



**Kuria & 27 others v Moti & 12 others (Environment & Land Case  
23 of 2021) [2023] KEELC 20871 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20871 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 23 OF 2021  
FO NYAGAKA, J  
OCTOBER 19, 2023**

**BETWEEN**

**DAUDI A. KURIA & 27 OTHERS ..... PLAINTIFF**

**AND**

**G. W. MOTI & 12 OTHERS ..... DEFENDANT**

**RULING**

1. This Court is once again called upon to decide on an application which, except prayers 1 and 3 of the application, barely makes sense. Eight or nine applications of similar strenuous nature previously determined in my life on the Bench so far were not in the instant file but different ones. To say the least the application before me is glaringly unintelligible. I will explain this view at the point of analyzing the issues in the application.
2. The Application was filed by parties in person. But to act in person is not an excuse for filing poorly drafted pleadings because even in ordinary life he who goes to battle ought to bear in mind that he should possess good enough skills and tactics on what it takes to win it.
3. To demonstrate the paucity of the expected input in the drafting herein, this Court will, at the appropriate paragraph, reproduce without alternations or corrections the content of the prayers sought. It will as much as possible do likewise regarding the grounds of the application and depositions in the supporting affidavits.
4. By an Application titled “Further Amended Notice of Motion” which was dated 23/01/2023 the Plaintiffs moved this Court under Section 1, (A), (sic) 1B and 3A and 63 of the *Civil Procedure Act* and provisions he referred to as Rule Orders S1 of (the) *Civil Procedures Rule* (sic) and all other enabling provisions of the law. They sought the following prayers:-
  1. ...spent



2. That pending the hearing and determination of this Application and suit, the Plaintiffs be granted leave to amend the plaint as per the Draft Amended Plaint annexed to this application.
  3. That the Draft Amended Plaint be deemed as filed subject to payment of the requisite court fees.
  4. That under the Land Act, 2012 No. 6 of 2012 Paragraph 159 and 160 and the 9<sup>th</sup> to 13<sup>th</sup> Defendant's counsels has default, neglect and dishonor (sic) this honourable court orders since September, 2020 and thereafter the Ruling delivered on 30<sup>th</sup> June 2021 by Honourable Justice Mwangi Njoroge and a letter dated 8<sup>th</sup> July 2021 by the State Law Eldoret and it is over 1½ years all other orders this honourable court has directed to them not yet being obeyed and it is in the records annexed herein marked 'A', D.A.K & D.A.K 2 in this regards its abusiveness time of the court process and buying time in this honourable court your honour.
  5. That pending the hearing and determination of this suit, the 9<sup>th</sup> and 13<sup>th</sup> Defendants and/ or their authorized representative be summoned to attend Court to shed light on the existence of Government caveats on the subject properties and the reason (is any) for failure to survey and remove government caveat in the said suit land estate filed herein (sic).
  6. That the cost of this suits and such further and other reliefs this honourable court may deem, for expedient to grant.
5. The Application was based on a number of grounds which, as indicated above, are herein reproduced nearly verbatim. They were, "That the government of Kenya placed caveat on all properties along Endebess to Suam supported by in the year 1974 vide Kenya Gazette dated 19/10/1974 (sic). The construction which started from June, 2019 thereafter gazette of 10/05/2019 but government caveat is still in force in the said suit land estates filled herein. The roads has since been completed by the 11<sup>th</sup> Defendant and there is no reason for the non-removal of the caveat pending to date.
  6. That there is need for urgent court intervention for the government of Kenya to remove notice dated 19/10/1974 under the Land Acquisition Act (now repealed) of the Land Act 1968 No. of 1978 (Notice No. 3304 and No. 3305) Section in pursuance of Section 6(2) of the Land Acquisition Act (now repealed) of the government of its intention to acquire land for construction of Suam-Endebess Road in Trans Nzoia District. The Government of Kenya in fresh Gazette of 10/05/2019 vide Kenya Gazette Notice No. 4496 pursuant to the Land Act No. 6 of 2012 of its intention to acquire land for the construction of Kitale-Endebess-Suam Road project inquiry in pursuance to Section 162(2) of the Land Act 2012 and further notice as listed as the National Land Commission intend to acquire listed parcels of land on behalf of Kenya National Highways Authority.
  7. That the said suit land estate was not transferred by the Chief Land Registrar because of the government caveat under Section 6(2) Land Acquisition Act 1968, 1983, 1970, 2007, 2010 and 2012 in the law of Constitution of Kenya in the said suit land filled herein. The Plaintiff's relies on documents missing in the file all hereby marked "A" GM 9B, GM 14B, GM 16B GM 16B, GM 18B and new GM 19.
  8. The Plaintiffs relies on documents issued by the State Law Counsel Madam Valestine Jepkemei on 8/07/2021 herein marked page vl -2-3-4-5-6-7 and others annex in the records. That the Plaintiffs for grandfathers and fathers purchasers of land estate from the vendors in the year 1968 and 20/01/1989 without knowing of the said caveat in the suit land estate filled herein.
  9. That the Plaintiffs had not yet benefitted because of the government caveat laid by the Commissioner of Land in the said suit land filed herein. The Plaintiffs aver that their fore grandfathers and father



