



**Kisia & another v Kavuludi; Equity Bank Limited (Interested Party) (Environment & Land Case 2 of 2023) [2024] KEELC 4953 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4953 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT & LAND CASE 2 OF 2023  
E ASATI, J  
JUNE 13, 2024**

**BETWEEN**

**JAMIN MISIGO KISIA ..... 1<sup>ST</sup> PLAINTIFF**

**JULIUS MWALA KAVULUDI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHNSTONE MAFENYI KAVULUDI ..... DEFENDANT**

**AND**

**EQUITY BANK LIMITED ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 5<sup>th</sup> February 2024 brought by the Defendant pursuant to the provisions of sections 1A, 1B, 3A and 27 of the *Civil procedure Act*, sections 13(7) and 17 of the *Environment and Land Court Act* and Order 25 Rule 4 and *Civil Procedure Rules* 2010. It seeks for an order that the court stays the suit pending settlement or payment of Party and Party costs on the part of the 1<sup>st</sup> Plaintiff in Hamisi MELC Case No. 2 of 2023. The applicant also sought for costs.
2. The grounds upon which the application was brought are that case No.MELC 2 of 2023 at Hamisi was struck out with costs in favor of the Defendant. That the Defendant’s bill of costs dated 30<sup>th</sup> October 2023 was pending assessment. That under Order 25 Rule 4 *Civil Procedure Rules*, the 1<sup>st</sup> Plaintiff is barred from instituting a subsequent suit against the Defendant until he pays the costs in the previous suit.
3. The application was supported by the contents of the Supporting Affidavit sworn by the applicant on 5/2/2024 and the annexures thereto.



4. The application was opposed *vide* the Replying Affidavit sworn by the 1<sup>st</sup> Plaintiff on 28/2/2024. The 1<sup>st</sup> plaintiff's case was that because the party and party bill of costs was still pending assessment he did not have an exact figure of the amount that ought to be paid to the applicant.
5. Parties filed submissions on the application which I have taken into account. Order 25 Rule 4 pursuant to which the application is brought provides for instances where a suit is discontinued or withdrawn by the Plaintiff. That provision of the law is not applicable in the instant case because the suit in the lower court from which the costs arose was not discontinued or withdrawn by the Plaintiff but struck out by the court at the instant of the Defendant who filed a preliminary objection.
6. Even if the said provision of the law was to be applicable in the instant case, the court has discretion to stay the subsequent suit. In exercising the direction, the court will have to consider the justice of the case. In this case, it has not been shown that the Plaintiff is unwilling to pay the cost. It has not been demonstrated that any specific amount of costs has been demanded from the plaintiff and he has declined to pay. It is common ground that the applicant's party and party cost are yet to be assessed by court. The suit cannot in the circumstances, be held in abeyance indefinitely awaiting the assessment. It has not been demonstrated that any prejudice will be occasioned to the applicant if the hearing of this suit proceeds as the applicant's costs in the lower court matter are being processed.
7. The court finds no merit in the application and hereby dismisses it. Costs to the 1<sup>st</sup> Respondent.  
Orders accordingly.

**RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 13TH JUNE, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

**In the presence of:**

**Ajevi- Court Assistant.**

**Malanda for the Plaintiffs/Respondents.**

**Nabasenge for the Defendant/Applicant.**

**No appearance for the Interested Party.**

