



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ramji & 2 others v Kenya Power & Lighting Company Ltd (Environment & Land Case 109 "B" of 2015) [2024] KEELC 6941 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6941 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 109 "B" OF 2015  
CA OCHIENG, J  
OCTOBER 22, 2024**

**BETWEEN**

**BHARAT RAMJI ..... 1<sup>ST</sup> PLAINTIFF**

**HARISH RAMJI ..... 2<sup>ND</sup> PLAINTIFF**

**ASHVIN RAMJI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**KENYA POWER & LIGHTING COMPANY LTD ..... DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiffs' Notice of Motion Application dated the 31<sup>st</sup> July, 2024 brought pursuant to Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act* and Order 22 Rule 49 of the Civil Procedure Rules. The Plaintiffs' seek the following Orders:-
  1. Spent.
  2. That the Honourable Court be pleased to order that the Plaintiffs' Motor Vehicle Registration No. KBT 444W attached by M/S Wilson M. Kariuki t/a Wiskam Auctioneers be released forthwith.
  3. That the cost of this Application be in the cause.
2. The Application is premised on the grounds on face of it and the Supporting Affidavit of Harish Ramji where he deposes that on 21<sup>st</sup> May, 2024, messrs Wilson M. Kariuki t/a Wiskam Auctioneers acting on instructions of the Defendant proclaimed and attached the Plaintiffs' motor vehicle registration number KBT 444W, Mercedes Benz in execution of the Certificate of Costs issued herein. Further, vide the Ruling delivered on 11<sup>th</sup> June, 2024, the Court issued an Order of Stay of execution of the said Certificate of Costs. He explains that by dint of the said Order of Stay of Execution, the attachment of the Plaintiffs' Motor Vehicle Registration Number KBT 444W was deemed to have



been withdrawn hence ought to be released. He contends that the Plaintiffs' have sought for the release of the aforementioned motor vehicle to no avail.

3. The Defendant opposed the instant Application by filing a Replying Affidavit sworn by its Advocate Fredrick Otieno Okeyo, where he deposes that there is no where in the court's Ruling delivered on 11<sup>th</sup> June, 2024 where the Court set aside the attachment. Further, there is no application for review, appeal or setting aside to disturb the contents of the Judge's decision. He insists that the Plaintiff's admitted owing costs of Kshs. 8,000,000 while the value of the attached motor vehicle is Kshs. 1,000,000. He reiterates that the Defendant is still a beneficiary of the taxed costs and until otherwise set aside, is entitled to the same. Further, that the instant application is seeking to have the court rewrite its Ruling over the taxation issue without security for the taxed costs being provided by the Applicant. He claims the Plaintiffs are not keen in the hearing of the Reference. He argues that the Plaintiffs should not be heard without depositing with the Defendant's advocates the amount of costs admitted by them during taxation which cannot by any extension be the subject of the filed Reference.

### **Analysis and Determination**

4. Upon consideration of the instant Notice of Motion Application including the respective Affidavits and rivaling submissions, the only issue for determination is whether the Plaintiffs' Motor Vehicle Registration No. KBT 444W attached by M/S Wilson M. Kariuki t/a Wiskam Auctioneers should be released.
5. The Plaintiff has sought for the release of the aforementioned motor vehicle insisting that since there was an order of stay of execution granted, attachment was deemed to have been withdrawn. The Defendant has however opposed the release of the aforementioned motor vehicle.
6. On removal of attachment, Order 22 Rule 49 of the Civil Procedure Rules provides that:-

“Where— (a) (b) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into court, or satisfaction of the decree is otherwise made through the court or is certified by the court; or the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immovable property the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 48 of this Order.”  
Emphasis mine
7. In this instance, this Court vide its Ruling delivered on 11<sup>th</sup> June, 2024 ordered as follows:-

“(a) The Plaintiffs be and are hereby directed to file and serve the Reference within fourteen (14) days from the date hereof, failure of which the execution process will proceed.”
8. I note the Plaintiffs filed a Reference vide their Chamber Summons Application dated the 17<sup>th</sup> June, 2024 which was within the fourteen (14) days period as had been directed by the Court.
9. This Court takes judicial notice of the fact that the warrants of attachment emanated from the decision of the Taxing Master dated the 20<sup>th</sup> March, 2024 which decision is subject to challenge vide the Reference filed on 17<sup>th</sup> June, 2024. On a keen reading of Order 22 Rule 49 of the Civil Procedure Rules, it is clear that once the decree is set aside or reversed, the attachment shall be deemed to be withdrawn. I opine that once an order of stay was issued and a Reference filed, the attachment automatically stood withdrawn. I note the Defendant in one of the annexures sought for the deposit of the taxed costs but



I opine that this cannot be, since the said costs are subject to challenge and the court already granted a stay of execution of the same. However, since the Reference is still pending determination, in my view a Security for Costs would suffice.

10. In the foregoing, I find the Notice of Motion Application dated the 31<sup>st</sup> July, 2024 merited and will make the following Orders:-
- a. The Plaintiffs' Motor Vehicle Registration No. KBT 444W which is attached by M/S Wilson M. Kariuki t/a Wiskam Auctioneers be released after the Plaintiffs' have deposited a Security for Costs amounting to Kshs. 500,000 in a joint interest earning account between the Plaintiffs' and Defendant's Advocates.
  - b. The Plaintiffs to pay the costs of the Auctioneers.
  - c. Costs of the Notice of Motion Application dated the 31<sup>st</sup> July, 2024 to be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 22<sup>ND</sup> DAY OF OCTOBER, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Okeyo for Defendant/Respondent

Nyanyuki for Applicant

Court Assistant – Simon/Ashley

