



REPUBLIC OF KENYA



**Muiva & another v Limurinke & another (Environment & Land Case  
720 of 2017) [2025] KEELC 3995 (KLR) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3995 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 720 OF 2017**

**MD MWANGI, J**

**MAY 21, 2025**

**BETWEEN**

**CECILIA MUNYIVA MUIVA ..... 1<sup>ST</sup> PLAINTIFF**

**NDINDA KUSU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SALAU OLE SOKON LIMURINKE ..... 1<sup>ST</sup> DEFENDANT**

**MIDARI PROPERTIES AGENCIES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

(In respect of the notice of motion dated 6<sup>th</sup> December 2024 seeking the committal to civil jail of the 1<sup>st</sup> Defendant herein for non-compliance with the decree of this court)

**Background**

1. The application under consideration is the notice of motion dated 6<sup>th</sup> December 2024 by the Plaintiffs/Decree-holders stated to be brought under the provisions of Section 63(c), 1A, 1B and 3A of the *Civil Procedure Act* and Order 40 Rule 3(1) and (3) of the *Civil Procedure Rules*. The Plaintiffs/Decree – holders seek a raft of orders in execution of the decree of this court dated 22<sup>nd</sup> March 2023.
2. The main prayer in the notice of motion is for an order that the court finds the 1<sup>st</sup> Defendant/Respondent in contempt of the court decree given on 22<sup>nd</sup> March 2023 and issued on 12<sup>th</sup> June 2023; subsequently that the 1<sup>st</sup> Defendant/Respondent be committed to civil jail for a period of six (6) months or such period as the court may please.
3. The application is based on the grounds on the face of it and on the supporting affidavit of Cecilia Munyiva Muiva sworn on 8<sup>th</sup> December 2024. The gist of the application is that the court decreed that the Plaintiffs are entitled to exclusive and unimpeded right of possession and occupation of the suit



properties. The court further issued an order of permanent injunction restraining the Defendants from remaining on, or continuing in occupation of the suit land, trespassing on, or in any way interfering with the Plaintiffs quiet possession thereof. The Plaintiffs further affirm that the decree was served upon the Defendants/ Respondents on 25<sup>th</sup> November 2024 at the DCI's offices at Isinya Sub-County. Despite service, the 1<sup>st</sup> Defendant/Respondent has failed to comply with the terms of the decree and is therefore in contempt of the court orders. He continues being in possession and occupation of the suit properties to the detriment of the Plaintiffs/Decree holders.

4. The application was not opposed by the 1<sup>st</sup> Defendant/Respondent, who in spite of service did not file any response to the application.

#### **Directions by the Court.**

5. Counsel for the Applicant urged the court to allow the application as drawn considering that it was unopposed. He relied on the grounds on the face of it and in the supporting affidavit thereof.

#### **Issues for Determination.**

6. Having carefully considered the application, I note that though the main prayer is that the 1<sup>st</sup> Defendant/Respondent be found to be in contempt of the orders of this court and that he be committed to civil jail as a consequence of the alleged disobedience, the application before the court is in essence an application for execution of the decree of this court.
7. As presented, the applications raises two critical issues;-
  - a. Whether the decree of the court is ripe for execution; and
  - b. Whether the application has been brought under the correct provisions of the law.

#### **Analysis and Determination**

##### **A. Whether the Decree of the Court is Ripe for Execution.**

8. Judgment in this case was delivered on 22<sup>nd</sup> March 2023 in favour of the Plaintiffs allowing them all the reliefs sought in their plaint except damages for trespass. The court further awarded them the costs of the suit. The costs however, are yet to be ascertained by way of taxation as provided for under the law.
9. Under Section 94 of the *Civil Procedure Act*, a decree passed in exercise of this court's original jurisdiction should only be executed upon the amount of the costs incurred in the suit being ascertained by way of taxation. The court however, may where it considers it necessary, order that the decree be executed forthwith before ascertainment of the costs.
10. In this case, the court has not made any such order, authorizing the execution of the decree herein before taxation of costs.
11. The Court of Appeal in the case of *Bamburi Portland Cement Company Limited v Hussein* (1995) KLR, observed that;

“Section 94 of the *Civil Procedure Act* requires that for execution of a decree before taxation leave must be obtained from the High Court, such leave may be sought informally at the time judgment is delivered but if that is not done then it must be sought by way of a notice of motion.”



