



REPUBLIC OF KENYA



KENYA LAW
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Wanyonyi & 2 others v County Government of Trans Nzoia & 3 others (Environment & Land Case 47 of 2021) [2025] KEELC 918 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 918 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 47 OF 2021
FO NYAGAKA, J
FEBRUARY 27, 2025

BETWEEN

ISAIAH WANYONYI & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS PLAINTIFF

AND

THE COUNTY GOVERNMENT OF TRANS NZOIA 1ST DEFENDANT
G. H. TANNA AND SONS LTD 2ND DEFENDANT
BARNABAS KEINO NGETICH 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. This court dismissed the instant suit on 24th October 2023 for want of prosecution. It awarded costs to the 2nd Defendant. The said Defendant filed a Party and Party Bill of costs dated 11th December 2023. It was fixed for taxation by the Deputy Registrar on 12th January 2024 and served. The Deputy Registrar delivered a Ruling on it on 26th January 2024. Upon the delivery of the ruling, the Plaintiffs filed the instant application.
2. The application is dated 31st January 2024. It was brought under Sections 1A, 1B, 3A and 65 of the *Civil Procedure Act* and Order 42 of the Civil Procedure Rules, (Article) 50(1) and (3) of *the Constitution* and all other enabling provisions of the law. It sought the following orders:-
 1. ...Spent
 2. That the Honourable Court be pleased to stay execution of the orders made on 6th January 2024 pending the hearing and determination of the plaintiffs. Notice of Motion dated 23rd January 2024 as well as their application.



3. That this honorable court grants the costs of the application.
3. The application was based on ten (10) grounds. One was that on 24th October 2024, the subject matter herein was dismissed for want of prosecution. The second defendant then proceeded to file a Notice of Taxation dated 11th December 2023 and a Bill of Costs dated the same date. It came up for taxation on 12th January 2024 without notice to the plaintiffs. On 26th January 2024, the Deputy Registrar delivered a ruling for the 2nd Respondent against the Applicants, in which he taxed the Party and Party Bill of Costs at KShs1,555,217/-. At the time of issuance of the ruling, the Court did not grant a stay of execution. If a stay of execution was not granted, the applicants would suffer loss. They had filed a Notice of Motion dated 23rd January 2023 wherein they sought orders for review or setting aside of the orders of 24th October 2024. The Notice of Motion had very high chances of success and would be rendered nugatory unless the honorable court granted the applicants the orders sought. The applicants stood to suffer substantial and irreparable harm if the orders of stay of execution were not issued urgently in the interest of justice.
4. The application was supported by the Affidavit sworn by the three Plaintiffs jointly. They swore it on 31st January 2024. They largely repeated the contents of the grounds in support of the application. They added that the suit was relatively fresh. It had not proceeded past the pre-trial conference stage. They annexed to the Affidavit, a copy of the Notice of Motion dated 23rd January 2024, in the market as IRW 1, to show that they had filed the earlier application.
5. The application was opposed by the 2nd Respondent through an Affidavit sworn by David Nyakango Onyancha, learned counsel for the party on 13th February 2024. He deposed that the Bill of Costs came up for taxation on 12th January 2024 before the Deputy Registrar of the Court. It was duly served upon the advocates for the Applicants and the said officer was satisfied as to proper service hence proceeded with the same. He gave the Ruling on 26th January 2024. The applicants had not applied to set aside the Ruling. Further, the 2nd Defendant had not secured any decree or certificate of costs hence there was no imminent threat of execution. The application dated 23rd January 2024 had no chance of success because the applicants had been indolent in prosecuting the suit, leading to the dismissal thereof. Equity and even constitutional provisions could not aid indolent litigants such as the Applicants who wanted to clog the courts' registry with cases. Further, the applicants had not demonstrated the damage they would suffer or any irreparable damage.
6. The 2nd Respondent filed written submissions dated 13th February 2022. He basically reiterated the contents of the deposition of the Replying Affidavit sworn by David Onyancha Advocate.
7. The Plaintiffs filed further written submissions dated 17th April 2024 by which they argued that they incorporated and fully relied on the contents of the Further Affidavit sworn by Isaiah Wanyonyi on 15th April 2024. The application met the threshold anticipated in Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules.
8. The Plaintiffs filed their written submissions dated 02/04/2024. They began by summarizing the application and giving the grounds for review and setting aside orders, specifically, of 24th October 2023. They combined the arguments to be for both the instant application and the one dated 23/01/2024. They stated that the issue was whether the applications had met the threshold for setting aside and reviewing the order of 24/10/2024. Their answer was in the affirmative. They summarized that by the time the order of dismissal was granted many substantive material facts were not within the knowledge of the court, so much so that by the time the notice show cause for dismissal for want of prosecution was served upon them they had been ready to prosecute the suit and were willing to abide with any timelines the court imposed.



9. They relied on Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules besides Article 159 to the of *the Constitution*, all of whose contents they reproduced verbatim. Then, they relied on four authorities whose import this court will consider as it gets to the determination of the merits of the application if the first issue for consideration fails.

Issue, Analysis And Determination

10. This Court is considered the application, the law and the issues and the rival parties' written submissions filed. Three issues lie for determination are, one, whether the Application is has been overtaken by events, two, whether the application is merited and, three, who to bear the costs thereof. The Court is of the view that they be determined in that sequence for reason that if the first one succeeds, then the whole application collapses. If it does not, then the court will have to determine the merits of the application hence the second issue.
11. Thus, the first issue is whether this application has been overtaken by events. Starting with the issue, this Court is of the view that it is a simple and straightforward one for determination. The main outstanding prayer for the applicants in the instant application is that this Honourable Court grants a stay execution of the orders made on 26th January 2024 pending the hearing and determination of the plaintiffs' Notice of Motion dated 23rd January 2024 as well as their application.
12. Two important questions flow from the prayer. First, which orders were made on 26th January 2024? Second, which application are the applicants referring to, and has it been determined? The court record shows that on the 26th January 2025, the Deputy Registrar delivered on the taxation of the 2nd Defendant's Bill of Costs. In the Ruling, he determined that the 2nd Defendant's costs in the sum of Kshs. 1,555,217/=. Thus, the orders to be stayed pending the hearing and determination of the Plaintiff's Notice of Motion dated 23rd January 2024 are the taxed costs. Those costs were taxed pursuant to the orders of dismissal of the Plaintiff's suit given on 23/10/2023. Now the court moves to answer the second question.
13. Regarding the application to which the stay sought herein was to pend it was the one application dated 23rd January 2024 and no other. That being so, and a decision on the Application having been rendered immediately here-before in a separate ruling, and the application having been lost or disallowed with costs to the 1st and 2nd Defendants, it goes without saying that the there is no application pending or favourable order in this suit after the determination of the application dated 23rd January, 2024. And since the instant one having been predicated upon the success of the other application, this one fails automatically. It has been overtaken by viciously terrible events. The upshot is that this application fails too. It can only be dismissed with costs to the Respondents.
14. Having found that this application has been overtaken by events it will not serve any purpose to consider its merits as the next issue. Costs have already been awarded to the Respondents and to be borne by the Plaintiffs. That will be so.
15. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 27TH DAY OF FEBRUARY, 2025.

HON. DR. IUR. F. NYAGAKA

JUDGE

In the presence of:



Miss Rutto Advocate for Yego Advocates for the 1st Defendant

D. Onyancha Advocate for the 2nd Defendant

Teti Advocate for Plaintiffs - absent though duly informed (see court record).

