respondent

Court Assistant: Brian