



REPUBLIC OF KENYA



**KENYA LAW**  
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**Doone Farm Limited v Kirui & 13 others (Environment & Land Case  
E013 of 2023) [2023] KEELC 21118 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21118 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E013 OF 2023**

**A OMBWAYO, J  
OCTOBER 31, 2023**

**BETWEEN**

**DOUNE FARM LIMITED ..... PLAINTIFF**

**AND**

**PHILIP KIRUI ..... 1<sup>ST</sup> DEFENDANT**  
**JOSEPH CHUMO ..... 2<sup>ND</sup> DEFENDANT**  
**DANIEL CHEPCHO ..... 3<sup>RD</sup> DEFENDANT**  
**JOSEPH NGENY ..... 4<sup>TH</sup> DEFENDANT**  
**SIMON KOECH ..... 5<sup>TH</sup> DEFENDANT**  
**CHEPKWONY ..... 6<sup>TH</sup> DEFENDANT**  
**RICHARD BARORET ..... 7<sup>TH</sup> DEFENDANT**  
**MOSES KORIR ..... 8<sup>TH</sup> DEFENDANT**  
**WILSON LEKAKENY ..... 9<sup>TH</sup> DEFENDANT**  
**JULIUS CHELULE ..... 10<sup>TH</sup> DEFENDANT**  
**JACKSON MUTAI ..... 11<sup>TH</sup> DEFENDANT**  
**ANN KEBENEI ..... 12<sup>TH</sup> DEFENDANT**  
**JOYCE KOSKEY ..... 13<sup>TH</sup> DEFENDANT**  
**NAOMI KIRUI ..... 14<sup>TH</sup> DEFENDANT**



## RULING

### Brief Facts

1. The Plaintiff/Applicant filed the instant application dated 12<sup>th</sup> September, 2023 seeking the following orders:
  1. Spent.
  2. That this Honourable court be pleased to review, and/or vary its orders of 8<sup>th</sup> May, 2023 and to allow the Applicant harvest the commercial trees (including but not limited to Eucalyptus) in the suit property.
  3. That cost of this application be in the cause.
2. The Application was based on grounds set out and supported by the Affidavit of Richard James Kay Muir a Director of the Plaintiff herein sworn on 12<sup>th</sup> September, 2023.
3. It was stated that the Plaintiff is the absolute proprietor of LR no 9045/9 Rongai Nakuru the suit property herein. That it had sought for a temporary as well as a permanent injunction restraining the Defendants from trespassing the suit property or in any way dealing with the Plaintiff's land.
4. That vide a ruling dated 8<sup>th</sup> May, 2023 this court ordered that the status quo be maintained pending the hearing and determination of the suit. He further stated that the court restrained both parties from felling or harvesting the tress on the suit land. He added that it was imperative to bring to the court's attention that the Plaintiff had planted exotic trees that have since matured and are due for harvesting.
5. It was further stated that the government had lifted the ban on logging which in effect gave then the greenlight to cut the trees for commercial purposes. The Applicant added that he is apprehensive that the commercial value of the exotic trees may expire during the pendency of the suit due to their life span.
6. The Applicant stated that as advised by his counsel the court can grant an order for review under Order 45 Rule 1 and guided by the holding in the case of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR. He added that as advised by his counsel, the instant application is premised on the grounds of discovery of new or important evidence in this case the lifting of the logging ban by the government of Kenya.
7. In conclusion, the Applicant urged the court to allow the instant application as prayed or else it will suffer financial loss.

### Response

8. The Defendants did not file any response despite service.

### Submissions

9. None of the parties filed their submissions.

### Analysis and Determination

10. This court has considered the application and supporting affidavit and is of the view that the main issue for determination is whether the Applicant is entitled to the orders sought.



11. Section 80 of the *Civil Procedure Act* provides that:

Any person who considers himself aggrieved: -

- a) By a decree or order in which an appeal allowed by this Act, but from which no appeal has
- b) By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

12. Order 45 Rule 1 of the *Civil Procedure Rules* on the other hand further provides that:

Any person considering himself aggrieved: -

- a) By a decree or order from which an appeal is allowed but from which no appeal has been preferred or
- b) By a decree or order from which no appeal is hereby allowed, and from whom the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of the judgment to the court which passed the decree or made the order without unreasonable delay.

13. The Applicant herein seeks to have the orders issued by this court on 8<sup>th</sup> May, 2023 reviewed on the ground that there has been discovery of new and important evidence being the lifting of the logging ban by the government of Kenya. This court had earlier ordered that the status quo be maintained pending the hearing and determination of the suit. It also restrained both parties from felling or harvesting the tress on the suit land.

14. It is not in dispute that in July this year the government lifted the 6-year ban on logging of trees in the country. It is also not in dispute that the government's lift on the ban on logging is a new evidence that arose after the court's ruling. However, it is noteworthy that in a recent holding on 12<sup>th</sup> October, 2023, Angote J in *Law Society of Kenya v Attorney General & 3 others; Katiba Institute & 6 others (Interested Parties)* (Environment & Land Petition E001 of 2023) [2023] KEELC 20583 (KLR) (12 October 2023) (Interim Judgment) issued an interim judgement to the effect that the lifting of the ban on logging by the government of Kenya ought not to proceed due to lack of public participation.

15. This court fully associates itself with the holding by the said court and finds that the Applicant does not stand to lose anything since the said trees shall remain intact pending determination of the suit. Furthermore, it would be of no good for this court to review its orders allowing the Applicant to cut the trees for its financial gain yet there is already an interim judgment by similar court of equal status touching on the said logging. In the upshot, I find that the Applicant is therefore not deserving of the orders sought.

16. Consequently, the application dated 12<sup>th</sup> September, 2023 is hereby dismissed with no orders as to costs. It is so ordered.

**RULING DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 31<sup>ST</sup> DAY OF OCTOBER 2023.**



**A.O. OMBWAYO**  
**JUDGE**

