



**Oge v Kara & another (Environment & Land Petition E001 of 2021)
[2023] KEELC 20260 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20260 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND PETITION E001 OF 2021
PM NJOROGE, J
SEPTEMBER 25, 2023**

BETWEEN

MARE OGE PETITIONER

AND

HABIBA AILA KARA 1ST RESPONDENT

KADHI COURT'S MARSABIT 2ND RESPONDENT

RULING

1. This application is dated August 10, 2023. It seeks orders that;-
 1. That the petitioner's notice of motion dated August 10, 2023 be certified urgent and be admitted for hearing during the August vacation.
 2. That the court be pleased to set aside the ruling issued on July 17, 2023.
 3. That in the alternative to prayer (2) above, the court be pleased to set aside its ruling with regards to paragraph 12 (b) of the ruling which marked the matter as closed.
 4. That pending the hearing and determination of this motion, this honourable court be pleased to grant an order staying any implementation of the Order of the 2nd respondent, Principal Kadhi, in Succession No. 04 of 2019, given on 21st December 2021 and issued on December 20, 2021 as well as suspending the legality or validity of the same particularly with regard to Title Number Marsabit/Mountain/1725;
 5. That costs of and /or incidental to this motion to borne by the respondent.
2. The application has the following grounds;
 - 7) That the court erred in observing that the petitioner did not file a Petition when in fact a Petition had been filed on December 22, 2021 (See copy of the filed Petition).



- 8) That the petitioner's Advocate also sent an email on December 22, 2021, to isiolocourt@gmail.com. (See copy of the email dated December 22, 2021).
- 9) That the petition was duly assessed along with an application and the petitioner paid a filing fees of Kshs. 8,375/-. (See copy of the KCB/Mpesa message dated December 22, 2021).
- 10) That the court marked the matter as closed as a result of the error.
- 11) That as a result of this error, the court did not properly consider the question of stay of implementation of the order of the Kadhi Court's Marsabit pending the hearing and determination of the Petition.
- 12) That the petition, which seeks a declaration that the Kadhi is in violation of article 50 and orders of *Certiorari*, will be rendered nugatory if stay is not granted.

And Which Motion is supported by the annexed affidavit of Mare Oge, the petitioner, sworn in support of both the Motion and in verification of the substantive petition.

3. When the matter was slated for hearing on 25/9/2023, the applicants and his advocate were not in court. Advocate Ondieki, for the 1st defendant asked the court to dismiss the application for non-prosecution.
4. I do note that the application does not satisfactorily address the issues that led to the decision that led the court to issue its orders on July 17, 2023. I agree with Mr. Ondieki that the application ought to be dismissed. No evidence of the filing or serving of the petition was produced. No evidence of payment through actual receipts as alleged by the petitioner's advocates was produced.
5. In the circumstances, the following orders are hereby issued:-
 - a. This application is dismissed.
 - b. Costs are awarded to the 1st respondent.

DELIVERED IN OPEN COURT AT ISIOLO THIS 25TH DAY OF SEPTEMBER, 2023 IN THE PRESENCE OF:

HON. JUSTICE P.M NJOROGE

JUDGE

Court assistant: Denge

