



REPUBLIC OF KENYA



KENYA LAW
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**Muunda v Mwanja & another (Environment & Land Case
151 of 2017) [2025] KEELC 3967 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3967 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 151 OF 2017**

EO OBAGA, J

MAY 22, 2025

BETWEEN

JOSEPH MWANGANGI MUUNDA PLAINTIFF

AND

STEPHEN NDOO MWANIA 1ST DEFENDANT

ANNA MUINDI MUTHAMA 2ND DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 22nd April, 2025 in which the Judgment Debtors/ Applicants seek the following orders:
 1. Spent
 2. Spent
 3. Spent
 4. Spent
 5. That this matter be referred to mediation.
 6. That in the alternative, this honourable court be pleased to grant the Applicants 120 days to plan and/or organize a fund raiser to raise money to pay off the decree.
 7. That the costs of this application be provided for.

Background

2. The Decree Holder/Respondent had filed a suit against the Applicants seeking a declaration that they had encroached on his land known as Kithuki/Kanthuni/Kimundi/158, a permanent injunction,



mesne profits and costs of the suit. In a judgment delivered on 26th November, 2018, the court granted the prayers sought by the Respondent whereby mesne profits were assessed at Kshs.150,000/= .

3. The Respondent's costs were assessed at Kshs.103,535/=. A decree was then extracted and the Respondent applied for execution. The warrants of execution were executed by Eastern Kenya Auctioneers but there were objection proceedings filed by one Nahashon Kiio Muindi.
4. The Respondent then changed the mode of attachment to that of Notice to Show Cause. On 28th May, 20024 the Notice to Show Cause came up for hearing. The Applicants who had been duly served did not attend court. The Respondent's advocate applied for warrant of arrest which was granted.
5. On 4th July, 2024 the 1st Applicant was brought to court under warrant of arrest. The judge was away. The Deputy Registrar released him on a personal bond of Kshs.500,000/=. The 1st Applicant was ordered to appear in court on 7th October, 2024 but come that date, he did not appear. The he court set down the matter for mention on 5th December, 2024. Come this date, the Applicants were not in court. The Deputy Registrar fixed the matter for mention on 9th December, 2024.
6. On 9th December, 2024, the counsel for the Respondent informed the court that the Applicants were in open court. The matter was placed aside. When the matter was called out in open court at 11.00 am, the Applicants were not in court. The counsel for Respondent pleaded with the court to give them time. The matter was fixed for mention on 27th February, 2025.
7. On 27th February, 2025, the 1st Applicant was in court when he pleaded for more time to go and talk to the family on how to pay the decretal sum. The court granted him more time despite opposition from the Respondent's counsel. The Notice to Show Cause was adjourned to 12th March, 2025. On this date, the Applicants did not appear in court. The court having given the Applicants opportunity to show cause why they should not be committed to civil jail and no cause having been shown, the court ordered that they be committed to civil jail for 3 months upon their arrest.

Applicants' Contention

8. The Applicants contend that they are neighbours with the Respondent and that they are unable to pay the decretal sum due to extreme poverty. They state that they have consulted their extended family who are willing to conduct a fundraiser to help raise the amount. They therefore require 120 days to do so.
9. The 1st Applicants contends that he is unemployed and has no means to pay the decretal sum. The 2nd Applicant who is mother to the 1st Applicant is aged 76 years and depends on others for upkeep and is therefore unable to raise the decretal sum. He states that she is for frail and does not even understand her surroundings.
10. The Applicants state that they are related to the Respondent as they are in laws and that the matter should be referred to mediation by elders. The Applicants further state that they are even willing to cede part of their land in settlement of the decretal sum.

Respondent's Contention

11. The Respondent contends that the Applicants' application is incompetent, frivolous, vexatious, devoid of merit and is based on erroneous understanding of the applicable law. The Respondent states that when proclamation of the Applicants' goods was made, they moved to court seeking to stop the proclamation but the application was dismissed on 29th January, 2021.
12. Objection proceedings were thereafter filed but the same were dismissed for want of prosecution on 24th November, 2022. The Respondent stated the history of this litigation as captured in the



background hereinabove and averred that the Applicants are out to frustrate the enjoyment of the fruits of judgment delivered in 2018.

13. The Respondent states that the Applicants have never made any proposal to clear the decretal sum and that there is no evidence to show the inability of the Applicants to pay the decretal sum.

Analysis and Determination

14. I have considered the Applicants' application, the opposition thereto by the Respondent and the oral submissions by the Applicants' counsel. There are two issues to be determined. The first is whether this matter should be referred to mediation and the second is whether the Applicants should be granted 120 days to organize a fund raiser to pay off the decretal sum.
15. On the first issue, there is no contention that there is a judgment which was delivered herein. The Applicant tried to have it set aside but the application was dismissed. There is therefore nothing remaining for this court to refer to mediation for settlement.
16. On the second issue, the 1st Applicant had been arrested before and when he was brought before court, he was released on a personal bond of Kshs.500,000/= and asked to come to court but he never came. Despite his non appearance, there were no orders made regarding his personal bond.
17. On 27th February, 2025 the 1st Applicant was present in court when he tried to mislead the court that he and his co-Applicant had won the case and did not understand why they were being asked to pay money. The counsel for the Respondent clarified the position and this is when he pleaded with court to go and talk to the family on how to settle the decretal sum. The court granted him time but he never came back. The court ordered that he be jailed in civil Jail for 3 months upon his arrest. This was done and he is serving civil jail.
18. It is clear that the Applicants are not keen on settling the decretal sum. This is clear from the conduct of the 1st Applicant who has been indulged before but does not seem to take court seriously. There is not prayer for release of the 1st Applicant from civil jail and even if there was such a prayer, it would not have been granted in view of the conduct of the 1st Applicant. It is said that a person jailed in civil jail is always with the key to the prison. He can open the prison doors by paying the decretal sum any time.
19. In the instant application, the Applicants are willing to conduct a fundraiser to raise the decretal sum or even cede part of their land to the Respondent in settlement of the decretal sum. All this can be done without the presence of the 1st Applicant who is serving civil jail term.

Disposition

20. From the above analysis, I find that the Applicants' application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 22ND DAY OF MAY, 2025.

In The Presence Of:



Ms. Kyalo for Respondent.

Court assistant – Steve Musyoki

