



Munuhe (Suing as the legal and personal representative of the Estate of the Late Lucy Wanjiru Munuhe) v Wagacha (Environment and Land Miscellaneous Application 114 of 2017) [2026] KEELC 2359 (KLR) (28 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2359 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 114 OF 2017
AY KOROSS, J
APRIL 28, 2026

BETWEEN

CHRISTOPHER MWANGI MUNUHE (SUING AS THE LEGAL AND PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE LUCY WANJIRU MUNUHE) PLAINTIFF

AND

WAMBUI WAGACHA DEFENDANT

RULING

1. This ruling concerns the notice of motion dated 3 April 2025, filed by the defendant, and it is presented as being made in accordance with Sections 3 and 14 of the *Environment and Land Court Act*, Sections 1A, 1B, 3A, 30, and 94 of the *Civil Procedure Act*, and Order 22 Rules 18 and 19 of the Civil Procedure Rules, Laws of Kenya. She seeks the following orders from this court: -
 - a. Leave be granted to the defendant to execute the decree issued on 17 August 2023, notwithstanding that the costs of the suit have not yet been taxed, in accordance with Section 94 of the *Civil Procedure Act*.
 - b. The plaintiff be ordered to give vacant possession of LR No. 20604/134 to the defendant within fourteen days, and in default:
 - i. The defendant be at liberty to proceed with the eviction, and
 - ii. The Officer Commanding Mavoko Police Station or such other officer in charge of the nearest police station be directed to provide security and maintain law and order during the eviction process.
 - c. The costs of this application be awarded to the defendant in the event of opposition.



2. The motion is based on the grounds listed on its face and the defendant's supporting affidavit, sworn on 21 April 2025, and in summary, she states that on 5 July 2023, the court dismissed the plaintiff's claim for adverse possession and allowed the defendant's counterclaim whereby the court ordered the plaintiff him to vacate LR No. 20604/134 ("suit property") within 60 days. If the plaintiff failed to comply, the defendant would be entitled to evict him at the plaintiff's cost. She was awarded general damages for trespass in the amount of Ksh 2,000,000 and costs of the suit.
3. Additionally, she avers that to date, the plaintiff has not complied with the court's orders and continues to trespass on the suit property, and she is entitled to the benefits of the judgment, including recovery of possession, which should not be delayed by pending taxation. There is no stay of execution, and the decree remains in force. A police presence is necessary to ensure the eviction is conducted peacefully and lawfully and to maintain order in accordance with their duty to enforce valid court orders. In support of her assertions, she presented to this court its judgment and decree.
4. The motion is strenuously opposed by the plaintiff's replying affidavit, sworn on 30 July 2025, where he succinctly informs the court that there are no compelling reasons or exceptional circumstances to grant the defendant leave to execute the decree before the bill of costs is taxed. Further, he has already filed the record of appeal and an application for a stay of judgment with the court of appeal, both of which are pending. The motion is premature, as the Court of Appeal will address both the application for a stay and the appeal.
5. Upon hearing the parties, the court directed that the motions be considered through written submissions. In compliance, M/s. Kieti Law LLP, for the defendant, filed their undated written submissions, whereas M/s. Manthi Masika & Co. Advocates for the plaintiff submitted theirs dated 17 December 2025. Accordingly, after thoroughly examining the motion, including its grounds, the parties' affidavits, the rival submissions, as well as the provisions of law and judicial precedents relied upon, elements which shall be considered in the analysis and determination of this matter-the principal issues for determination are (a) whether the defendant should be permitted to execute the decree before taxation, and (b) whether police should be allowed to provide security during the eviction process.
6. However, prior to addressing the substantive issues, it is essential to resolve certain preliminary matters. According to the record, the plaintiff submitted an application dated 24 August 2023 seeking a stay of execution of this court's judgment, which was denied by a ruling of this court on 10 July 2024. Moreover, although the plaintiff has stated that he filed an application for a stay of execution before the Court of Appeal, no such application has been presented.
7. Therefore, in agreement with the defendant, the existence of an appeal does not constitute an obstacle to the enforcement of the decree. Pointedly, this court in its judgment had already issued orders of vacant possession, and in the considered view of this court, the defendant did not have to raise it again. Furthermore, according to the record, a bill of costs dated 24 October 2025 has been submitted by the defendant, and rival written submissions arguing this bill of costs have been filed, and the sole remaining obstacle to the issuance of a ruling date therein is this very ruling. We shall now proceed to address the issues in sequence.

A. Whether the defendant should be permitted to execute the decree before taxation

8. With regard to this matter, and as duly submitted by the defendant, Section 94 of the *Civil Procedure Act*, when read in conjunction with Section 14 of the *Environment and Land Court Act*, authorises



this court to enforce its judgments, awards, orders, or decrees, including granting the relief sought by the defendant. Section 94 of the *Civil Procedure Act* provides:

“Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that 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. This proviso has been the subject of interpretation in various court decisions, including *David George Bell & another v Ashutosh Bhasin* [2009] KEHC 225 (KLR), which has been relied upon by the defendant, where the court held: -

“Although the applicant has filed an appeal there is no order staying execution, merely filing an appeal does not operate as a stay. Secondly, the sum which was deposited in the joint names of the advocates was held as security, thus it is not necessary to take out garnishee proceedings. I see no justifiable reason why the plaintiff should be kept away from their fruits of litigation; they should be allowed to execute the decree before the ascertainment of costs.”

