



**B.M Mungata & Co. Advocates v Mutua & another (Environment and Land Miscellaneous Application E043 of 2021) [2024] KEELC 3596 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3596 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E043 OF 2021  
A NYUKURI, J  
APRIL 29, 2024**

**BETWEEN**

**B.M MUNGATA & CO. ADVOCATES ..... APPLICANT**

**AND**

**ROSE KATILE MUTUA ..... 1<sup>ST</sup> RESPONDENT**

**MESHACK MUTUA MUSAU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before court is dated June 27, 2023, filed by the respondents and seeks the following orders;
  - a. Spent
  - b. Spent
  - c. That the applicants be allowed to satisfy the decree herein by monthly instalments of Kshs. 10,000.00 with effect from July 30, 2023 until full payment.
  - d. That costs be provided for.
2. The application was based on grounds on the face of it and supported by the affidavit of Meshack Mutua Musau, one of the respondents. He deposed that the suit arose from the bill of costs in regard to ELC Appeal No. 23 of 2019 which was taxed at Kshs. 220,810/= and is in the same series with Miscellaneous Application Nos 42 and 44 of 2021, which were taxed at Kshs. 140,510.00 and Kshs. 231, 107.00 respectively, all totalling to Kshs. 592,427/=.
3. He stated that the amount being claimed by the respondent is colossal and that they operate a small cereal business with no stable income and are hence not in a financial position to pay the whole amount at once.



4. He further stated that they stood to suffer substantial loss and prejudice if the respondent proceeds with execution and that they had not refused to pay, but their financial situation does not allow them to. It was his averment that the respondents will not be prejudiced as the applicants intend to pay until the whole sum is completed if the orders sought are granted. They prayed that the court exercises unfettered discretion in their favour as the application is brought in good faith. He attached their bank statement to that effect, and prayed that they be allowed to liquidate the costs awarded by monthly instalments of Kshs. 10,000.00 for all the 3 matters.
5. The application is opposed. A replying affidavit sworn by Brian Munyao advocate, in conduct of the matter was filed on July 17, 2023. He deposed that the applicants had knowingly and willingly engaged a legal counsel with full knowledge of financial responsibilities. He averred that the respondents had tirelessly worked on the case, invested significant time, effort and resources to secure a favourable outcome. He further stated that the taxing master had awarded a total cost of Kshs. 592,427.00 which the respondents had not objected to, hence the instant application is a deliberate tactic aimed at causing unnecessary delays, rather than a genuine concern about their ability to pay. It was their contention that the evidence presented by the applicants for their inability to pay was insufficient as the statement annexed was for an account that seemed to lack any transactions and the court ought to order for disclosure of full statements of accounts including Mpesa statements and all other bank accounts. He further deposed that allowing such application would jeopardize the financial stability of the legal profession as the same would be a bad precedent and erode the trust and confidence necessary for the legal profession to function effectively.
6. Counsel further deposed that it was contradictory for the applicants to claim financial struggles while at the same time engaging another firm of M. M. UVYU & Company Advocates, a well-established law firm, to represent them further, raising doubts about their inability to pay. It was his averment that the alleged inability to pay is hence questionable. He prayed that the court does apply principles of fairness and justice and safeguard the integrity of the legal profession.

### **Analysis and determination**

7. Having considered the application, the only issue for determination is whether it would be fair and just to allow the applicant to settle the decretal sum of Kshs. 220,810/= by monthly instalment of Kshs. 10,000/=.
8. Article 48 of the Constitution provides for the right to access to justice. The respondent advocates filed their client advocate bill of costs in 2021 and the same was taxed on December 15, 2022. Subsequently on application by the respondent, judgment was entered for them in the taxed sum on May 30, 2023. To date the applicants have not made a single payment although the advocates bill was taxed in December 2022. On July 12, 2023, parties were given a chance to negotiate but still no payment was made by the applicants. If indeed the applicants could only afford Kshs. 10,000/= per month, they could have started paying the same as soon as December 2022, but having failed to do so, it is my view that the application herein is made in bad faith. In addition, the applicants' attached bank statement shows only two transactions made in March and June 2023, being deposits of Kshs 10,000/= on each occasion, which in my view, is not a true reflection of the applicant's financial position as they have not shown their financial position before 2023 and a business account may not ordinarily operate like a salary account where a fixed amount of Kshs. 10,000/= is deposited every month.
9. In the premises I am not convinced that the applicants deserve the discretion of court to be allowed to settle the decretal amount by Kshs. 10,000/= as that would mean that it will take them over 23 months to pay, which would not serve the interests of justice.



10. The upshot is that the application dated 27<sup>th</sup> June 2023 lacks merit and the same is hereby dismissed with costs to the respondent.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 29<sup>TH</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of:**

Ms. Mutuku holding for Mr. Mutava for applicant

Mr. Ngure for respondents

Court assistant – Abdisalam