- plus themselves has been obeying the law of the government caveat up to date. That if the removal of the government caveat has not been removed it will adversely affect more than Plaintiffs' fundamental rights.
10. That the additional parties added are necessary and will assist the Court in the speedy resolution of the issues brought before the Court. It is imperative that 1<sup>st</sup> to 8<sup>th</sup> be served by way of substituted service since all efforts to trace them have not bore fruits. That it is the interests of justice that the application be granted in the wider public interest and in order to safeguard the interests of the several parties affected whose land was hived off, have not been compensated and the intended removal of caveat placed more than four decades ago," (end of the direct quote).
  11. Attached to the Application were copies of documents marked D.A.K 1, being three pages of the Land Act, 2012, a letter dated 08/07/2021 written by the State Law Office and Department of Justice, a copy of the Amended Plaint filed on 16/07/2021 and a Notice of Appointment of Advocate by Nathaniel C. Munga Advocate. Also attached to the application was an Affidavit purported to be sworn by the 1<sup>st</sup> to 10<sup>th</sup> Plaintiffs but in reality, only two deponents, namely the 1<sup>st</sup> and 6<sup>th</sup> Plaintiffs signed it, meaning they are the only ones who appeared before the Commissioner for Oaths. All parts to be signed by the remaining eight Plaintiffs had blank spaces.
  12. The document read at paragraph 1 that all the persons named were of sound mind. At paragraph 2 it stated that they as the 1<sup>st</sup> to 10<sup>th</sup> Plaintiffs had authority of the other Plaintiffs to swear "this Plaint on their behalf." In paragraph 3 they deponed that they were beneficiaries of members of Mukunya farmers who bought four companies and other land estates "as per the list of documents filed before this Honourable court." They deponed further at paragraph 4 that "these properties since 1974 had been laid a government caveat by the Commissioner of Lands for the road to pass through from Kitale-Endebess-Suam border of Kenya Uganda." That "it was not possible to complete the process of transfer of the land estates since there was a caveat by the Chief land Registrar Section 6(2) Land Acquisition Act 1968, 1983, 1970, 2007, 2010 and 2012 in the law of Constitution of Kenya in the said suit land filed herein." That they were "aware that the Plaintiffs' documents were submitted to the lands office in Nairobi for transfer on February, 1989 of the suit land filed herein but to date no single transfer had been effected." That "the previous owners of the lands estates left for overseas, majority being white settlers, before completing the transactions up to date (Annexed is Exhibit marked GM-1, GM2, GM3, GM-4 and GM-5)".
  13. That "most of the purchasers did not live to acquire certificates of title yet the government unilaterally and arbitrary (sic) placed a caveat and to date no action has been taken by the Commissioner of Lands or any other government agency to remove the caveat and/or compensate the affected owners."
  14. It was their deposition that upon the construction of the Endebess-Suam road (now complete) by the Kenya National Highways Authority (KENHA), they did not bother to remove the caveat and or engage the applicants with a view to releasing "the remainder of the land less acreage acquired for road construction." That the applicants had lost much because they were not able to obtain titles for subdivision, farming and or even succession purposes for more than four decades from the time the caveat was placed.
  15. They deponed further that there was need for urgent court intervention for the government to remove the notice dated 19/10/1974 under the Land Acquisition Act, 1968 No 40 of 1978 (sic) (Notice No. 3304 and Notice No. 3305) Section in pursuance of Section 6(2) of the Land Acquisition Act (now repealed) of the government of its intention to acquire land for construction of the Suam-Endebess Road in Trans Nzoia District.



