



Kinyariro v Wolff; Kariuki (Interested Party) (Environment & Land Case 330 of 2017) [2024] KEELC 6986 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6986 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 330 OF 2017
LN MBUGUA, J
OCTOBER 17, 2024**

BETWEEN

RICO KINYARIRO PLAINTIFF

AND

RENATE WOLFF DEFENDANT

AND

RENE NJUGUNA KARIUKI INTERESTED PARTY

RULING

1. Judgment was entered in this matter on 1.10.2018 where, Hon. Justice Mr. Eboso stated that;

“In the event that the contemplated sale does not take place or sale to the Plaintiff fails for whatever reason, the Defendant shall deposit in court the above sum of ksh.7,058,197.25/= and shall be at liberty to apply to proceed to deal with the suit property in any manner she desires. The Plaintiff shall be at liberty to apply for release of the deposited money to himself.”

2. The contemplated sale for parcel LR 12661/61 didn't take place.

Subsequently, the Plaintiff filed the Notice of Motion application dated 13.5.2024 seeking to be granted 60 days to vacate the suit land, as well as orders that ksh. 7,058,197.25/= be released to him. He also sought costs for the application and further orders that the court reviews its award of costs awarded to the Defendant in its ruling delivered on 24.4.2024.

3. The said application was compromised on 2.7.2024 in terms that the plaintiff would exit the suit property on 12.7.2024, failure to which eviction would issue. The issues surrounding costs were left for determination.



4. Subsequently, the plaintiff filed the application dated 14.6.2024 seeking orders that the funds of ksh. 7,058,197.00/= deposited in court by the Defendant be released to him and that costs be borne by the Defendant.
5. Again on 2.7.2024, the said application was compromised in terms that the prayers for release of funds to the plaintiff was allowed by consent of the parties. The issue of costs of the said application was left for determination by the court.
6. The issue pending relates to the issue of costs in the two applications of the plaintiff dated 13.5.2024 and 14.6.2024 and the issue as to whether this court should review its award of costs awarded to the Defendant in its ruling delivered on 24.4.2024.
7. Still on 2.7.2024, the court gave directions for the parties to canvass the issue on costs through written submissions, the same were to be filed simultaneously by 22.7.2024. The Plaintiff did not comply with the aforementioned directions.
8. On their part, the Defendants and the Interested Party filed Submissions dated 22.7.2024 where they aver that while costs follow the event, other factors including conduct of the parties and subject of litigation should be considered. It is pointed out that the conduct of the plaintiff has been reckless and negligent noting that the defendant had deposited the decretal amount way back on 30.4.2024. Thus the plaintiff is not entitled to costs.
9. I have considered all the issues raised herein. The award of costs is in the realm of exercise of discretion by the court, but must be anchored on facts. – See *Super marine handling services Ltd vs Kenya Revenue Authority* [2010] eKLR. To this end, I have considered the entire chain of events from the time this suit was filed to date, and that the parties are close relatives. I have also taken into account that the applications dated 13.5.2024 and 14.6.2024 were determined by consent, having been filed after the Defendant had deposited money to this court.
10. The Plaintiff has failed to establish the basis for review of this court’s award of costs to the Defendant in its ruling delivered on 24.4.2024. Nevertheless in the interest of justice and to bring these proceedings to an end, I direct that each party shall bear their own costs in the two applications.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Owade for Plaintiff

Mwendwa for Defendant and Interested Party

Court assistant: Joan/Vena

