



**Trompell v Titus (Environment and Land Case 124 of 2021 & Miscellaneous Case E003 of 2023 (Consolidated)) [2025] KEELC 5831 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5831 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT AND LAND CASE 124 OF 2021 &  
MISCELLANEOUS CASE E003 OF 2023 (CONSOLIDATED)**

**LL NAIKUNI, J**

**JULY 30, 2025**

**BETWEEN**

**BERYARD TROMPELL ..... PLAINTIFF**

**AND**

**JESSICA MWIKALI TITUS ..... DEFENDANT**

**RULING**

**I. Introduction**

1. This ruling is a quick follow up from the issues raised from the directions issued by this Honourable Court on 2<sup>nd</sup> April 2025. It concerns the valuation of the suit property known as LR. No. Kwale/Diani Complex/644 (Hereinafter referred to as "The Suit Property").
2. As a matter of background, the issues before the Court pertains to the execution of the Judgment delivered by this Court on 3<sup>rd</sup> February 2022. Specifically, the pith and substance is on the adoption of the appropriate valuation reports to facilitate the equitable division of the Suit Property between the Plaintiff/Decree Holder, Bernd Trompell and the Defendant/Judgement Debtor, Jessica Mwikali Titus.
3. In order to proceed on smoothly, equitable, reasonable and fairly, the Honourable Court has been tasked with affirming which of the Survey reports filled before Court should be used as the basis for the valuation, following deliberations and submissions by the parties' respective Learned Counsels in court and on the court's record.
4. From the very onset, it is instructive to note that this Court is not sitting as an appeal of its own Judgement. It is purely to finalise on the execution of the Decree already issued.



## **II. Background**

5. For information sake and ease of reference, the Honourable Court feels imperative to provide a brief background of the matter. The Plaintiff instituted a civil suit against the Defendant through a Plaint dated 13<sup>th</sup> October 2021. The parties, formerly in an intimate relationship, jointly acquired and developed the Suit Property, registered as a joint property with a Certificate of Title Deed issued to both. The relationship irretrievably broke down in the year 2017, leading to their separation and subsequent legal disputes over the Suit Property. The Defendant continues to occupy the property, while the Plaintiff seeks exclusive possession or, in the alternative, a valuation and equitable division of the property's value. The suit went through the usual proceedings of a full trial.
6. On 3<sup>rd</sup> February 2022, this Honourable Court delivered a Judgment declaring the Plaintiff and Defendant as registered absolute proprietors of the Suit Property in common. The Court ordered a valuation by the Government Land Valuer, Kwale, within 45 days, with costs to be shared equally by both parties. The Judgment further stipulated that each party is entitled to a 50 percent share of the property's value, with execution to be completed within six months.
7. Subsequent proceedings before the Deputy Registrar revealed disputes over two valuation reports: one by Wyco Valuers & Company, dated 8<sup>th</sup> May 2023 and another commissioned by the County Land Valuation and Survey Department, Kwale dated 28<sup>th</sup> May 2025. The parties failure to agree on a joint valuation report necessitated further directions, culminating in the Courts directions on 2<sup>nd</sup> April 2025 and thus leading to this ruling.

## **III. Deliberations and Submissions by the Parties**

### **A. Plaintiffs Deliberations**

8. The Plaintiff, through their counsel, submitted that the Government Survey Report, prepared by the Government Land Valuer, Kwale, should be adopted as it complied with the Courts orders of 3<sup>rd</sup> February 2022. The Plaintiff's Counsel notified the Respondent's advocates, M/s Aboubakar Mwana Kitina & Co., by letter dated May 15, 2025, scheduling the valuation for May 22, 2025, and requesting participation by the Respondent's valuer, Wyco Valuers & Co.
9. The valuation occurred as planned, attended by the Plaintiff, his Counsel, the Government Valuer, and the Respondent, but neither the Respondent's advocate nor their valuer participated, despite notification, and no explanation was provided. A letter dated May 27, 2025, informed the Respondent's advocates of the completed valuation report. The absence of the Respondent's valuer constitutes non-compliance with court orders, undermining the joint valuation process.
10. Pursuant to this, the Plaintiff requested the court to accept the Government Valuer's report as the sole valuation and note the Respondent's default for further directions. The Plaintiff further contended that the Defendants continued occupation of the Suit Property and reluctance to agree on a valuation had unnecessarily delayed the execution of the Judgment

### **B. The deliberations by the Defendant**

11. The Defendant, through their Learned Counsel, disputed the Government Survey Report, citing concerns about its accuracy and relevance due to the time elapsed since its preparation.
12. The Defendant proposed adopting of their valuation report dated 14<sup>th</sup> August 2024 or commissioning a third valuation to account for potential depreciation in the property's value.



13. The Defendant maintained that the Suit Property was matrimonial property, and any valuation must reflect their equal contribution and entitlement.

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

14. The primary issue before this Court is the adoption of an appropriate valuation report to facilitate the execution of the judgment. Specifically, in order to arrive at an informed, fair and reasonable decision, the Honourable Court has come up with the following (2 ) issues. These are:-
  - a. Whether the Government Survey Report or Wyco Valuers & Company survey should be affirmed as the authoritative valuation for the Suit Property, given the conflicting positions of the parties and the existence of multiple valuation reports?
  - b. Who shall bear the costs of the valuation and subsequent processes?

