



Macharia v Nairobi City Council (Environment & Land Miscellaneous Case 2 of 2023) [2024] KEELC 1819 (KLR) (20 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1819 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 2 OF 2023**

EK WABWOTO, J

MARCH 20, 2024

BETWEEN

MARY NYAMBURA MACHARIA APPLICANT

AND

NAIROBI CITY COUNCIL RESPONDENT

RULING

1. The Applicant filed a Chamber Summons Application dated 3rd August 2023 brought under Order 53, Rule 1(1) and (2) of the [Civil Procedure Rules](#) which was accompanied by the Statement of facts and verifying affidavit sworn by Kennedy Otieno Arum Advocate in which the following orders were sought:
 - i. That leave do be granted to the Applicant to apply for an order of mandamus to issue and remove from this Honorable Court directed at the County Secretary and the Chief Officer, Finance/County Treasurer Nairobi City County directing them to pay to the applicant forthwith and without delay the decretal sum delineated hereunder together with accrued interest payment in full for sum of Kshs 7,461,632.33.
 - ii. THAT the costs of this Application be borne by the Respondent.
2. The Application was based on several grounds including that:
 - a. The Applicant's bill of costs dated 18th July 2022 was taxed off at Kshs 551,632.33 in a ruling delivered on 6th February 2023.
 - b. A certificate of taxation was issued against the Respondent dated 30th June 2023.
 - c. The Court in ELC No 555 of 2011 issued a decree on 9/2/ 2023 against the Respondent for a sum of Kshs 6,910,000 plus interest at 14% until payment in full.



- d. All decretal amounts remain unpaid.
3. On 7th November 2023, the Respondent was granted leave to respond to the application. All parties were also granted corresponding fourteen (14) days to file and serve their submissions with the matter being set down to confirm compliance on 24th January 2024.
 4. An affidavit of service dated 16th November 2023 and sworn by Marube Ondiek confirms that the Respondent's counsel on record Momanyi & Associates Advocates was duly served. The Respondent did not respond to the application.
 5. The Applicant filed submissions dated 11th January 2024 in which it was submitted that the application was merited and since this was a final resort it was only fair for leave to be granted to the Applicant.
 6. Having considered the application and supporting documents, it is clear that the issues for determination before this court is whether the Applicant's application dated 3rd August 2023 is merited?
 7. Section 13 (7) of the *Environment and Land Court Act* outlines that:

“...In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including:- (a) interim or permanent preservation orders including injunctions; (b) prerogative orders; (c) award of damages; (d) compensation; (e) specific performance; (g) restitution; (h) declaration; or (i) costs.
 8. Perusal of the Court records confirms that service was duly effected upon the Respondent's Counsel to which the Respondent opted not to participate. I have further considered all supporting documents which confirm the decretal sum due to the Applicant. In ELC 555 of 2011, Okong'o J gave the following directions vide a ruling delivered on 3rd February 2022:

“...The execution of the judgment dated 2nd July 2021 delivered on 3rd August 2021 and the decree issued on 9th September 2021 is stayed for a period of 12 months from the date hereof or until the hearing and determination of the intended appeal to the Court of Appeal whichever comes earlier.

 2. The defendant shall deposit in an interest earning bank account in Nairobi in the joint names of the advocates on record for the parties a sum of Kshs. 7,000,000/- as security within 30 days from the date hereof in default of which the stay granted herein shall stand discharged automatically without any further reference to the court...”[Emphasis Mine]
 9. On 20th February 2024, the Court directed the parties to produce evidence either confirming or dispelling compliance of the aforementioned orders. At the time of filing this instant application, I take note that the 12 months stay had already lapsed. The Applicant filed a further affidavit dated 7th March 2024 in which it was averred that no appeal had not been filed and no deposit had been made. Noting that this matter has been ongoing for over a decade.
 10. In the foregoing, the Court hereby finds that the Chamber Summons application dated 3rd August 2023 is merited and the same is allowed in terms of prayers 1(a), (b) and (c) in favour of the Applicant. There shall be no orders as to costs.
 11. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF MARCH 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Arum for the Applicant.

Mr. Nyakoe for the Respondent.

Court Assistant; Caroline Nafuna.

