



**Kiraga v Bryant & 4 others (Environment & Land Petition
E009 of 2022) [2023] KEELC 18147 (KLR) (20 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18147 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION E009 OF 2022
NA MATHEKA, J
JUNE 20, 2023**

BETWEEN

ANDERSON KIRAGA PETITIONER

AND

WENDY BRYANT 1ST RESPONDENT

LEAH BRYANT 2ND RESPONDENT

REGISTRAR OF TITLES MOMBASA 3RD RESPONDENT

NATIONAL LAND COMMISSION 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

- 1 The Application is dated December 8, 2022 and is brought under section IA, 1B and 34 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, Order 2 Rule 15 and Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#) seeking the following orders;
1. That this Application be certified urgent and service be dispensed with in the first instance
 2. That this Honourable Court be pleased to dismiss and/or strike out the Petitioner's case as against the 1st Respondent, for:
 - (a) Being scandalous frivolous, vexatious and an abuse of court process (b) Prejudicing, embarrassing and delaying fair trial.
 3. That the Honourable Court be pleased to direct the file in Mombasa ELC No 134 of 2018 to be placed before it for purposes of comparing the photographic evidence produced in Court in the said file as well as this matter;



4. That the 1st Respondent/Applicant be awarded the costs of this application and the costs of the entire suit together with interest.
 5. That this Honourable court be pleased to direct the OCS Bamburi police station to effect the arrest of the Petitioner if he is found to have falsified evidence.
 6. That this Honourable Court do grant any other or further orders as may be deemed fit in the circumstances.
- 2 It is based on the grounds that it is the 1st Respondent's position that she registered owners of all that parcel of land situated in Mombasa County containing by measurement, Two Decimal Seven Eight Nine (2.789) Hectares or thereabout and being known as property certificate of Title number CR 40989 subdivision number 11352 (original No 317/2) section I mainland north as well as all that parcel of land situated in Mombasa County containing by measurement, Two Decimal Seven Eight Nine (2.789) Hectares or thereabout and being known as property certificate of Title number CR 40990 subdivision number 11353(original No 317/3) section I mainland north together with Leah Bryant. On March 3, 2022 via a Petition and Application, the Petitioner instituted a suit against the Respondents.
- 3 As will be demonstrated through the Affidavit in support of this Application, the photos attached by the Petitioner as evidence of the alleged demolitions are a fabrication intended to create a false representation of the actual condition of the suit properties. The purported photos are currently the subject matter of an eviction suit being Civil suit being Mombasa ELC number 134 of 2018 with regards to property number MN/1/16636 to MN/I/16663 and MN/I/18816 to MN/I/18873 all being subdivision of Original Plot No MN/I//264 situated in Bamburi within Mombasa County located just a few Kilometers from the suit properties. Further, despite the Petitioner purporting to have resided on the suit property for over 30 years, they have not provided the Court with any evidence of their loved ones who were buried on the suit property, or any demolished schools, hotels, bars, churches or mosques. It is clear from the foregoing that the Petitioners have not been candid in their case and in any case, have not demonstrated a right that has been violated or is threatened to be violated to invoke the jurisdiction of this Honorable Court to issue the prayers sought. The Petitioner's suit is therefore frivolous, vexatious, incurably bad and ought to be struck out. The 1st Respondent suffer gross prejudice if the application herein and the orders sought are not granted. It is in the interests of administration of justice that the prayers sought be granted.
- 4 The Petitioner stated that the 1st Respondent has no locus to lodge the same as they are still in contempt of earlier orders given by this Honourable court that status quo be maintained in respect to there being vacant possession with regards to the suit property. That despite being aware of the said orders which were given by this Honourable Court, the 1st Respondent together with the 2nd Respondent through themselves and/or through their known agents and servants proceeded to re- enter the suit premises and do road grading activities and further erect structures therein. That it is unbelievable that the said activities were done under the close supervision of the help of law enforcement officers stationed at Bamburi Police Station. That the resultant actions of the 1st and 2nd Respondent together with Police officers prompted him to direct his then counsel on record to file an application dated the November 11, 2022 for contempt of court orders as against the 1st and 2nd Respondent. That the said application filed before this Honourable Court on the November 11, 2022 and the same served upon the Respondents.
- 5 That 2nd Respondent proceeded to file a Notice of Preliminary Objection dated November 25, 2022, which translates to approximately fourteen (14) days after they lodged their contempt application to



this Honourable court. That it is curious that the said Notice of Preliminary Objection was brought nearly ten (10) months after their Petition dated the 3rd day of March 2022. That it is trite law that a Preliminary Objection should be preferably brought at the earliest opportunity and this was not done but the same was actually an afterthought aimed at distorting the court's attention from their contemptuous acts. That an analysis of the 1st and 2nd Respondent's actions either by themselves or through their designate agents shows that their conduct in this trial is one that is aimed at frustrating their efforts to have their application heard, if need be have this Honourable Court commission a site visit to the suit property. That it is trite law that court orders ought to be complied with a position that has been asserted by the Court of Appeal in the case of *Fred Matiang the Cabinet Secretary Ministry of Interior and Coordination of the National Government -versus- Miguna Miguna & 4 others* (2018) eKLR. That though the 1st and 2nd Respondent allege to be the owners of 11353/ 1/ MN and/or 11352/1/ the process that led to the allocation of the said parcel of land is questionable as the existing occupants of the said parcel were not involved in the process despite them being in actual possession of the same. That in reference to the contents of their Petition filed on the 3rd day of March 2022, it is evident that the process that oversaw the allocation of the suit property to third parties and the subsequent allocation of the same to both the 1st and 2nd Respondents.

6 This court has considered the Application and the submissions therein. The Applicant submitted that, the photos attached by the Petitioner as evidence of the alleged demolitions are a fabrication intended to create a false representation of the actual condition of the suit properties. The purported photos are currently the subject matter of an eviction suit being Civil suit being Mombasa ELC number 134 of 2018 with regards to property number MN/1/16636 to MN/I/16663 and MN/I/18816 to MN/I/18873 all being subdivision of Original Plot No MN/I//264 situated in Bamburi within Mombasa County located just a few Kilometers from the suit properties. That despite the Petitioner purporting to have resided on the suit property for over 30 years, they have not provided the Court with any evidence of their loved ones who were buried on the suit property, or any demolished schools, hotels, bars, churches or mosques. The Respondent submits that the Applicant is in contempt of court orders and is frustrating their efforts to have their application for contempt heard. I find that the allegations by the Applicant are matters to be adduced in evidence and should not be canvassed at this preliminary stage. Whether the evidence adduced in court in support of the Petition is false or not will be determined during the trial. Parties are advised to desist from filing numerous unnecessary applications in this matter and set the main Petition for hearing. I find that this application is not merited and I dismiss it with costs.

7 It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 20TH DAY OF JUNE 2023.

N.A. MATHEKA

JUDGE

