



Trustees (Registered) Eldoret Churches Urban Project Trust Fund & another v National Land Commission & 7 others (Environment & Land Case 63 of 2015) [2023] KEELC 17328 (KLR) (11 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17328 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT & LAND CASE 63 OF 2015

JM ONYANGO, J

MAY 11, 2023

BETWEEN

THE TRUSTEES (REGISTERED) ELDORET CHURCHES URBAN PROJECT TRUST FUND 1ST PLAINTIFF
ELDORET CHURCHES URBAN PROJECT TRUST FUND 2ND PLAINTIFF

AND

THE NATIONAL LAND COMMISSION 1ST DEFENDANT
THE NATIONAL LAND COMMISSION 2ND DEFENDANT
THE COUNTY GOVERNMENT OF UASIN GISHU 3RD DEFENDANT
THE COUNTY GOVERNMENT OF UASIN GISHU 4TH DEFENDANT
THE LAND REGISTRAR UASIN GISHU COUNTY 5TH DEFENDANT
THE LAND REGISTRAR UASIN GISHU COUNTY 6TH DEFENDANT
DOUGLAS NJUGUNA KARIUKI, SOPHIA NJOKI NGUGI, EUNICE WAMBUI NDUNGU & JARED AKONGA OWASHIKA (ON BEHALF OF OTHERS) 7TH DEFENDANT
ON BEHALF OF OTHERS 8TH DEFENDANT

RULING

1. This ruling is in respect of two applications filed by the Plaintiff/ Applicant. The first one is dated November 3, 2022 and it seeks to reinstate the application dated October 3, 2022 which was dismissed on November 1, 2022. The application is based on the grounds set out on the face of the Notice of



- Motion and the supporting affidavit of Evans Ogeto Miyienda, Advocate sworn on the November 3, 2022.
2. The gist of the application is that Mr Miyienda, learned counsel for the plaintiff had logged into the virtual court session when the application came up for inter-partes hearing on November 1, 2022 but when the matter was called out, he was handling another case virtually before the High Court and by the time he got back into this court's virtual session, the application had been dismissed.
 3. He depones that the application dated October 3, 2022 did not merely seek to stay the taxation of the 2nd Defendant's Bill of costs but it also sought a determination as to whether the County Government could claim costs as a party in a suit and whether the plaintiffs who are trustees who run the Health Centre that serves the local communities and receives donations from the 2nd Defendant and World Vision should be ordered to pay costs.
 4. It is his further contention that the 2nd Respondent ought not to claim costs as it was not a successful party since it lost the suit and counterclaim and in any case the Plaintiff has no funds from which to pay the costs.
 5. The application is resisted by the 2nd Defendant through the Replying Affidavit of Gad Kipkurui Chemoiyai Advocate sworn on the November 17, 2022 in which he depones that Plaintiff's application was dismissed because the court noted that it had been overtaken by events and not for non-attendance. He is of the view that the Plaintiff ought to either apply for review or appeal against the court's ruling.
 6. The second application dated December 22, 2022 seeks a temporary order of stay of attachment of the movable assets of the Plaintiff /Applicant proclaimed on the December 19, 2022. It is based on the grounds that the goods proclaimed by the auctioneers comprise of medicines, an ambulance and other items belonging to a Health Centre which is run by churches through trustees on a voluntary basis.
 7. The application is supported by the affidavit of Bishop Thomas Kogo the Chairman of the Trustees of the Eldoret Churches Urban Project. He avers that the auctioneers proclaimed items including medicines, an ambulance, computers, and a water dispenser belonging to a health centre run by churches through trustees as a non-profit making organization for the benefit of the general public. The said health center depends on donations from World Vision and the County Government of Uasin Gishu and it is therefore strange for the Country Government to attach an organization it sponsors. He avers that unless a stay of attachment is granted, the health centre will be ground to a halt and the public who depend on the health center will suffer irreparably.
 8. In response to the application, the 2nd Defendant/ Respondent filed a Replying Affidavit sworn by Gad Kipkurui Chemoiyai Advocate on the December 29, 2022. He averred that the Plaintiff's Bill of Costs was taxed on October 21, 2022 and a Certificate of Costs was issued thereafter. On November 18, 2022, he wrote to the 2nd defendant's counsel notifying him that he would execute against the 2nd Plaintiff if they did not pay the 2nd Defendant's costs of Kshs 399,260. The Plaintiff subsequently filed an application for stay and reinstatement of the application dated October 3, 2022.
 9. He maintains that the proclamation carried out upon the 2nd Defendant's items was lawful and if the Plaintiff was dissatisfied with the taxation ruling, it should have appealed or applied for review.
 10. The court directed that the two applications be disposed of jointly by way of written submissions and both parties filed their submissions in respect of both applications.
 11. The issues for determination are twofold;-



- i. Whether the order for dismissal of the application dated March 10, 2022 made on November 1, 2022 should be set aside and the application reinstated for hearing.
 - ii. Whether the application for stay of proclamation dated November 22, 2022 should be allowed.
12. I will first consider the application dated November 3, 2022 which seeks to reinstate the application dated October 3, 2022. The court has a wide discretion to set aside its orders although the said discretion should be exercised judiciously.
13. To set the record straight and as correctly submitted by learned counsel for the 2nd Respondent, the application dated October 3, 2022 was not dismissed for non-attendance but rather for the reason that the taxation which the Applicant sought to be stayed had already been done and therefore the court was of the view that the application was overtaken by events.
14. Counsel for the Applicant has explained that he was not able to respond when the matter was called out as he was attending to another matter before the High Court. He could have avoided being marked absent by simply informing his counterpart about his predicament so that the file could be placed aside until he was ready to address the court. Although he is not disputing the fact that the 2nd Respondents costs had been taxed by the time the application came up for hearing, it is his contention that the application also sought to challenge the fact that costs were awarded to the County Government against the Trustees of a charitable organization.
15. To the extent that the court did not delve into the other issues raised in the application other than the prayer for stay of taxation, I am of the view that it would be in the interest of justice, to allow the application so that all the issues raised in the application dated October 3, 2022 can be canvassed.
16. The second application seeks a stay of attachment of the plaintiff's goods following the proclamation carried out by Gillette Traders Auctioneers on behalf of the 2nd Defendants/ Respondents.
17. It has been submitted on behalf of the 2nd Respondent that the execution is proper as the 2nd Respondent is entitled to recover the costs awarded to them following the withdrawal of the Plaintiff's case. On the other hand, counsel for the Applicant has submitted that the application dated December 22, 2022 and the one dated October 3, 2022 are inter-related and since the only issue raised in the application dated December 22, 2022 is attachment, the court should stay the attachment pending the outcome of the application dated October 3, 2022.
18. Having allowed the application dated November 3, 2022 which seeks to reinstate the application dated October 3, 2022, it would be logical to stay the attachment until the application dated October 3, 2022 is heard and determined.
19. Accordingly, I grant both applications and make the following orders:
 - a. The Plaintiff/ Applicant's application dated October 3, 2022 which was dismissed on November 1, 2022 is hereby reinstated.
 - b. A temporary stay of attachment is hereby granted in respect of the movable assets of the Plaintiff/Applicant proclaimed on December 19, 2022.
 - c. The costs of both applications shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF MAY 2022

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J. M. ONYANGO



JUDGE

In the presence of;

Mr. Miyiinda for the Plaintiff/Applicant

Mr. Chemoiyai for the 2nd Defendant/Respondent

Court Assistant: A.Oniala