10. The basis of this legal provision was outlined in *Mercedes Sanchez Rau Tussel v Samken Ltd, Abercrombie & 2 others* [2002] KEHC 543 (KLR), and this decision was upheld by the Court of Appeal in *Bruce Joseph Bockle v Coquero Limited* [2017] KECA 265 (KLR), and it stated: -

“The principle behind this section is not far to search. When awarded costs are not agreed, it often takes a considerable time before the costs are taxed by a taxing officer. In order not to permit a judgment-debtor to hold up execution of a decree for a known sum or a sum to which there can be no sensible contest, section 94 provides that the court may permit the execution of a decree except as to so much thereof as relates to unsettled costs.

The need to have section 94 is equally obvious. As it is well-known from the definition in the *Civil Procedure Act*, a “decree” is a formal expression of the adjudication made by the court with regard to the questions which arose for determination and so, when a judge on the original side passes a judgment in favour of a party for a certain amount and awards costs to him, the decree being the formal expression of that judgment must normally embody the whole of that judgment. Accordingly, to proceed to execute an aspect only of that judgment necessarily requires the permission of the court if the decree holder is afterwards going to pursue the remaining portion. That is why we have this provision with regard to cost.”

11. In *Bruce Joseph* (Supra), the court stated the guiding principle of granting leave to execute before taxation, thus: -

“Section 94 of the *Civil Procedure Act* empowers a court to allow execution of a decree before costs are ascertained by taxation. The court allows such execution in circumstances it considers just.”

12. Both parties concur that the court exercises judicious discretion in deliberating on a prayer for execution prior to taxation, which this court agrees with. In his submissions, the plaintiff contends that discretion should not be exercised in the defendant’s favour due to the existence of an appeal; however, as previously stated in this ruling, this is not a valid ground. The plaintiff also relied on the case of *Kenya Shell Ltd v. Benjamin Karuga Kibiru* (1986) KLR 410 to support his argument, but did not tender



this decision to the court. Nonetheless, this well-cited authority delineates the principles necessary to qualify for a stay of execution pending appeal, which are not applicable here.

13. In exercising its discretion, this court must consider the circumstances of each case, and in the instant case, the court rendered judgment over two years ago in favour of the defendant and determined that the plaintiff was a trespasser, ordered him to vacate the suit property within 60 days, meaning by 5 September 2023, as judgment was rendered on 5 July 2023. However, the plaintiff has persistently failed to vacate, thereby necessitating the defendant's need for eviction of the plaintiff from the suit property as provided for in Order 22 Rule 29 of the Civil Procedure Rules.
14. Given the nature of land disputes, the denial of access to one's property results in both emotional and economic hardship and injustice. It is also pertinent to observe that this matter has been before the court for eleven years, and there appears to be no valid reason to deny the defendant the benefits of the judgment and decree. Therefore, this court finds that this relief is merited and should be allowed.

B. Whether police should be allowed to provide security during the eviction process.

15. The legal framework governing the execution of eviction orders, as stipulated in Section 2(2)(a) of the *Auctioneers Act*, mandates that such executions be carried out solely by appointed court bailiffs. The role of the police in this process is confined to maintaining law and order, as outlined in Section 24 of the *National Police Service Act*.
16. It is apparent that the defendant has yet to appoint a court bailiff; however, this does not preclude the application for security at this stage, particularly given that the plaintiff has refused to vacate the suit property despite explicit court orders. Therefore, this court has no reason to deny the defendant this relief and finds it merited. On this, this court is guided by the Court of Appeal decision of Bruce Joseph (*Supra*), which held: -

“Last but not least, ideally, police officers ought not to be used in enforcement of civil processes. However, in this case the respondent demonstrated that the appellant had refused to comply with the court orders; ...we see nothing wrong with the learned Judge directing the police to maintain law and order during the eviction process. This is a clear case where police involvement and the observance of law and order is necessary.”

17. The upshot of the foregoing is that the court finds merit in the defendant's notice of motion dated 3 April 2025. Costs follow the event, and since the defendant is successful, costs are awarded to him. The motion is hence allowed only in the following terms:
 - a. That leave is hereby granted to the defendant to execute the decree issued on 17 August 2023 before the taxation of the bill of costs.
 - b. That in enforcement of the decree issued on 17 August 2023, the Officer Commanding Mavoko Police Station or any other officer in charge of the nearest police station to LR No. 20604/134 is hereby directed to provide security and maintain law and order during the eviction process.
 - c. That the defendant is hereby awarded costs of the application.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 28TH DAY OF APRIL, 2026.

HON. A. Y. KOROSS



JUDGE

28.04.2026

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM**

In the presence of;

Ms. Kanja Court Assistant

Miss Wekesa for Mr. Kiragu for the applicant.

Miss Lokol for respondent.

