



Shukare & another (Both Suing on their Personal Capacity and as Representatives of the Unregistered Members of Mbirikani Group Ranch) v Metoe & 4 others (Environment & Land Case 048 of 2021) [2023] KEELC 19959 (KLR) (25 September 2023) (Ruling)

Neutral citation: [2023] KEELC 19959 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 048 OF 2021
MN GICHERU, J
SEPTEMBER 25, 2023**

BETWEEN

MICHAEL SHUKARE 1ST APPLICANT

MUYENDET OLE MAYIANI 2ND APPLICANT

**BOTH SUING ON THEIR PERSONAL CAPACITY AND AS
REPRESENTATIVES OF THE UNREGISTERED MEMBERS OF MBIRIKANI
GROUP RANCH**

AND

DANIEL METOE 1ST DEFENDANT

DANIEL MAPI 2ND DEFENDANT

JOSHUA SUIYANKA 3RD DEFENDANT

**STEPHEN AMBANI T/A KOLMANS – GEOMATIC CONSULTANTS KENYA
LTD 4TH DEFENDANT**

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT,
KAJIADO 5TH DEFENDANT**

RULING

1. This ruling is on the Notice of Motion dated 28/3/2022. The motion which is by the Plaintiffs seeks the following orders.
 - i. Summons to issue to the Defendants to appear before the court to explain why the court orders dated 17/11/2021 have been breached.



- ii. Conservatory orders restraining the Defendants or anybody acting on their behalf from transferring, subdividing, disposing off the suit property and evicting the Plaintiffs therefrom.
 - iii. The Defendants be cited for contempt of court and be committed to civil jail for a period of six (6) months.
2. The motion which is brought under Articles 23 (3), 40 48 and 159 (2) (d) of the Constitution of Kenya, Section 5(b) of the Contempt of Court Act (Act No 46 of 2016), Sections 1A, 1B, 3, 3A and 63 (c) of the Civil Procedure Act, Order 40 Rules 1 and 4, Order 51 Rule 1 of the Civil Procedure Rules and other enabling provisions of law is based on seven grounds. It is also supported by an affidavit sworn by the first Plaintiff, Michael Shukare and five (5) annexures.

The gist of the above material can be summarized as follows.

Firstly, on 17/11/2021, this court issued an order to the Respondents restraining them from evicting the Plaintiffs from the suit land which is Kajiado/Mbirikani/733 pending the hearing and determination of the Plaintiffs' Notice of Motion dated 21/9/2021.

Secondly, the Plaintiffs are rightful members of Mbirikani Group Ranch having lived there since 1989 and developed the suit property.

Thirdly, the Defendants were served with the court order on 1/12/2021.

Fourthly, the Defendants have blatantly ignored the court order and have proceeded to subdivide the suit land by issuing allotment cards to third parties while instructing them to take possession thereof.

Finally, the entire suit will be rendered moot if the Plaintiffs are evicted from their land before the suit is determined.

- . The motion is opposed by the Respondents and Daniel Metoe, the first Defendant has sworn a replying affidavit dated 8/6/2022 in which he deposes as follows.

Firstly, none of the Plaintiffs has been evicted from the suit land that each of them occupies.

Secondly, the order dated 17/11/2021 only enjoined the Defendants from evicting the Plaintiffs but not from subdividing the land.

Thirdly, the application dated 21/9/2021 which sought six prayers including barring the Defendants from subdivision and allocation of the suit property was never allowed.

The first, second and third Defendants therefore say that they have not disobeyed any order and the Plaintiffs' application ought to be dismissed with costs.

4. The fourth Defendant Stephen Ondongo Ambani has also opposed the motion by filing a replying affidavit dated 10/6/2022 in which he denies evicting or attempting to evict the Plaintiffs. He urges that the Plaintiffs' application be dismissed for failure to meet the high threshold of proof required in a case of contempt of court orders.
5. Counsel for Respondents filed written submissions dated 27/11/2022. I have not seen the applicants' counsel's written submissions. Even without considering the submissions, it is not difficult to identify the issues for determination. In my view, they are as follows.
 - a. Whether the order of 17/11/2021 restrained the Defendants from subdividing the suit land.



- b. Whether the Defendants can be cited for contempt of orders that were not issued in the first place.
6. On the first issue, I find that the Defendants were not restrained from proceeding with the process of subdivision of the suit property and allocating it to third parties as per prayer 4 of the notice of motion dated 21/9/2021. The court only allowed prayer 2 which sought to injunct the Defendants from evicting the Plaintiffs from the part of the suit land that they occupy. Nothing more than this was allowed.
7. On the second issue, I find that the Defendants cannot be cited for breach of an order that was not issued in the first place.
8. For the above stated reasons, I find no merit at all in the motion dated 28/3/2022 and I dismiss it with costs.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF SEPTEMBER, 2023.

M.N. GICHERU

JUDGE

