



**Pwani Breeze Limited v Africa Inland Church Tudor (Environment & Land
Miscellaneous Case 12 of 2023) [2024] KEELC 7295 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND MISCELLANEOUS CASE 12 OF 2023
SM KIBUNJA, J
NOVEMBER 6, 2024**

BETWEEN

PWANI BREEZE LIMITED RESPONDENT

AND

AFRICA INLAND CHURCH TUDOR APPLICANT

RULING

1. The applicant moved the court vide the application dated the 26th February 2024 seeking for among others to have Anne Yego and David Yego, being directors to the respondent, to be in contempt of the tribunal order of 1st November 2022 that was confirmed by this court on the 1st June 2023, ordering them to give vacant possession of the demised premises on Mombasa/Block X1/806; that the personal properties of the said directors be sequestrated and sold for mesne profits of Kshs.3,230,000 as of 31st January 2024 at the rate of Kshs.170,000 per month from 31st July 2022, that continues to accumulate at the same rate until vacant possession. The application is based on the nine grounds on its face marked (i) to (ix), and supported by the affidavit of David Katuva Mulu, pastor, sworn on the 26th February 2024.
2. The application is opposed by the respondent through the replying affidavit of David Yego sworn on the 3rd May 2024, inter alia attaching copies of three cheques for payment of rent through advocate and pointing out that the application has been brought through a finalised file. The applicant responded by filing the affidavit sworn on 20th May 2024 by the said David Katuva Mulu indicating that the copies of two cheques annexed to the affidavit of David Yego were of 1st August 2022 and 22nd August 2022 before the eviction order were granted. That the third cheque dated 29th February 2024 for Kshs.361,800 was issued after this application was served, and received on a without prejudice as mesne profits and not rent.



3. The learned counsel for the applicant filed their submissions dated the 20th June 2024 that the court has considered.
4. The court has considered the grounds on the application, the affidavit evidence, the submissions filed, the record and come to the following determinations:
 - a. That the record confirms that this miscellaneous file was opened upon the of filing of the application dated 13th February 2023 by Pwani Breeze Limited, the tenant/respondent, for leave to file an appeal out of time among others. That application was heard and the prayer for leave was granted vide the court ruling of 21st June 2023. The file was then ordered to be closed, as there was nothing remaining in it to be prosecuted, and the subsequent proceedings were to take place in the file where the appeal was to be filed.
 - b. It follows therefore that however deserving the application by the landlord/applicant is, it has been filed in a closed file, and the best cause is for it to be struck out. The applicant may consider filing it in the proper record.
 - c. That in view of the foregoing, I find it fair and just for each party to bear their own costs in the application, the provisions of section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya notwithstanding.
5. Flowing from the foregoing, the court finds and orders as follows:
 - a. That is application dated 26th February 2024 is hereby struck out for being filed in a closed miscellaneous file.
 - b. Each party to bear their own costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 6TH DAY OF NOVEMBER 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

IN THE PRESENCE OF:

Applicant/Tenant: Mr Birir

Respondent/Landlord : Mr Kenzi

Leakey – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

