



**Teya v County Government of Nyamira & 2 others (Environment & Land
Petition E008 of 2022) [2023] KEELC 18983 (KLR) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18983 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND PETITION E008 OF 2022**

**JM KAMAU, J
JULY 25, 2023**

BETWEEN

JAMES OBINO TEYA PETITIONER

AND

THE COUNTY GOVERNMENT OF NYAMIRA 1ST RESPONDENT

DIRECTOR, PHYSICAL AND LAND USE PLANNING NYAMIRA

COUNTY 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

RULING

1. The petitioner filed an undated and an unsigned petition in court on January 10, 2023 seeking the following orders: -
 1. A declaration that:
 - a. The proprietary interest in plot No 3 Keroka Market, situated in Nyamira County partly vests in the estate of the deceased one Barnanas Teya Ruoti (with two others) and is the property of his beneficiaries and thus an infringement of the petitioner's rights was suffered as stated under paragraphs 30 to 34 of the petition herein.
 - b. The 1st to 3rd respondents' seizure of the deceased's estate herein comprised in land parcel plot No 3 Keroka Market, situated in Nyamira County in any way including but not limited to compulsory acquisition, without proper consent or compensation is unconstitutional and breached the petitioner's rights and fundamental freedoms under the provisions of articles 35 (1) (a) and 35 (3) 40 (2), 47 (1), and 47 (2) of the [Constitution](#) of Kenya, hence void for all intents and purposes.



2. An order of permanent injunction restraining the respondents and any other person acting on their instructions from destroying and/or interfering with the rights of the petitioner and his siblings to ownership and possession over parcel of land know as plot No 3 Keroka Market, situated in Nyamira County.
 3. An order that all mesne profits accruing from the respondent' illegal encroachment, demolition, acquiring and/or trespass/possession and/or wrongful enjoyment and benefit from the allocated portion hosting the petitioner's property referred to as parcel known as plot No 3 Keroka Market, situated in Nyamira County be fully compensated.
 4. Costs incidental to this suit, and
 5. An order for general damages for trespass and demolition of property.
 6. Any other/further order or relief that this honorable court may deem fit to grant in the interest of justice.
2. The prayers in the petition are supported by the petitioner's affidavit sworn on December 19, 2022. It is the petitioner's case that he is the administrator of the estate of his father Barnanas Teya Ruoti in conjunction with Paulina Nyanchera Teya. The deceased was a joint proprietor of the parcel of land known as plot No 3, Keroka Market together with his brothers Sitima Teya and Andrew Manga (also both deceased) where they constructed commercial houses but what belonged to each was identifiable on the ground and for which the petitioners have always paid rent and rates. But the respondents have trespassed thereon against which this court should restrain the respondents. The 1st respondent's Chief Officer Lands, Housing and Physical Planning Mr Josephat Motanya swore an affidavit on May 10, 2023 that the suit land, located on LR No East Kitutu/Mwamongera/1128, is owned by the 1st defendant and allotted to Sitima Teya (B Soroko Co) and not Barnabas Teya Ruoti to which in a further affidavit, the petitioner deponed that the said B. Soroko Trading Company was registered jointly by Sitima Teya Omaiko, Barnabas Teya and Andrew Marunga as a partnership but the last 2 names were dropped without cause from the register of ownership but no one has taken out the letters of administration in respect of the 2 other estates and the petitioner cannot sit back and see the property being taken away for lack of probate. Secondly, he urges that the petitioner has no authority to bring this petition on behalf of 2 other deceased alleged joint owners without authority since should the court grant his prayers then this would amount to disinheriting the beneficiaries of the deceased's estates which the court would not wish to do. It is also argued for the respondents that there is no petition before the court since the filed petition, though supported by a sworn affidavit is neither signed nor dated.
3. Under order 2 rule 16 of the *Civil Procedure Rules*, every pleading shall be signed by an advocate, or recognised agent (as defined by order 9, rule 2), or by the party if he sues or defends in person. In the case of *Regina Kavenya Mutuku & 3 others v United Insurance Co Ltd* [2002] eKLR the court held as follows on unsigned pleadings:
- ... I am in agreement ... that an unsigned pleading cannot be valid in law. To my mind, it is the signature of the appropriate person on a pleading which authenticates the same...An unauthenticated document is not a pleading of anybody. It is a nullity. In my opinion where a pleading has been amended and the same has been struck out for whatever reason, the party affected has simply no valid pleading left on record... I find that the defendant has no valid defence on record."



4. Consequently, it is my finding that the petitioner's unsigned petition is a nullity. In the absence of a signed petition there is no suit before court. In *Vipin Maganlal Shah & another v Investment & Mortgages Bank Limited & 2 others* [2001] eKLR the Court of Appeal was of the following view: -

"...the position in Kenya seems to us to be that a party who files an unsigned plaint runs a very grave risk of having that plaint struck out as not complying with the law..."

5. Ultimately, I make the following disposal orders in relation to the defendants' notice of preliminary objection dated November 1, 2019.

a. The suit herein is struck out on the grounds that the pleadings initiating the suit are not signed as required by the law and that granting the prayers as sought would amount to disinheriting the Estates of Sitima Teya and Andrew Maranga.

b) The petitioner shall bear the costs of the suit.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 25TH DAY OF JULY 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Petitioner: Ms. Mosomi

Respondents: Mr. Nyambane

