



**Kirimi v Mworia & another (Environment and Land Appeal
E068 of 2021) [2024] KEELC 1446 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E068 OF 2021
CK NZILI, J
MARCH 13, 2024**

BETWEEN

JOHN MARK KIRIMI APPELLANT

AND

ROBERT MATUMBI MWORIA 1ST RESPONDENT

LOYFORD MUTHURI GITANGATA 2ND RESPONDENT

RULING

1. The court, by an application dated 6.12.2023, is asked to stay the execution of the decree herein for costs. The reasons are contained on the face of the application and in a supporting affidavit of John Mark Kirimi filed on 7.12.2023. The applicant avers his appeal was dismissed for non-appearance, which he was not aware of and his advocate was in another court. He says he was only surprised when auctioneers descended on his property and proclaimed the goods on 5.12.2023, only for his lawyers to establish that taxation of the costs was done in his absence. He prays that he is allowed to liquidate the costs in installments of Kshs.10,000/= per month for he is an unemployed peasant. Further, if the stay orders are not granted, he will suffer irreparable loss and his appeal will be rendered nugatory.
2. The applicant's appeal was struck out for non-compliance on 5.7.2022. Later on, he filed an application dated 15.7.2022, which was dismissed by this court on 2.11.2022. A ruling on costs was delivered on 21.7.2023, which has not been appealed against or set aside.
3. The respondent opposes the application through a replying affidavit by Loyford Muthuri Gitangata sworn on 14.12.2023. He avers the application was misplaced, frivolous, vexatious and an abuse of the court process aimed at denying him the enjoyment of the fruits of his litigation. Similarly, the respondent says if a stay was to be granted, the sum should be deposited in a joint interest-earning account of both parties.



4. Costs in this file were assessed on 21.7.2023, following the dismissal of the applicant's application on 2.11.2023. The delay in moving to court is not explained. The respondent has not termed the proposal to pay the costs in installments as unreasonable. The postponement of the payment of the decree at lumpsum has not been termed as a delaying tactic; sufficient material has to be given for a party to be allowed to liquidate a decree in installments. See *Kenya Shell Ltd vs Benjamin Karuga Kabiru & another* (1986) eKLR and *Lavington Security Ltd Hildegard Ndelat vs Letkina Dairies Ltd & another* (2005) eKLR.
5. In Rajabali *Aldina vs Bemtulla Aldina & another* (1961) E.A 565, the court said the tests to consider as;- the circumstances under which the debt was incurred, the conduct of the debtor, his financial position and bonafide in offering to pay a fair proportion of the debt at once. Going by the material before the court, I think the applicant has made a case to be entitled to the prayers sought. The respondent has not produced any evidence that the applicant was privy to the taxation or had been served with a notice before the execution commenced.
6. Consequently, the execution process is a result of this suspended. The applicant shall commence payment of Kshs.10,000/= with effect from 30.3.2024 and on the 30th day of every succeeding month until payment in full. In default of any single installment, the whole amount due and owing shall become payable at once and execution to re-commence.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13th DAY OF MARCH, 2024

In presence of

C.A Kananu

John Mark Kirimi

Miss Kerubo for Mr. Kiara for the applicant

Otieno C for the respondent

HON. C K NZILI

JUDGE