16. Further, they deponed that the government in a fresh gazette of 10/05/2019, Notice No. 4496 pursuant to the Land Act No. 6 of 2012 of its intention to acquire land for construction of the Kitale-Endebess-Suam Road Project Inquiry in pursuance of Section 162(2) of the Land Act 2012 and a further notice as listed as the National Land Commission intend to acquire land listed parcels of land on behalf of the Kenya National Highway Authority.
17. They deponed further that their efforts to get assistance, compensation, re-survey and/or any dealings in the gazette properties have not bore (sic) any fruit and we continue to suffer from lack of use, ownership development and/or to freely deal with their inheritance to their detriment. That they had established from the court records that some of their documents were missing in the Court file and they marked them as “A” GM 9B, GM 14B GM 15B, GM 16B, GM 17B, GM 18B and new GM 19 (sic) and they wished that the same be part of the Court record.
18. That it was regrettable and unfortunate that in spite of their grandfathers and/or fathers being bona fide purchasers of the land estates from vendors in the year 1988 to January 1989 without knowing of the caveat on the suit lands, no assistance has been forthcoming from any arm of government hence the instant proceedings. They then averred that they, their fathers and grandfathers have been obeying the law of the government caveat to date. That if the caveat was not removed they would continue to be collectively adversely affected in their fundamental rights. That it was only fair and in the interest of justice that “the prayers sought be granted in the interests of justice and the relevant government officials be summoned in the wider public interest in order to fast track the resolution process.
19. Annexed to the supporting ‘Affidavit’ were copies of the letter dated 8/07/2021 the Amended Plaintiff dated 08/07/2021 and filed on 16/07/2021, the Notice of Appointment of Advocate by Nathaniel C. Munga and a copy of a draft Further Amended Plaintiff dated 23/01/2023 which proposed amendments on years at paragraphs 5, 16 and (a) of the reliefs sought and a date at paragraph 27 thereof.
20. In an apparent reference to prayers 2 and 3 of the (instant) Application for amendment to add new parties, the Applicants made proposed changes in the heading of the Application itself as follows, the 199th Plaintiff, the name Mwangi Mungai was crossed and underlined in red and Patrick Kamau inserted instead. For the 217th Plaintiff, Njoki Mburu crossed and underlined in red while inserting the name Gichane K. Benson. For the 226th Plaintiff, was crossed and underlined in red while James M. Macharia was inserted. For the 235th Plaintiff, the name CO was crossed and underlined in red. For the 242nd Plaintiff, the name O FRANCIS was crossed and underlined in red. Then still on the heading of the Application there were parties added as Plaintiff 258, 259, 260, 261, 262, 263, 264, 265, 266, 267 and 268 and all were underlined in red. These alterations were nowhere in the proposed Further Amended Draft Plaintiff.
21. The application was strongly opposed by the 9<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Defendants through the Replying Affidavit of learned counsel Valentine Jekpemei which she swore on 22/02/2023 and filed on 28/02/2023. She deponed that the Application was misconceived, untenable and bad in law and an abuse of the process of the court as the prayers could not be granted in by a court of law. She deponed further that the Application was wanting in form and substance as it was not accompanied by a supporting affidavit. She swore that the proposed amendment was a waste of the Court’s time since the draft Amended Plaintiff was similar to the one in the Plaintiff’s trial bundle amended on 12/11/2021 and she referred the Court to the pages 1-20 of the Plaintiffs’ trial bundle.
22. She deponed further that the prayer to summon the 9<sup>th</sup> and 13<sup>th</sup> Defendants was premature at the interlocutory stage and could have only awaited the trial of the main suit. Further, she deponed that the allegation that the 9<sup>th</sup> and 13<sup>th</sup> Defendants disobeyed a Court order was mere falsehood and a misrepresentation of facts aimed at hoodwinking the Court.



23. The 10<sup>th</sup> Defendant opposed the Application through a Replying Affidavit sworn by one Brian Ikol on 11/04/2023 and filed the same date. He stated that the 10<sup>th</sup> Defendant was an Independent Commission established under Article 67(1) of *the Constitution* of Kenya, 2010 and operationalized through the *National Land Commission Act* No. 5 of 2012. He deponed that the Application was frivolous, misconceived, untenable in law and an abuse of the process of the Court. He swore that the application was fatally defective in form and substance as it was unaccompanied by a supporting affidavit as required by law. The prayers sought were untenable and could not be granted in law. That the amendments sought were a waste of the Court's time for no substantive amendment had been sought. Lastly, he stated further that the application was an afterthought, lacked merit and designed to derail the matter before Court.

