



**Nabala v Attorney General & 5 others; Gathua & 3 others (Proposed Defendant)  
(Environment & Land Case 64 of 2007) [2024] KEELC 1674 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1674 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 64 OF 2007**

**FM NJOROGE, J  
MARCH 20, 2024**

**BETWEEN**

**WILLIAM OLE NABALA ..... PLAINTIFF**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**MARY WAMBUI NJUGUNA ..... 2<sup>ND</sup> DEFENDANT**

**MWANATUMU ATHUMANI ATHUR ..... 3<sup>RD</sup> DEFENDANT**

**RHODA MUGURE NGANGA ..... 4<sup>TH</sup> DEFENDANT**

**GRACE NYOKABI GITHOME ..... 5<sup>TH</sup> DEFENDANT**

**REGISTRAR OF TITLES ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**ROBERT GATHUA ..... PROPOSED DEFENDANT**

**JASON KATHURIMA ..... PROPOSED DEFENDANT**

**IBRAHIM MUSA MOHAMED ..... PROPOSED DEFENDANT**

**HENRY GATHUKA CHEWE ..... PROPOSED DEFENDANT**

**RULING**

1. The 2<sup>nd</sup> Defendant filed the present notice of motion application dated 20<sup>th</sup> September 2023 seeking orders that: -
  1. Spent.
  2. Spent.



3. Spent.
  4. That this honourable court be pleased to find, hold and declare that the warrants of execution issued against the 2<sup>nd</sup> Defendant/applicant are unlawful, illegal and therefore a nullity.
  5. That the Plaintiff/Respondent be condemned to pay costs of this application together with any attendant costs.
2. The application is premised on the grounds set forth on the notice of motion and grounded on the supporting affidavit of Mary Wambui Njuguna, the 2<sup>nd</sup> Defendant herein. She deposed that judgment was entered in this matter on 6<sup>th</sup> March 2015 wherein orders were issued that the 3<sup>rd</sup> Defendant would bear the costs of the suit. This position, she stated was affirmed by the taxing master. That she has since been served with warrants of execution together with a proclamation notice. To her, the execution proceedings against her are malicious, discriminatory, malicious and a clear abuse of the court process.
  3. The Plaintiff opposed the application. He filed a replying affidavit sworn by his advocate, Macmillan Jengo on 12<sup>th</sup> October 2023 wherein he deposed that the judgment of this court dated 6<sup>th</sup> March 2015 was the subject of an appeal filed before the Court of Appeal by the 2<sup>nd</sup> Defendant. The appeal was dismissed and the 2<sup>nd</sup> Defendant ordered to pay costs of the appeal. Subsequently, the costs of the appeal were taxed and a certificate of costs issued to that effect; the warrants of execution dated 11<sup>th</sup> July 2023 are therefore solely for the costs granted at the appellate stage.
  4. The application was canvassed by way of written submissions. Notably, as at the time of writing this opinion, only the Plaintiff had filed such submissions which I have carefully considered. The sole issue for determination is whether the warrant of sale of property dated 11<sup>th</sup> July 2023 is unlawful.

### **Analysis and Determination**

5. I have carefully perused the judgment dated 6<sup>th</sup> March 2015 and there is no doubt that the costs of the suit before this court were to be borne by the 3<sup>rd</sup> Defendant, Mwanatumu Athuman Athur. There is also no doubt that the warrants for sale of property dated 11<sup>th</sup> July 2023 entail that the intended execution is in favour of the decree holder in Malindi ELC No 64 of 2007, for the decretal amount Kshs 3,212,783/-. It is also notable that the warrants of attachment of movable property dated 11<sup>th</sup> July 2023 entail that the intended attachment is in favour of the decree holder in Malindi Civil Appeal 100 of 2016 -Mary Wambui Njuguna v William Ole Nabala & Others, for the decretal sum Kshs 3,212,783.
6. It is evident that the party and party bill of costs filed by the Plaintiff in the suit before this court was taxed at Kshs 1,307,145/- amount which Mr. Jengo averred had already been paid by the 3<sup>rd</sup> Defendant.
7. The Plaintiff also annexed a copy of the taxation ruling and certificate of costs issued in Malindi Civil Appeal 100 of 2016 by the Deputy Registrar, Court of Appeal. As per that certificate, the party and party bill of costs therein was taxed at Kshs 3,057,650/- in favour of the Plaintiff herein.
8. The 2<sup>nd</sup> Defendant did not challenge the existence of the said appeal. I am equally satisfied that the 2<sup>nd</sup> Defendant indeed unsuccessfully filed an appeal against the Plaintiff and others, and was condemned to costs of the said appeal. It is pertinent to state that the appeal was not from the judgment of this court but a ruling delivered by Angote J. on 22<sup>nd</sup> September 2016 in the present case.
9. From the foregoing, it appears that reference to the suit Malindi ELC 64 of 2007 in the warrants of sale of property dated 11<sup>th</sup> July 2023 is clearly wrong. I say so because the costs amount that follows thereafter in the body of the said warrants of sale is that which was awarded in the Court of Appeal. If the warrant is in regard to the Court of Appeal's award of costs it must expressly refer to that appeal and



the amount awarded therein and not to the ELC suit. The 2<sup>nd</sup> Defendant did not adduce any evidence that she had settled the costs awarded by the Court of Appeal. Nevertheless, the impugned warrant of sale of property is irregular in its reference to the suit rather than the appeal. The warrants of sale of property in execution of the decree in the present matter dated 11/7/2023 as drawn are therefore illegal and a nullity.

10. The upshot is that the Notice of Motion dated 20<sup>th</sup> September 2023, has merit and it is hereby allowed as prayed in prayer no 4 thereof. The costs of the application shall be borne by the plaintiff/respondent only.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 20<sup>TH</sup> DAY OF MARCH 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

