



REPUBLIC OF KENYA



KENYA LAW
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**Paritau v Tauta (Environment and Land Appeal 17 of 2019)
[2023] KEELC 16225 (KLR) (20 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16225 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL 17 OF 2019
MN GICHERU, J
MARCH 20, 2023**

BETWEEN

KURMETI OLE PARITAU APPELLANT

AND

PARKEO OLE TAUTA RESPONDENT

*(Being an appeal against the Ruling of Hon. Kasera at Kajiado Magistrates
Courts in Land Tribunal No. 5 of 2018 delivered on 17th July, 2019))*

RULING

1. This ruling is on the notice of motion dated December 9, 2020. The motion which is under order 51, rule 1, *Civil Procedure Rules*, section 3A of the *Civil Procedure Act* and any other enabling provisions of law seeks four orders.
 - i. Dismissal or striking out of the appellant's memorandum of appeal dated July 19, 2019 with costs to the respondents.
 - ii. Dismissal of the notice of motion dated July 19, 2019 with costs to the respondent.
 - iii. Vacating the order of the lower court dated October 24, 2018 preserving the suit property.
 - iv. Any other further order that the court deems fit and just to grant in the circumstances of this case.
2. The motion is supported by seven grounds, an affidavit by the respondent dated December 9, 2020 and four annexures. A summary of the above material is as follows.
3. Firstly, the applicant has failed to file a copy of the ruling of the lower court that he is appealing against.



4. Secondly, the appellant seeks to take a second bite at the cherry using the back door to litigate on issues heard and determined in ELC Miscellaneous Application No 8 of 2018 filed by the applicant in this court.
5. Thirdly, this appeal and the application dated July 19, 2019 only serve to embarrass and delay the fair trial of Land Disputes Tribunal Case No 5 of 2008 and ELC Misc Application No 8 of 2018.
6. Fourthly, there was no order or ruling delivered by Hon Kasera at Kajiado Magistrates Court on July 17, 2019 as alleged by the applicant.
7. Fifthly, the concatenation of events is as follows. On April 24, 2018, the lower court issued a decree ordering that LR KJD/Ntashart/3249 be registered in the name of the claimant, Parkeo Ole Tanta. On September 17, 2018, the same court ordered that the objector, Kurmeti Ole Parsitan be evicted from the suit land or resultant subdivision of the same. On October 24, 2018 the same court ordered the status quo to be maintained pending the outcome of High Court Miscellaneous Case No 8 of 2018. On May 29, 2019 the High Court dismissed the Miscellaneous Cause No 8 of 2018 which had been filed by the objection seeking review of the ruling and decree of the lower court dated February 26, 2013. The appellant was given ample time to file the ruling by Hon Kasera but he never did. It is for the above reasons that the current application was filed.
8. The application by the respondent is unopposed though served on October 22, 2021.
9. Counsel for the applicant filed written submissions dated May 19, 2021 in which she urges for the dismissal of the suit for failure to comply with mandatory provisions of order 42, rule 13 [Civil Procedure Rules](#).
10. I have carefully considered the notice of motion dated December 9, 2020 in its entirety including the affidavits, grounds, annexure submissions and the law cited therein. I find that the application has merit for the following reasons.
11. Firstly, the appellant has failed to comply with the basic requirement in every appeal of filing the order appealed against contrary to the mandatory provisions of order 42, rule 13(4) (f) of the [Civil Procedure Rules](#).
12. Secondly, since the current application is unopposed, there is no explanation by the appellant for his failure to comply with mandatory requirements of the law. For the above reasons, I allow the notice of motion in terms of prayers 1, 2 and 3.
13. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF MARCH, 2023.

M.N. GICHERU

JUDGE