12. The issuance of such an order is a matter of exercise of the discretion of the court; where the court considers it necessary. As rightly observed by Stella Rutto J, in the case of *Ngari v Kenya Meat Commission* (cause 64 of 2019) (2023) KEELRC 3139 (KLR),

“The use of the phrase, ‘where necessary’ under Section 94 (of the *Civil Procedure Act*) connotes the existence of compelling reasons and exceptional circumstances as to warrant the court to exercise its discretion.”

13. By virtue of the provisions of Section 94 of the *Civil Procedure Act*, the decree herein is not ripe for execution.

#### **B. Whether the Application has Been Brought under the Right Provisions of the Law.**

14. The application by the Plaintiffs is expressed to have been brought under the provisions of Section 63(c), 1A, 1B and 3A of the *Civil Procedure Act* and Order 40 Rule 3(1) and (3) of the *Civil Procedure Rules*.

15. Contempt of court in this country is punishable under the provisions of Section 3 of the *Judicature Act* which provides that;

“The jurisdiction of the Supreme Court, the Court of Appeal, the High Court, the Environment and Land Court, the Employment and Labour Relations Court and all subordinate courts shall be exercised in conformity with:-

- a. The constitution
- b. Subject thereto, all other written laws, including the Acts of Parliament of the united Kingdom cited in part 1 of the schedule to the Act, modified in accordance with part II of that schedule
- c. Subject thereto and so far as those written laws do not extend or apply, the substance of common law, the doctrines of equity and the statutes of general application in force in England on the 12<sup>th</sup> August 1897, and the procedure and practice observed in courts of justice in England at that date.

Provided that the said common law, doctrines of equity and statutes of general application shall apply so far only as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.”

16. The law that govern contempt of court proceedings in Kenya is therefore the English Law applicable in England at the time the alleged contempt is committed. Section 5 of the *judicature Act* imposes a duty on legal practitioners and the courts to ascertain the applicable law of contempt in the High Court of Justice in England at the time the application is made.

17. The application by the Plaintiffs has therefore not been brought under the correct provisions of the law.



18. The Supreme Court of Kenya addressing a situation where an Applicant filed an application under the wrong provisions of the law in the case of *Daniel Kimani Njibia v Francis Mwangi Kimani & another* (2014) eKLR, stated that

“...it is trite law that a court of law has to be moved under the correct provisions of the law, Hence, without identifying the proper legal framework for the motion, an application is liable to be struck out.”

19. Again in the case of *Michael Munga v HFC (K) Limited & 5 others* (2017) eKLR, the Supreme Court of Kenya once more stated that;

“In the case of *Hermanus Phillipus Steyn v Giovanni Gmechi-Ruscone* Supreme Court, application No. 4 of 2012, this court was categorical that a court has to be moved under a specific provision of the law. The court stated that; it is trite law that a court of law has to be moved under the correct provisions of the law.”

20. In this regard, the Plaintiffs’ application herein is liable to be struck out having been brought under the wrong provisions of the law and for the reason discussed earlier on.

21. In conclusion, I need to remind the Plaintiff of the Plaintiffs/Decree-holders that it is incumbent upon them to identify the appropriate mode of execution of the decree issued in their favour considering the nature of the reliefs granted and move the court appropriately.

22. Consequently, the Plaintiffs’ notice of motion dated 6<sup>th</sup> December 2024 is struck out but with no order as to costs.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 21<sup>ST</sup> DAY OF MAY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kabue for the Plaintiffs/Applicants

N/A by the Defendants

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