### **Submissions**

24. The Application was disposed of by way of written submissions. The Plaintiff's filed theirs dated 22/03/2023 on the same date. They filed another set of submissions dated 14/08/2023 on 15/08/2023. The Plaintiffs filed the latter submissions titled "Plaintiff's supplementary Submissions" without leave of the Court. This Courts therefore expunges them from the record.
25. The Plaintiff's submissions dated 22/03/2023 were to the effect that the 9<sup>th</sup>-13<sup>th</sup> Defendants appeared on 03/09/2022 without a Memorandum of Appearance. They argued that that was an illegality. They argued further that the said defendants had not filed a bundle of documents hence they were buying time and that was contrary to Sections 1A, 1B and 3A of the *Civil Procedure Act*.
26. The Applicants then argued that the 9<sup>th</sup>-13<sup>th</sup> Defendants knew they had not responded to the instant matter hence they were delaying the matter. Further, that the 9<sup>th</sup> Defendant already accepted that there was a caveat in place and it was supposed to be removed. That the 10<sup>th</sup> Defendants had not filed any pleadings since 2020. Again, that the 11<sup>th</sup> Defendant failed to respond to letters dated 08/11/2019 and 11/11/2019 from the Chief Land Registrar.
27. They argued that the 12<sup>th</sup> and 13<sup>th</sup> Defendants were waiting for the Court to issue orders establishing boundaries between private owned estates, ADC and Forestry and other groups. That the Court should issue summons to the 9<sup>th</sup> - 13<sup>th</sup> Defendants to show cause why the caveats on the deed plans should not be removed.
28. That the Plaintiffs had spent a lot of in traveling and accommodation so as to dispose of the suit but the defendants continued to delay the matter. That the learned counsel for the 9<sup>th</sup> - 13<sup>th</sup> Defendants were vexatious litigants.
29. That the application dated 19/12/2022 and Memorandum of Appearance dated 03/10/2022 and 08/03/2023 were unstamped hence illegal. They then submitted on a number of provisions of the *Land Registration Act* and Article 65 of *the Constitution*.
30. They also submitted that the Director of Land Valuation (sic) had never exercised his duty of valuation of the suit lands to date and the Article 40(2) of *the Constitution* had never been complied with. And that the 10<sup>th</sup> Defendant had never complied with the provisions of the *Land Act*.

### **Issues, Analysis And Determination**

31. This Court has considered the Application, the Responses thereto, the submissions thereon, and both case law and statutory land on the issues raised. I am of the view that this Court will determine the Application properly if issues that go to the root of it are analyzed first before going to the merits, if any.



32. First, the submissions by the Applicant do not address the issues herein. I stated so because as noted from the prayers, the proper issue in the Application, that merits consideration if the application is competent whether the Court should grant the prayer for amendment of the Plaint. The rest of the payers 2, 4 and 5 cannot be granted because, to grant prayer 2 would mean that the Application would be allowed at the interlocutory stage before hearing. That would render prayer 3 of the application overtaken by events and the arguments in the Application of no purpose.
33. Second, regarding payers 4 and 5 of the Application are of the nature of that cannot be granted because prayer 4 does not making sense. Prayer 5 is directed to evidence being adduced in Court.
34. Third, about the entire application, I have stated at the beginning of this ruling that most of the documents does not make sense. Even then main issue that makes this Application incompetent is that it is supported by a document titled “Supporting Affidavit” but the same was not signed by all the alleged deponents. Moreover, the Plaintiffs amended the Application itself and not any other annexure. The only document which should have been an annexure that would have come close to an Amended Plaint was a photocopy of an ‘Amended Plaint” filed on 16/07/2021. One wonders why the Applicant purported to attach that document to the Supporting Affidavit.
35. In Addition to the observation above, none of the documents purported to be annexures to the Supporting Affidavit were commissioned and serialized by the Advocate, one Stephen Mwaura Muhia who is alleged to have commissioned the Supporting Affidavit, as required under Section 9 of the *Oaths and Statutory Declarations Act*, Chapter 15 of the Laws of Kenya. The provision is to the effect that:
- “ All exhibits to affidavits shall be securely sealed thereto under the seal of the commissioner, and shall be marked with serial letters of identification ”.
36. Since none of the annexures to the purported Affidavit in support of the Application before me were commissioned as required by law, the facts deponed to in relation to them are inadmissible hearsay in so far as they relate to the documents. Again, since the purported Affidavit does not accord with the law regarding how affidavits are to be drawn, sworn and filed, particularly in the sense that it purports to be an oath of nine people who took it jointly before a Commissioner for Oaths but only two actually signed it to own the oath, the same is incurably defective. Neither the interest of justice nor Article 159(2)(d) of *the Constitution* of Kenya, 2010 can cure the defect. I therefore strike it out. Further, since the purported affidavit has been struck out, the Application dated 23/01/2023 remain naked or bare and not supported by an Affidavit. Therefore, it is incurably defective and an abuse of the process of the Court.
37. Therefore, this Court need not waste precious time by making analysis of each issue the application could have required that I consider if it was properly before me, for instance, that the purported proposed amendments, if permitted, could have been done in what can be best described as a confused and unacceptable manner in law. I wish the first Plaintiff would heed to the advice of the Court to seek the services of a lawyer to represent the parties herein if ever they were to understand and present the issues they wish to in a manner that the Court make head or tail of. Thus, the place of the instant Application is none other than on the path and in the end of striking out. It is struck out with costs to the Respondents who opposed it.
38. This suit shall be mentioned virtually on 02/11/2023 for further directions. All parties to attend virtually.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 19<sup>TH</sup> DAY OF OCTOBER, 2023.**



**HON. DR. IUR FRED NYAGAKA**  
**JUDGE, ELC KITALE**

