



Mjomba & Family v Mwanshigadi & another (Environment & Land Case 176 of 2017) [2024] KEELC 13712 (KLR) (10 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13712 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 176 OF 2017
NA MATHEKA, J
DECEMBER 10, 2024**

BETWEEN

HILARY MJOMBA & FAMILY DECREE HOLDER

AND

FRANCIS MWASHIGADI 1ST JUDGMENT DEBTOR

ADAN KIHARA 2ND JUDGMENT DEBTOR

RULING

1. The application is dated 30th January 2024 and is brought under Section 1A, 1Bm and 3A [Civil Procedure Act](#); Order 22 Rule 28 and Order 51 Rule 1 seeking the following orders;
 1. That this application be certified urgent.
 2. That the Judgment Debtors/Respondents be committed to civil jail for a period of six (6) months for being in contempt of the decree of this court issued on 28th March, 2022.
 3. That the Judgment Debtors/ Respondents be summoned to appear before court to show cause why they cannot purge the contempt.
 4. That upon failure or refusal by the Judgment Debtors/ Respondents, there be issued warrants of arrest against them to be executed by the Officer in Charge of the Mackinnon Road Police Station for their production in court and subsequent punishment for contempt of court.
 5. That in the alternative, this Honourable Court do issue an order for demolition and/or removal of all structures erected and being on the suit property known as Adjudication Section Taru-Voi/No.78 by the Judgment Debtors within fourteen (14) days of the date of this order and that in default thereof the Decree-Holders/ Applicants to undertake such demolition and removal pursuant to warrants issued by this Honourable Court at the Judgment Debtors' cost.



6. That the Officer in Charge of the Mackinnon Road Police Station to supervise the order for demolition and removal for purposes of upholding law and order.
 7. That the costs of this application be awarded to the Decree Holders in any event.
2. It is based on the supporting affidavit of Hilary Mjomba the grounds that judgment was awarded in favour of the decree holders herein on 23rd March 2022 and decree issued on 28th March 2022. That the Judgment debtors advocates duly attended the reading of the judgment and are aware of its contents and import. That the decree herein was extracted and duly served upon the judgment creditors requiring their compliance. That the judgment debtors have had opportunity of obeying the decree but have willfully failed to do so. That the issued warrants of arrest against them be executed by the Officer in Charge of the Mackinnon Road Police Station for their production in court and subsequent punishment for contempt of court. That in the alternative, this Honourable Court do issue an order for demolition and/or removal of all structures erected and being on the suit property known as Adjudication Section Taru-Voi/No.78 by the Judgment Debtors within fourteen (14) days of the date of this order and that in default thereof the Decree-Holders/Applicants to undertake such demolition and removal pursuant to warrants issued by this Honourable Court at the Judgment Debtors' cost. That the Officer in Charge of the Mackinnon Road Police Station to supervise the order for demolition and removal for purposes of upholding law and order. That the costs of this application be awarded to the Decree Holders in an event.
3. This court has considered the application and submissions therein. The Applicants seek that the Judgment Debtors/Respondents be committed to civil jail for a period of six (6) months for being in contempt of the decree of this court issued on 28th March, 2022 or in the alternative their structures be demolished if they fail to do so. I have perused the court file and find that on the 19th May 2022 the Applicants filed an application seeing the same orders as the instant application. On the 6th December 2022 this court delivered the ruling and stated as follows;
1. That the Defendants to comply with the court orders issued on the 23rd March 2022 within the next 60 (sixty) days after service of this order failure of which they will be cited for contempt and be directed to pay a fine of Kshs. 50,000/= each and in default, the Defendants to be committed to civil jail for a period of one (1) month.
 2. The Defendants to pay the costs of this application.
4. This was way back in 2022 and it is not clear whether or not these court orders were ever implemented. The Applicant has now filed the exact application! I find that this application is *res judicata* and an abuse of the court process. Section 7 of the [Civil Procedure Act](#) Provides
- No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties. or between parties under whom they or any of them claim. litigating under the same title. in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised. and has been heard and finally decided by such court.”
5. Expounding further on the essence of the doctrine this Court in [John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others](#) (2015) eKLR pronounced itself as follows;

The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation



over the same matter. Res-judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”

6. I find this application is res judicata and not merited and is struck off.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 10TH DAY OF DECEMBER 2024.

N.A. MATHEKA

JUDGE

