



**Khavere v Kavuludi & 3 others (Environment and Land Appeal  
12 of 2022) [2023] KEELC 17780 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17780 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT AND LAND APPEAL 12 OF 2022**

**E ASATI, J**

**JUNE 8, 2023**

**BETWEEN**

**CAROLINE KHAVERE ..... APPELLANT**

**AND**

**PETER KHENDI KAVULUDI ..... 1<sup>ST</sup> RESPONDENT**

**EMILY KHAVERE ..... 2<sup>ND</sup> RESPONDENT**

**FLORENCE KHAVAI ..... 3<sup>RD</sup> RESPONDENT**

**HELLEN KHADI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the notice of motion application dated May 2, 2023 stated to be brought pursuant to the provisions of article 159(2)(d) of the *Constitution*, section 7 of the *Appellate Court Jurisdictions Act* cap 9 Laws of Kenya, sections 13(7) and 19 of the *Environment and Land Court Act*, cap 12A Laws of Kenya and section 1A, 1B, 3, 3A of the *Civil Procedure Act* cap 21 Laws of Kenya and order 50 rule 1 *Civil Procedure Rules 2010*.
2. The application seeks for orders that pending the hearing and determination of the instant appeal, the respondents be ordered to pay the appellant/applicant Kshs 550,000/= (Kenya shillings five hundred and fifty thousand) being quantified damages for compensation for deliberate and unlawful demolition of the perimeter wall in respect of the suit land.
3. The application is based on the grounds that in its ruling on an application for contempt, this court held that as much as the respondent did not breach court order on November 16, 2022, they deliberately and unlawfully demolished the said perimeter wall and that the applicant is at liberty to pursue for compensation of the same. That the application was in pursuit of the said damages for the demolished wall.



4. The application was supported by the contents of the supporting affidavit sworn by the applicant and the annexures thereto.
5. The application was opposed *vide* the grounds of opposition dated May 9, 2023 and filed in court on the same date. The respondents' case is that the application is an abuse of the court process. That the application is incurably defective in substance and ought to be struck out. That the application is incompetent, bad in law, offends [Civil Procedure Rules 2010](#) and ought to be struck out. That the court is bereft of the requisite jurisdiction to entertain the application or grant the orders sought and prayed that the same be struck out or dismissed with costs.
6. On May 10, 2023 the court gave directions that the application be heard virtually on May 17, 2023. On May 17, 2023 only counsel for the respondents attended court. Because written submissions had already been filed on behalf of the applicant, the matter proceeded and counsel for the respondents made oral submissions.
7. It was submitted on behalf of the applicant that the issues for determine in the application were;
  - i. whether or not the court has jurisdiction to handle the application.
  - ii. whether or not the applicant is entitled to the relief sought.

Counsel referred the court to the provisions of section 13 and 19 of the [Environment and Land Court Act](#) and submitted that the court has jurisdiction. That any other court will lack jurisdiction in view of the principle of sub-judice. It was submitted on behalf of the respondent that in handling the application, the court will be sitting as an appellate court. That under section 13(4) of the [Environment and Land Court Act](#) give the court jurisdiction to entertain appeals from the subordinate courts. That during trial, there was no issue of the perimeter wall. That no party sought for any damages in the lower court. That the appeal is against the judgement that cancelled titles. That in its ruling dated April 13, 2023 the court had referred to appropriate forum.

8. I have carefully considered the application, the grounds of opposition and submissions the mandate of this court as an appellate court is provided for in section 78 of the [Civil Procedure Act](#) and section 13 of the [Environment and Land Court Act](#). The jurisdiction of the court is limited to the matters that were pleaded in the suit, the judgement and the grounds of appeal raised in the memorandum of appeal. When the appellant sought that the respondents be punished for contempt of court, the court did find that the actions of the respondents, though wrongful, were not in breach of the court order. The court order of interim stay of execution only stopped or stayed execution of the orders that were made in the judgement.

Though it is in the interest of the parties and the system of administration of justice that multiplicity of suits between the same parties and over the same subject matter be avoided, it is my view that the actions of the respondents complained of in the application form a cause of action separate from this appeal to be tried at the appropriate forum.

9. For the foregoing reasons I find that the court has no jurisdiction in respect of the claim in the application. I strike out the application. Each party to bear own costs.

Orders accordingly.

**RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 8TH DAY OF JUNE 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**



**JUDGE.**

**In the presence of:**

**Neville Court Assistant.**

For the Applicant

For the Respondents

