



Abdi & another v Salim (Legal Representative of the Estate of Said Salim Mbarak (Deceased)) (Environment and Land Appeal 13 of 2013) [2024] KEELC 13344 (KLR) (20 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13344 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL 13 OF 2013
FM NJOROGE, J
NOVEMBER 20, 2024**

BETWEEN

YUSUF ABDALLA ABDI 1ST APPELLANT

ALI SALADO ABDI 2ND APPELLANT

AND

JAMAL SALIM RESPONDENT

**LEGAL REPRESENTATIVE OF THE ESTATE OF SAID SALIM MBARAK
(DECEASED)**

RULING

1. The respondent/applicant filed notice of motion application dated 14/11/2023 which he amended on 11/6/2024. In the amended application he seeks the following orders:
 1. That the costs of the second appeal (i.e. CA Civil Appeal No 103 of 2016 at Malindi) certified on taxation at Kshs 740,690/- be executed for by arrest and civil imprisonment of the persons of Yusuf Abdalla Abdi and Ali Salado Abdi for obstructing restitution, and this motion serves as a notice to show cause for the purpose;
 2. Before the taxation and ascertainment of costs of the first appeal and of the first trial courts, ingress and egress to allow for exclusive possession of plot no TRCC /Minjila /C/84 Minjila and the petrol station thereon are restored to the respondent applicant under the protection of police under the command of the OCS and OCPD Garsen police station and Tana River County Police Commandant, Hola who upon removal of obstructions for restoration of respondent's exclusive possession shall file a report to court with the TR County Commander and the TR County Commissioner Tana river certifying compliance with this order;



3. The decree as relates to costs of the first trial court, and the first appeal court, as well as for this application and incidental expenses and disbursements, be executed separately as soon as the amount of costs before the court of first instance and the first appellate court are ascertained by taxation, or otherwise by agreement.
2. The application which was brought under Section 4 of the *Appellate Jurisdiction Act* and Sections 91 and 94 of the *Civil Procedure Act* and is premised on the grounds set out on the face of the amended motion and the supporting affidavit sworn by Jamal Salim, the applicant, on 14/11/2023.
3. The background to the said application is set out in the grounds and the supporting affidavit as follows:
 - a. That the respondent was sued by the appellant in Malindi CMCC 97 of 2008 which was dismissed and they appealed to the ELC in Malindi ELCA 13/2013 which appeal was decided in their favour.
 - b. The applicant herein lodged Malindi civil appeal no 103 of 2016 in the Court of Appeal and it was decided in his favour, reversing the ELCA 13/2023 judgment;
 - c. Costs of the 2nd appeal Malindi Civil Appeal No 103 of 2016 were ascertained by taxation;
 - d. Despite service of the certificate of taxed costs no payment was received;
 - e. The petrol station subject matter of the appeals has been blockaded by the respondents for long;
 - f. The ELCA court file and the first trial court files have been missing for long periods;
 - g. That the applicant has to otherwise await taxation of costs in both the first appeal and the subordinate court lest he is accused of piecemeal execution of the order of the court of appeal;
 - h. The applicant is suffering in that the acts of the respondents are exposing him to more loss and damage in respect of which he can not re-open the assessment of damages afresh in the concluded cases and he cannot commence a fresh case before execution without falling afoul of the res judicata doctrine;
 - i. That the only remedy now is to execute for the ascertained costs;
 - j. That it might take a long time to tax costs in both courts while the applicant is out of business every day;
 - k. That this court has duty to allow for good cause shown by an applicant, execution of an order of the court of appeal before taxation of costs in the first appellate court, and to restore possession in the circumstances of this case;
 - l. That the local police have stated that they need a court order for them to intervene.
4. The application is not opposed. I have considered the grounds thereof and I am satisfied that there is need to grant it as prayed. I therefore grant prayers nos 1, 2 and 3 in the amended notice of motion dated 11/6/2024 as prayed.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 20TH DAY OF NOVEMBER, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

