



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC APPEALNO. 246B OF 2011

IN THE MATTER OF: PARTY & PARTY BILL OF COSTS

JAMES KALUKO KYALO.....APPELLANT/RESPONDENT

-VERSUS-

JULIUS MWANGANGI MULU.....RESPONDENT/APPLICANT

RULING

1. For determination is the motion dated 19th June 2018 brought under the provisions of Section 1A, 1B 3, 3A & 63 (e) of the Civil Procedure Act. The Respondent is asking the Court for the following orders:

a) Spent

b) Spent

c) That this Honourable Court be pleased to issue to grant leave to the Appellant/Respondent to pay the amount of Kenya Shillings Six Hundred and Twenty Two Thousand Eight Hundred and Sixty Six and Twenty One Cents (Kshs. 622,866.21) only due to the Applicant by way of monthly instalments of Kenya Shillings Five Thousand (Kshs. 5,000/=) only.

d) That costs of this application be in the cause.

2. The Respondent opposed the application by filing grounds of opposition dated 27th July 2018 setting out the following reasons:

(1) The Application dated 19th June, 2018 is incompetent bad in law and an abuse of the Court process and the same should be struck out with costs.

(2) Pursuant to Article 40 of the Constitution read together with Section 7 of the Sixth Schedule of the Constitution, Transitional And Consequential Provisions, this Honourable Court lacks jurisdiction to grant the orders sought.

(3) The Application is an afterthought designed to frustrate the Respondent from recovering his costs.

3. During the hearing of the application, I asked parties to file affidavits showing means of the Applicant. The Applicant stated that he is 83 years old living on family land which he holds for the benefit of his family members. That he relies on "pesa kwa wazee of Kshs 2000= given through the cash transfer programs from the Government. He urged the Court to allow him liquidate the debt in monthly instalments of Kshs 5000= each.

4. The Respondent on his part swore that the Applicant is a man of means having large parcels of land. He proceeded to annex a letter from the Kilifi Land Adjudication Officer which stated that the Applicant jointly with 4 others own land in the area measuring approximately 145 acres. On being served with this affidavit, the applicant's counsel sought time to reply but did not file any. The import is that the contents of the Kilifi Land Adjudication Officer's letter has not been rebuffed.

5. Taking into account the age of the applicant and the track of land he owns, I find his proposal to liquidate the decretal sum which is over

Kshs 600,000= in monthly instalments of Kshs 5000= as unreasonable. If he was to be allowed to do so, it will take 125 years which if you add to his 83 gives 208 years. I am yet to hear of any Kenyan or man the world generally to have lived for this long.

6. In light of the circumstances of this case and in exercise of my discretion I will allow the applicant an opportunity to liquidate the decretal sum but in ten (10) equal instalments with the first instalment payable on or before 28.2.2019 and thereafter on the 30th of every subsequent month till the decree is paid in full. In default of any instalment, the plaintiff is at liberty to execute for any and or the whole balance outstanding. Costs of this application is ordered in the cause.

Dated, signed & delivered at Mombasa this 5th February 2019

A. OMOLLO

JUDGE