



**Ngalogalo v Dabaso (Environment & Land Miscellaneous Case E015 of 2024) [2025] KEELC 1352 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1352 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E015 OF 2024**

**LN MBUGUA, J  
MARCH 19, 2025**

**BETWEEN**

**ABDUBA HAR NGALOGALO ..... APPLICANT**

**AND**

**WAKO DABASO ..... RESPONDENT**

**RULING**

1. This Miscellaneous suit was filed by way of a Notice of Motion Application dated 19.8.2024 where the applicant prays that the respondent be prohibited from dealing with the premises known as UNS Industrial Plot B –nanyuki Municipality, that the said respondent be cited for contempt of court orders and he be detained in prison for 6 months accordingly. He contends that he was declared as the legal owner of the suit property.
2. The aforementioned application was scheduled for hearing on several dates. On 6.11.2024, the application was rescheduled for hearing to 11.2.2025 as the rival parties continued to file submissions.
3. On 11.2.2025, the court was informed that there were two other pending applications dated 6.2.2025 and 7.2.2025 both filed by intended interested parties who desire to be joined in these proceedings. The court then scheduled a ruling in respect of the aforementioned two applications on 19.3.2025. However, when the court embarked to write the ruling, it became untenable to deal with the two applications without dealing with the initial (main) application dated 19.8.2024.
4. Thus, the decision herein, relates to the entire suit for reasons to be given herein.
5. For the substantive application dated 19.8.2024, the same is premised on grounds on the face of the application and the supporting affidavit of the applicant. He contends that the respondent has unlawfully taken over the suit premises and has gone ahead to fence the same and has built structures thereon, thereby obstructing the course of justice. He has annexed photographs depicting the encroachment.



6. The applicant has also filed a supplementary affidavit dated 1.10.2024 where he contends that he was declared the owner of the suit property in the lower court case no. Nanyuki ELC 5 of 2023.
7. The respondent opposed the suit vide a replying affidavit dated 4.9.2024 where he contends that he is not aware of any court orders declaring the applicant as the owner of the suit property, adding that he has no interest in the aforementioned property.
8. I have considered all the arguments raised herein including the submissions of the protagonists and I conclude that this court has no jurisdiction to deal with the matter as the orders allegedly violated were not given by this court. It is noted that it is only in the supplementary affidavit that the applicant alleges that the substantive suit was before the lower court. Even then, the particulars of the orders in question have not been availed.
9. Further, even if such particulars had been availed, this court would still not have entertained the prayers sought in view of the fact that magistrates have jurisdiction to deal with issues of contempt. To this end, I make reference to the case of *In re ZJA & TA (Minors) [2020] eKLR*, where the court stated that;  

“Magistrates have powers under Section 10 of that Act to hear and punish for contempt arising out of their decisions”.
10. I must point out that the practice of litigating serious conflicted issues of law and facts in the platform of a miscellaneous applications is unacceptable and untenable. After all, the miscellaneous file does not have the substantive pleadings of the parties, yet pleadings are the foundational documents upon which, the claims of the rival litigants are anchored upon. In absence of pleadings and the evidence, this court would not know what the dispute is all about.
11. I find that the filing of this suit amounts to an abuse of court processes, hence the orders sought cannot be granted in a miscellaneous file.
12. That being the case, how then can the court allow joinder of parties in a suit which is devoid of any pleadings? It is pertinent to note that in their applications dated 6.2.2025 and 7.2.2025, the proposed parties are asserting claims of ownership to the suit property. As earlier stated, the court cannot deal with such conflicted claims in a miscellaneous suit. Thus the two applications must fall by the way side.
13. In the final analysis, I proceed to give the following orders;
  - a. The entire suit is hereby struck out for want of jurisdiction with costs awarded to the respondent in the suit.
  - b. Both the applications dated February 6, 2025 and February 7, 2025 are hereby marked as spent in view of the fact that there is no suit, the same having been struck out.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 19<sup>TH</sup> DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Applicant – absent

Hezekia Gichuru 1<sup>st</sup> Interested Party

Nzame for 2<sup>nd</sup> Intended Interested Party



Respondent – Absent

Nancy Mwangi – Court Assistant

