



**Mwene Muunda Welfare Association (Suing through its Chairman,
Secretary and Organizing Secretary) Duncan Kamba, Kavili Mbiti & Muthui
Musembi v Kitui County Government & 2 others (Environment & Land
Case 200 of 2018) [2024] KEELC 1549 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1549 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 200 OF 2018**

A NYUKURI, J

MARCH 13, 2024

BETWEEN

**MWENE MUUNDA WELFARE ASSOCIATION (SUING THROUGH ITS
CHAIRMAN, SECRETARY AND ORGANIZING SECRETARY) DUNCAN
KAMBA, KAVILI MBITI & MUTHUI MUSEMBI PLAINTIFF**

AND

KITUI COUNTY GOVERNMENT 1ST DEFENDANT

**B2 YATTA RANCHING CO-OPERATIVE SOCIETY LIMITED 2ND
DEFENDANT**

**KATOTENI NGUAMUKA FARMERS ENVIRONMENTAL CONSERVATION
(SUED THROUGH ITS PATRON, CHAIRMAN AND ORGANIZING
SECRETARY) KYALO NGUTHU MUTHENGI MULAMBYA CEDRIC SAMMY
MWANZIA JOSEPHAT NGUU NDONGA 3RD DEFENDANT**

RULING

Introduction

1. The application before court is dated 23rd December 2022, filed by the plaintiffs/applicants and seeks the following orders;
 - a. Spent
 - b. Spent
 - c. Spent



- d. That this Honourable court be pleased to grant leave to the Applicants to settle the decretal sum of Ksh.176,673/= by equal monthly instalments of Ksh.58,666/= until payment in full beginning the 30th January 2023.
 - e. That the court be pleased to order or direct that any auctioneers fees or charges be negotiate or be assessed or taxed by the Deputy Registrar.
2. The application is based on grounds on the face of it and supported by the affidavit of Muthui Musembi, the 3rd applicant. He deposed that the applicants are the judgment debtors in this matter, relating to party and party costs and that the same was assessed at Kshs. 176,673/=. He averred that the 2nd defendant had instructed auctioneers who had proclaimed the property of the 1st and 2nd applicants at their home and place of work.
 3. He deposed that the notice period had lapsed hence the property could be sold any time and that they had engaged the members of the association in a bid to settle the decree at hand. He stated that a special meeting has to be called to discuss and raise money to settle the costs. He prayed that they be allowed to settle the costs in 3 instalments starting 30th day of January 2023, stating that they had not refused to pay but are not able to pay the amount in full at the moment.
 4. The application is opposed. Martin Mutisya Muthengi, counsel for the 2nd defendant swore a replying affidavit filed on 11th January 2023. He stated that the entire costs should be paid at once as they have not explained why they delayed in the payment of the same. He stated that the applicants had only rushed to court at the last minute after their property was attached. He also asserted that the applicants ought to pay both the party and party costs plus the auctioneer's costs.
 5. In the course of time, parties had sought for time to negotiate and solve the matter out of court. However, when the matter came up on 31st January 2024, none of the parties appeared in court and the matter was reserved for ruling.

Analysis and determination

6. Section 3A of the *Civil Procedure Act* grants this court inherent power to make orders necessary for the ends of justice and to prevent abuse of the court process. In this case, the applicants state that they have not paid the costs in the sum of Kshs. 176, 673/= and that they need to pay in three instalments because they must first call a special general meeting of their members. The record shows that the party and party costs in this matter were taxed on 22nd June 2022. The application herein was filed on 28th December 2022, which is six months thereafter. No explanation was given by the applicants why they did not hold a special general meeting for those six months and I agree with the respondent that the applicants have rushed to court at the last minute only because they were attached. In the premises, I do not think that the application herein was filed in good faith.
7. The upshot is that I find no merit in the application dated 23rd December 2022 and I hereby dismiss the same, with no order as to costs.
8. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 13TH DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:



No appearance for the applicants

No appearance for the respondents

Abdisalam – Court Assistant

