



**Karsan Ramji & Sons Limited v Officer Commanding Station  
Kanyonyoo Police Station & 4 others (Constitutional Petition  
E001 of 2023) [2023] KEELC 17927 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17927 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITUI  
CONSTITUTIONAL PETITION E001 OF 2023**

**LG KIMANI, J**

**APRIL 20, 2023**

**IN THE MATTER OF: ARTICLES 29, 39, 40, 47 49 & 50 OF THE CONSTITUTION  
OF KENYA 2010**

**AND**

**IN THE MATTER OF: VIOLATION OF ARTICLES 29, 39, 40, 47, 49 & 50 OF THE  
COSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: FAIR ADMINSTRATIVE ACTIONS ACT, 2015  
IN THE MATTER OF: UNLAWFUL ARREST OF THE PETITIONER’S DRIVERS  
IN THE MATTER OF: UNLAWFUL DETENTION OF MOTOR VEHICLES KDC  
403L AND KDE 039Q**

**BETWEEN**

**KARSAN RAMJI & SONS LIMITED ..... PETITIONER**

**AND**

**OFFICER COMMANDING STATION KANYONYOO POLICE  
STATION ..... 1<sup>ST</sup> RESPONDENT**

**OFFICER COMMANDING STATION NGUUTANI POLICE  
STATION ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL NATIONAL POLICE SERVICE ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KITUI ..... 5<sup>TH</sup> RESPONDENT**



## RULING

1. This matter is for ruling in respect of the application dated April 6, 2023. The Applicant seeks orders 2 and 4 of the said application.
2. The application was first filed before the High Court and this court on April 11, 2023. The Judge of the High Court noted that the matter was related to another matter before the ELC and directed that in order to avoid conflicting orders and/or parallel orders, the file be transferred to this court for hearing and further orders and the applicant was directed to serve the respondents.
3. The application was scheduled for hearing before this court on April 17, 2023 when counsel for the petitioner/applicant and the Officer Commanding Ngutani Police Station the 2<sup>nd</sup> respondent attended court.
4. The applicant confirmed having served on the respondents the petition, Notice of Motion, affidavits in support of the application and petition together with the orders dated April 11, 2023 and a mention notice dated April 12, 2023.
5. Counsel further confirmed that he had filed affidavits of service. Upon perusal of the affidavits of service filed on April 17, 2023 the court noted that the documents attached to the said affidavits did not show that some of the respondents were aware of the date the application was scheduled for hearing. Counsel undertook to regularize the position and provide duly received, and stamped copies of attachments/ annexures to the affidavits of service.
6. I have looked at the affidavits of service filed and note as follows:
  - i. The two affidavits of service filed are stated to be sworn by Henry Nyamoko and Aggrey Avumba.
  - ii. The two affidavits are stated to have been made by Henry Nyamoko and Aggrey Avumba but the jurat of the two affidavits states that they were “sworn at Nairobi by Leroy Shikanda on April 14, 2023 before Jotham Okome Arwa Advocate.”
  - iii. The affidavit of service of Henry Nyamoko/Leroy Shikanda did not attach the stamped copies of documents received by the 3<sup>rd</sup> respondent.
  - iv. The affidavit of Aggrey Avumba/Leroy Shikanda only attached the stamped certificate of urgency received and stamped by the 5<sup>th</sup> respondent. It did not attach the stamped and received Notice of Motion, mention notice and/or orders issued on April 11, 2023.
7. From the above observations, the court finds that the affidavits of service filed are defective and they do not show the process server who effected service.
8. The court further finds that from the attachments to the said defective affidavits of service there is no proof that the 3<sup>rd</sup> and 5<sup>th</sup> respondents were notified of the date on which the application was to be heard.
9. It is further noted that the issues raised in this suit are common to the issues raised in ELC Petition No E005 of 2022 and specifically orders issued in the said suit on November 10, 2022.
10. Arising from the foregoing the court makes the following directions;
  - i. The petition dated April 6, 2023, the notice of motion dated April 6, 2023 be served afresh on the respondents and a proper affidavit of service be filed.



- ii. The notice of motion dated April 6, 2023 to be heard on April 26, 2023.
- iii. That ELC Petition No E005 of 2022 Karsan Ramji & Sons Ltd Vs County Assembly of Kitui & Another be placed before the court together with this file on April 26, 2023 for directions and counsels in that petition be served with a mention notice and these directions.
- iv. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 20<sup>TH</sup> DAY OF APRIL 2023.**

**L. G. KIMANI**

**JUDGE**

**ENVIRONMENT AND LAND COURT, KITUI**

Ruling virtually in the presence of:

C/A Musyoki

Okwach together with Shikanda for Petitioner/Applicant

N/A for Respondents

