



Moror & 10 others v Chairman, Kajiado Land Board & 3 others; Kironua & 9 others (Interested Parties) (Judicial Review 968 of 2017) [2023] KEELC 22642 (KLR) (13 July 2023) (Ruling)

Neutral citation: [2023] KEELC 22642 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
JUDICIAL REVIEW 968 OF 2017
LC KOMINGOI, J
JULY 13, 2023**

BETWEEN

**NKAITOLE MOROR 1ST APPLICANT
NTUIYOTO MARASWA 2ND APPLICANT
MOKARE SERINA 3RD APPLICANT
NKUKAT KAKURO 4TH APPLICANT
TARAYIA MPAPA 5TH APPLICANT
JOSPEH KARANTEI 6TH APPLICANT
KOLELE LESIANGU 7TH APPLICANT
JOSHUA PARMERE 8TH APPLICANT
RAINGPT LEMGA 9TH APPLICANT
JEREMIAH MORORO 10TH APPLICANT
MAILUA GROUP RANCH 11TH APPLICANT**

AND

**CHAIRMAN, KAJIADO LAND BOARD 1ST RESPONDENT
COUNTY LAND ADJUDICATION OFFICER 2ND RESPONDENT
THE CHIEF LAND REGISTRAR 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT**

AND

**DANIEL KOKAI KIRONUA INTERESTED PARTY
CHRISTOPERH K. SAIGOL INTERESTED PARTY**



SHAPAPA MPAPA	INTERESTED PARTY
JOSHUA LENGETE SARBABI	INTERESTED PARTY
KOILEKEN SEMPETA	INTERESTED PARTY
PARMERES NINA	INTERESTED PARTY
MEIBUKO MOSILA	INTERESTED PARTY
TOBIKO NKULANA	INTERESTED PARTY
MASHIPEI TIRATI	INTERESTED PARTY
SINJALE OLE KANORE	INTERESTED PARTY

RULING

1. This is the Notice of Motion dated 19th December 2006 brought under;

(Under Articles 1, 2, 3, 159 of the *Constitution*, Section 5 of the *Judicature Act*, Sections 3, 3A, 40 of the *Civil Procedure Act Cap 21* Laws of Kenya and any other enabling Provisions of the law).
2. It seeks Orders;
 1. That the Honorable Court be pleased to Order the 2nd Applicant/Respondent to appear before the Honorable Court in person to show cause why he has refused to comply with the Orders of this Honorable Court issued on the 16th November 2016.
 2. That the Honorable Court be pleased to cite the applicants for contempt of court and issue an order of committal to civil jail against Ntuyoto Maraswa, the immediate former Secretary, Mailua Group Ranch for such period as the Honorable Court may deem fit and just.
 3. An order that costs of and occasioned by the Motion be paid personally by the said Ntuyoto Maraswa.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 10.
4. The application is supported by the affidavit of Daniel Koikai Kironua, the 1st Interested Party/Applicant, sworn on the 19th December 2016.
5. The application is opposed. There is a Replying Affidavit sworn by Ntuyoto Lampesai Maraswa, the 2nd Applicant (Original) on the 8th March 2023.
6. The Notice of Motion was canvassed by written submissions.
7. I have considered the Notice of Motion and the affidavit in support. I have also considered the response thereto, the written submissions and the oral highlights. The issues for determination are;
 - i. Whether the 2nd Applicant/Respondent is in contempt of the orders of 8th December 2016.
 - ii. Who should bear costs of this application?
8. It is the Interested Parties' case that they were declared the dully elected officials by Honourable R. Nyakundi J in his judgment dated 8th December 2016.



- That the Honourable Judge also made certain orders which were elaborate and timelines given. The Applicants were to deliver the documents to the 2nd Respondent within fourteen (14) days.
9. It is their case that the Applicants have failed to comply hence this application.
 10. The 2nd Applicant/Respondent on his part, stated that he does not have the documents hence it is impossible for him to comply with the orders issued.
 11. Further that the Decree was not directed at him. He prays that the Application be found to lack merit and be dismissed with costs.
 12. Order No. 3 in the Decree issued on 8th December 2016 states;

“That all documentation relating to the 11th Applicant be deposited with the 2nd Respondent within 14 days to facilitate a smooth transaction and an inventory of the documentation be prepared and failed with the Deputy Registrar”.
 13. In paragraph 6 of the Judgement the Honourable Judge observed thus;

“.....PW1 Ntuyoto Maraswa is the Secretary to the Mailua Group Ranch. He testified that there was a dispute as to the actual membership in the register as it had never been updated since 1989.....”
 14. In the proceedings of 31st May 2016 PW9 Ntuyoto Lempesai Maraswa stated that he was the secretary of the Mailua Group Ranch.
 15. On Page 14 of the proceedings he stated;

“.....The government adjudication officer has a register of Mailua Group Ranch. I also keep a register at the office.....”

On page 17 he stated;

“I have the minutes of 24th May 2012 for Mailua Group Ranch.....”

On page 18, he stated;

“.....As Secretary there had been no communication from the Attorney General or Government officer. I have not been asked to prepare handing over notes for Mailua Group Ranch”.
 16. The above averments made under oath are enough to confirm that the 2nd Applicant/Respondent was the Secretary of the Mailua Group Ranch. He was also the custodian of all the documents relating to the group Ranch.
 17. His claim in paragraph 4 of the Replying Affidavit that he does not have the documents cannot be true.
 18. In the Case of *Shimmers Plaza Limited Vs. National Bank of Kenya Limited* (2012) eKLR the Court of Appeal, stated thus;

“.....It cannot be gainsaid that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and due administration of Justice. As stated by Romer L.J in *Hadkinson Vs. HadKinson* (1952) A11 ER 567;



“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.....”

19. I am satisfied that the order were made in the presence of the Applicants, the 2nd Applicant included. Even if they were not present, I note that the judgement was delivered in the presence of their counsel who must have informed them.
20. In the Case of *Econet Wireless Kenya Ltd Vs. Minister for Information & Communication of Kenya & Another* (2015) eKLR Ibrahim J (as he then was) stated;

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular and void”.

I find that the 2nd Applicant/Respondent is guilty of disobeying the orders of 8th December 2016. I am satisfied that he is in contempt.

21. The upshot of the matter is that I find merit in this application and the same is allowed.
22. I hereby order that the 2nd Applicant/Respondent Ntuiyoto Maraswa do appear before this Honorable Court on 11th October 2023 to show cause why he cannot be cited for contempt for failing to comply with the orders of 8th December 2016.
23. The Interested Parties shall have costs of this application to be borne by the original applicants.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 13TH DAY OF JULY 2023.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF.

Ms Omamo for Mr. Namada for the Interested Parties.

Mr. Nyaberi for the 1st, 2nd Applicants.

Court Assistant – Mutisya.