#### **Issue No. a). Whether the Government Survey Report or Wyco Valuers & Company survey should be affirmed as the authoritative valuation for the Suit Property, given the conflicting positions of the parties and the existence of multiple valuation reports?**

15. The Honourable Courts made an order on 3<sup>rd</sup> February 2022 specifically mandating a valuation by the Government Land Valuer, Kwale, to ensure an independent and authoritative assessment. Pursuant to that, the Government Survey Report was prepared in compliance with the Courts orders. The surveying exercise was conducted by a qualified public officer with expertise in land valuation. Its methodology adheres to standard practices, including market analysis and physical inspection of the Suit Property. In contrast, the Defendants valuation report, while professionally prepared, lacks the impartiality of a government-commissioned report and was not mandated by the Courts original orders. The suggestion for a third valuation, while noted, is deemed unnecessary, as it would further delay the execution of the Judgment without sufficient justification. The Defendants concern regarding depreciation is acknowledged
16. On 2<sup>nd</sup> April, 2025 this Court directed that the two parties proceeds to prepare a joint valuation report taking all relevant facts into consideration within some stringent stipulated time frame. Unfortunately, this never happened for unclear reasons. However, the Government Valuer under the Director of Land Valuation prepared a very comprehensive Land Valuation report dated 28<sup>th</sup> May 2025. This report is relatively recent for an exercise was undertaken on 22<sup>nd</sup> May, 2025. It provides the terms of reference, limiting conditions, the situation, Google survey satellite maps,, tenure, area, services, land use, developments undertaken and the Valuation certificate. The report reflects the property's value within a reasonable timeframe. Thus, the Honourable Court finds no compelling evidence to suggest significant depreciation that would warrant discarding the report.
17. Upon careful consideration of the averments, the Honourable Court affirms the use of the Government Land Survey Report dated 28<sup>th</sup> May 2025 as the primary basis for valuing the Suit Property. This decision is grounded in the reports compliance with the Courts orders, its impartiality, and its alignment with statutory requirements.
18. The Defendants objections, while noted, do not sufficiently undermine the reports credibility or relevance. For this reason, therefore, I discern that the current market valuation of the suit property for a sum of Kenya Shillings Twenty Six Million (Kshs. 26,000,000/=) will be adopted as the basis for the equitable division of the Suit Property.



## **No. b). Who shall bear the costs of the valuation and subsequent processes?**

19. It is now well established that the issue of Costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.
20. I have well stated in previous precedence and most especially in “Sagalla Lodge Limited – Versus - Samwuel Mazeru Mwangi & another (Suing as the Executors of Eliud Timothy Mwangi – Deceased) [2022] eKLR”, held that:-
- “ 58. The Black Law Dictionary defines “Cost” to mean, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.
- The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7<sup>th</sup> December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21<sup>st</sup> December, 2021.”
21. Further, in the case of:- “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court finds it equitable that the costs of the valuation and subsequent processes be shared equally, as initially ordered.

## **V. Conclusion & finding**

22. In light of the foregoing, and based on the framed issues herein, the Honourable Court issues the following orders:
- a. That the Government Valuation Report dated 28<sup>th</sup> May 2025 be and is hereby affirmed as the authoritative valuation of the Suit Property for the purposes of executing the Judgment of 3<sup>rd</sup> February 2022.
  - b. That the suit property herein, Kwale/Diani Complex/644 is hereby valued at a sum of Kenya Shillings Twenty Six Million only (Kshs. 26,000,000/=.
  - c. That an order made to have the Suit Property sold of within the next ninety (90) days from the date of this ruling, with the proceeds divided equally (50% each) between the Plaintiff/Decree Holder and the Defendant/Judgement Debtor.
  - d. That, notwithstanding the above order under ( c ) above, the Plaintiff/Decree Holder shall be at liberty to buy out the Defendant’s 50% share at the valued amount within 30 days.



- e. That the costs of the sale or buyout process, including any incidental expenses, shall be borne equally by the Plaintiff/Decree Holder and the Defendant/Judgement Debtor herein.
- f. That the Defendant shall vacate the Suit Property within 30 days of the completion of the sale or buyout, failing which the Plaintiff/Decree Holder may apply for an eviction in accordance with the provision of Section 152E of the Land Act, No. 6 of 2012.
- g. That each party shall bear their own costs.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS SIGNED  
& DATED AT KWALE THIS 30<sup>TH</sup> DAY OF JULY 2025**

.....  
**HON. MR. JUSTICE L.L NAIKUNI**  
**ENVIRONMENT & LAND COURT AT**  
**KWALE**

Ruling delivered in the presence of:

- a. Mr. Daniel Disii, the Court Assistant.
- b. M/s. Bunyengo Advocate holding brief for Mr. Walubengo Advocate for the Plaintiff/Decree Holder.
- c. Mr. Chaka Bora Advocate holding brief for Mr. Abubakar Advocate for the Defendant/Judgement Debtor.

