



REPUBLIC OF KENYA



KENYA LAW
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**Kamau & another v Ngeru & 2 others (Environment and Land Case
1031 of 2013) [2025] KEELC 7493 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7493 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1031 OF 2013**

**AA OMOLLO, J
OCTOBER 30, 2025**

BETWEEN

SCHOLASTICA WAITHERA KAMAU 1ST PLAINTIFF

JANE WAMBUI NGERU 2ND PLAINTIFF

AND

DENNIS NJAGI 1ST DEFENDANT

KIBASUI NDONGA 2ND DEFENDANT

DANIEL MAINGI 3RD DEFENDANT

RULING

1. For determination is the motion application dated 8th April, 2025, brought by the plaintiff under the provisions of section 94 of the CPA and Order 51 of the Civil Procedure Rules. The Plaintiffs hereafter called the Applicants seeks orders;
 - i. Spent
 - ii. Spent
 - iii. That this Honourable Court be pleased to grant the Plaintiff/Applicants leave to execute the decree issued on 24th September, 2020 against the 2nd Defendant before taxation of the Party and Party Bill of costs.
 - iv. That this Honourable Court be pleased to order that the 2nd Defendant be evicted from the suit property in enforcement of the judgment delivered on 24th September, 2020.
 - v. That this Honourable Court be pleased to order the O.C.S, Buruburu Area to supervise in the enforcement of the orders of this court and to maintain law and order.



- vi. Costs of the application be provided for.
2. The application is premised on the grounds inter alia;
 - a. On 17th October, 2016, this honourable court granted the defendants an order for maintenance of status quo which was the defendants continue using our land as a playground. The position changed fundamentally when a judgment was given in our favour on 24th September, 2020, but they declined and have continued to refuse to obey it.
 - b. The Defendants have practiced kindness to neighbours of the property by offering it at the Plaintiffs' expense as a playground for youth, without purchasing it, and thereby acting like Robbin Hood who robbed to assist the poor; the law does not recognize Robbin Hood who robbed to assist the poor: the law does not recognize Robbin Hoods of this world particularly in Land Law.
 - c. Since the judgment was delivered, it had not been set aside but the Defendants have used all manner of tricks to delay execution of the decree; this Honourable court as demonstrated by Hon. Justice Angote in a ruling delivered on 11th November, 2021, this Honourable court has jurisdiction to permit a decree holder to execute to order for possession pending taxation and that jurisdiction was excised in favour of the Plaintiffs in Nairobi ELC Case No. 83 of 2010 Mary Wangui Karanja and Salome Njeri Karanja vs Rhoda Wairimu Karanja and another in paragraph 37 of his ruling.
 3. The application is also supported by the affidavit sworn by Jane Wambui Ngeru on 8th April, 2025. She deposes that the status quo order given by this court on 17th October, 2016 was terminated when a judgment was rendered. The judgment, inter alia, directed that the Defendants vacate the suit property.
 4. She deposes that on 13th April, 2023, when the bill of costs was pending, the Defendants applied for a stay of execution of the said judgment. The application was heard but the orders of stay was not granted.
 5. That upon delivery of the taxation ruling, the Defendants applied for a reference and the same was allowed on 30th January, 2025. The consequence of this is that the taxation, which commenced in 2022, is now set to begin again and she cannot know how long it will take to have another taxation and a possible reference completed.
 6. Further, the Applicants depose that their wish was to develop the property for their benefit and also for the benefit of their church. Hence, they urge the court to grant the orders sought.
 7. The Defendants filed grounds of opposition dated 29th May, 2025. The grounds stated are;
 - i. That the Plaintiffs have not demonstrated the existence of any exceptional circumstances to warrant this court issue an order of execution before re-taxation of the Bill of Costs.
 - ii. The Plaintiffs have not provided any compelling reasons to warrant them leave to execute the judgment dated 24th September, 2020.
 - iii. This Honourable Court already taxed the Plaintiff's Bill of Costs dated 28th September, 2022 and what is pending before this Honourable Court is the re-taxation of various contested items in the Bills of Costs as directed by the Court vide a Ruling dated 30th January, 2025.
 - iv. The Plaintiffs have not shown how they stand to suffer irreparable harm in the event re-taxation is undertaken first prior to execution.



- v. The items in the Bill of Costs had been fixed for re-taxation before the Plaintiffs filed the present application hence the application is a waste of Judicial time.
- vi. The application devoid of merit and should be dismissed with costs.

Submissions:

8. Both the Applicants and the Defendants filed written submissions dated 16th July, 2025. I have read and considered the issues addressed by the submissions and will make a deference in the analysis below. The application is premised on the provisions of Section 94 of the *Civil Procedure Act* which states;

“Where the High Court considers if necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of costs incurred in the suit can be ascertained by taxation, the court may order the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.”
9. The Defendants have argued, among other things, that the application should not be granted because the Plaintiffs have not provided any compelling reasons. From the records, both parties are aware that the judgment was entered in favour of the Plaintiff on 24th September, 2020. Since then, the decree has not been executed or implemented.
10. There is no dispute that there is no pending appeal against or application to set aside the judgment. The Applicants have stated that they have been kept away from using this property since 17th October, 2016, when the order of maintenance of status quo was made. The status quo order was given in the course of the proceedings to preserve the suit property pending the determination of the dispute.
11. Therefore, the time within which the Applicants were denied access was from the date of the judgment on 24th September, 2020. I have perused the record, and there is no indication as to why the bill of costs was not filed until 28th September, 2022. The record bears that the party and party bill of costs was fixed for hearing on 22nd February, 2023 and later set for mention on 13th April, 2023.
12. It was on the same date of 13th April, 2023 that the Defendants also filed an application to set aside the impugned judgment. The application for setting aside was dismissed and a ruling rendered on the party and party bill of costs 29th August 2024. Subsequently, the Defendants filed a reference vide an application dated 11th September 2024.
13. The reference application was determined on 30th January 2025 where a few items of the bill were referred back for re-taxation. I have noted the deputy registrar of the court already gave directions on filing of written submissions during the pendency of this application.
14. I have given the above outline on the history of the matter as it is crucial in assessing the merit or otherwise of the compelling reason to grant leave to execute before the re-taxation ordered. The Plaintiffs were holding a judgment for almost two years (September 2020 -September 2022), during which period they did not move the court for leave to execute before assessment of the costs.
15. They pleaded and submitted that they do not know how long it will take before the costs are taxed, and the duration of the subsequent reference will take to be determined. Based on the record outlined above, the Applicants can almost be certain that, but for their application, the re-taxation would have been completed. Similarly, if a reference is filed against the re-taxed party and party bill of costs, they can determine that it will take less than a year to hear and decide the reference if any is filed



16. Furthermore, this case does not seek execution before taxation as per section 94 because the taxation on the party and party bill of costs was already done. What remains is re-taxation on a few items, indicating that the process is nearing completion. The Applicants, who contributed to the delay in filing the party and party bill of costs two years after the judgment, will not suffer any prejudice by waiting a little longer for the re-taxation to be determined, which step involves only a few items from the bill.
17. It is on this account that I hold that there is no compelling reason to grant the orders sought in the application. The result is that the application is dismissed for lack of merit with no order as costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF OCTOBER, 2025.

A. OMOLLO

JUDGE

